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Response: Individuals who have taken the competency evaluation as part of a NATCEP may be considered still to be in the program and may continue to serve as a nurse aide, as discussed above. Individuals who have completed only a CEP may not serve as a nurse aide until results indicating successful completion of the evaluation are obtained.

Comment: A few commenters requested clarification on what role nurse aide registry verification has in the employability of nurse aides. Some indicated that individuals who have successfully completed a NATCEP or CEP but have not yet been placed on the registry should be allowed to be employed. One commenter requested that temporary employment of an individual be allowed when the registry is closed. Others requested that facilities not be allowed to hire any individual without receiving all clearances from the registry.

Response: Sections 1819(b)(5)(C) and 1919(b)(5)(C) of the Act indicate that, unless an individual is in a NATCEP, a facility may not use an individual as a nurse aide unless the individual is competent to provide services and the facility inquired with the registry about information contained on that individual. To clarify our regulations for this requirement, we have revised the provisions in proposed § 483.75(g)(3) (now redesignated as § 483.75(e)(4)) by removing from this section the requirement that facilities permit individuals to serve as nurse aides only when the facility has asked and not yet evaluated a reply from the State registry for information concerning the individual, and placing, and further amending, the provision in a new § 483.75(e)(5), Registry verification. This new section specifies that before allowing an individual to serve as a nurse aide, a facility must receive registry verification that the individual has met competency evaluation requirements unless the individual can prove that he or she has recently successfully completed a NATCEP or CEP approved by the State and has not yet been included in the registry, or the individual is in a NATCEP approved by the State. Facilities must determine whether individuals who have recently completed a CEP or NATCEP actually become registered. We believe that a facility must receive a response from the registry before using an individual as a nurse aide. Therefore, we have not permitted temporary employment while the registry is closed. We note that facilities must receive a response from all registries they are required to contact before using an individual as a nurse aide. This applies to individuals who have recently completed a NATCEP or CEP as well as other individuals because of the possibility that adverse findings might exist in other States.

Furthermore, we have added a new § 483.75(e)(6), Multi-State registry verification, which requires that, before allowing an individual to serve as a nurse aide, a facility must seek information from all State nurse aide registries established under sections 1819(e)(2)(A) or 1919(e)(2)(A) of the Act the facility believes will include information on the individual. This new provision is required by sections 4008(h)(1)(C) and 4801(a)(3) of OBRA '90.

Section 483.75(g)(4) Required Retraining (Now Redesignated as Section 483.75(e)(7))

Summary of NPRM Provisions

Section 483.75(g)(4) specified that when an individual has not performed paid nursing or nursing-related services for a continuous period of 24 consecutive months since the most recent completion of a NATCEP, the facility must require the individual to complete a new NATCEP.

Comments and Responses

Comment: Several commenters indicated that the requirement for retraining of nurse aides who have not performed nursing or nursing-related services for monetary compensation for the 24 months prior to their most recent completion of a NATCEP should be clarified to reflect that individuals must actually fail to perform services for 24 consecutive months to require retraining. A number of commenters requested that the required retraining requirement be deleted from the final regulations, that individuals should be required to complete only a CEP rather than a full NATCEP, that individuals should be allowed to take an abbreviated version of the NATCEP, or that other alternatives to a NATCEP should be allowed. A couple of commenters believed that there should be exceptions to this provision, e.g., for maternity leave.

Response: We agree that this provision needs clarification and have revised § 483.75(g)(4) (now redesignated as § 483.75(e)(7)) using the statutory provisions from sections 1819(b)(5)(D) and 1919(b)(5)(D) of the Act. These provisions have been amended by sections 4008(b)(1)(D) and 4801(a)(4) of OBRA '90 to state that it, since an individual's most recent completion of a NATCEP, there has been a continuous period of 24 consecutive months during none of which the individual performed nursing or nursing-related services for monetary compensation, such individual must complete a new NATCEP or CEP. (Previously, sections 1819(b)(5)(D) and 1919(b)(5)(D) of the Act required these individuals to take only a new NATCEP.) Because sections 1819(b)(5)(D) and 1919(b)(5) (D) of the Act state explicitly that nurse aides who fail to perform nursing or nursing-related services for monetary compensation for a period of 24 consecutive months must complete a new NATCEP or CEP, we cannot grant exceptions to this requirement.

Comment: Several commenters requested that we specify where a nurse aide had to work to be considered to have performed nursing or nursing-related services for purposes of the required retraining provision.

Response: Sections 1819(e)(5)(D) and 1919(e)(5)(D) specify only that a nurse aide who does not perform nursing or nursing-related services for monetary compensation must complete a new NATCEP or CEP but does not specify where the services may be provided. We have interpreted the statute as allowing a nurse aide to perform nursing or nursing-related services anywhere for purposes of this provision. Because of this interpretation, we believe it is unnecessary to provide an exhaustive list of appropriate entities.

Comment: A couple of commenters wanted to know if the 24-month period begins after the actual completion of a NATCEP or from the date the individual was placed on the registry. Another commenter wanted to know if this requirement applies to individuals who had completed NATCEPs before October 1, 1990.

Response: The 24-month period begins after the date the individual completed the competency evaluation portion of a NATCEP, regardless of whether the 24 months lapsed before or after October 1, 1990. This provision also applies to individuals whose competence was deemed or for whom the requirement was waived as discussed in § 483.150. We have clarified this in the final regulations.

Comment: A number of commenters raised questions on the length of employment sufficient to qualify an individual as having performed nursing or nursing-related services for monetary compensation for purposes of § 483.75(g)(4) (now redesignated as § 483.75(e)(7).

Response: Sections 1819(b)(5)(D) and 1919(b)(5)(D) do not specify any minimum amount of time a nurse aide must work for purposes of the required

retraining provision. However, we believe that one documented day (e.g., 8 hours) of employment providing nursing or nursing-related services for monetary compensation would be sufficient.

Section 483.75(g)(5) Regular In-Service Education (Now Redesignated as Section 483.75(e)(8))

Summary of NPRM Provisions

Section 483.75(g)(5) specified that the facility must provide regular performance review and regular in-service education to ensure that individuals used as nurse aides are competent to perform services as nurse aides. It also specified that in-service education must include training for individuals providing nursing and nursing-related services to residents with cognitive impairments.

Comments and Responses

Comment: A few commenters indicated that we should not require in-service education because it would make being a nurse aide less appealing.

Response: The in-service education requirement in sections 1819(b)(5)(E) and 1919(b)(5)(E) of the Act was intended to ensure that nurse aides receive sufficient in-service education to maintain competence. We believe that instead of making the position of nurse aide less appealing, regular in-service education will allow for the professional development of nurse aides, building their self-esteem while enhancing their abilities to provide quality nursing care. Also, because the statute requires facilities to provide in-service education for nurse aides, the Secretary does not have the authority to delete this requirement from our regulations.

Comment: A large number of commenters requested that we clarify how much in-service education is required for nurse aides. Many commenters requested that there be no mandated number of hours, that the State be allowed to determine the number of hours, or that patient outcomes be used to determine whether adequate in-service education has been provided. Others requested that a specific number of hours be mandated so that facilities would not be subjected to the judgments of individual surveyors. Suggestions for numbers of hours ranged from 4 hours per year to 24 hours per year, the number specified in previous guidance in Transmittal 223 of the State Operations Manual and Transmittal 62 of the State Medicaid Manual. A number of commenters indicated that six hours per quarter was more than was required of licensed nurses and was therefore excessive. Some commenters indicated that mandating hours on an annual basis, rather than quarterly, would provide more flexibility to facilities and nurse aides.

Response: After consideration of these comments, we have revised § 483.75(g)(5) (now redesignated as § 483.75(e)(8)) to specify that a facility must annually provide a minimum of twelve hours of in-service education. We have required this minimum because we have found it to be sufficient for maintaining the competency of home health aides who perform services similar to those performed by nurse aides. (The requirements for in-service education for home health aides are at 42 CFR 484.36(b)(2).) We do not believe that nurse aides will need fewer hours of in-service training than home health aides. We did not choose a greater number of required hours of in-service training, nor did we impose a quarterly minimum of hours, because we believe a facility should have the flexibility to conduct training in accordance with its needs and staffing requirements.

Comment: Several commenters suggested that we mandate certain topics for in-service education. A wide range of topics were suggested. Some commenters suggested that the guidance in the State Operations Manual and State Medicaid Manual (cited above) be inserted into the final regulations. A couple of commenters suggested that in-service topics should be drawn from the training needs of the nurse aides and the needs of the residents as determined by the professional nursing staff or that facilities should have in-service plans to meet the needs of residents.

Response: We agree that it is necessary to provide some guidance as to the nature of in-service education and have revised § 483.75(g)(5) (now redesignated as § 483.75(e)(8)) to specify that in-service training must address areas of weakness as determined in nurse aides' performance reviews, and may address the special needs of residents as determined by the facility staff. We have adopted the suggestion that in-service topics be drawn from the training needs of the nurse aides and the special needs of residents in the facility because we believe it allows for optimum flexibility for facilities while assuring the continued competence of nurse aides. We have allowed the facility to determine in-service topics rather than specifying that the professional nursing staff make this determination because we believe that many types of facility staff may have valuable input on areas that need to be addressed.

We have not indicated specific topics that must be addressed during in-service education because we believe that such a list would not give facilities the flexibility to include programs in all areas necessary to insure the continuing competence of nurse aides.

Comment: A couple of commenters wanted clarification on in-service education relating to cognitively impaired residents. Some indicated that all in-service education should be designed to provide additional skills in the care of cognitively impaired residents.

Response: We have revised this requirement at § 483.75(g)(5) (now redesignated as § 483.75(e)(8)), which is mandated by sections 1819(b)(5)(E) and 1919(b)(5)(E) of the Act, to indicate that nurse aides who are providing services to cognitively impaired residents must receive in-service education in the care of the cognitively impaired. We have not required that all in-service education address the care of cognitively impaired residents because we believe that there are other important areas that need to be addressed.

Comment: A few commenters requested that we place some responsibility for in-service education on nurse aides by requiring proof of in-service education for recertification or through other methods. One commenter wanted to know what would happen to a nurse aide or a facility if a nurse aide did not meet the in-service education requirement.

Response: Sections 1819(b)(5)(E) and 1919(b)(5)(E) address only the responsibility of facilities to provide in-service training to nurse aides, and we believe that this responsibility should remain with the facilities. Penalties for non-compliance with this requirement will be discussed in the survey and certification requirements, which are being revised.

Comment: One commenter requested that we provide specific guidance on what constitutes in-service education. One commenter requested that HCFA develop independent study modules for in-service education. A few commenters requested that we define what constitutes a performance review, while others suggested that we require annual or semi-annual performance reviews of nurse aides.

Response: We have not provided more comprehensive guidance in what constitutes an in-service education program because we do not want to limit facility flexibility in developing in-service programs. We also do not wish to advise facilities that a performance review should cover all aspects of an

individual's job, especially those areas relating to patient care. We agree that a performance review should be performed on an annual basis, and have revised § 483.75(g)(5) (now redesignated as § 483.75(e)(8)) to specify that the facility must complete a performance review of every nurse aide at least once every twelve months.

Section 483.75(g)(6) Definitions (Now Redesignated as Section 483.75(e)(1))

Summary of NPRM Provisions

Section 483.75(g)(6) specified the definition of nurse aide to mean any individual providing nursing or nursing-related services to residents in a facility who is not someone who volunteers to provide such services without pay.

Comments and Responses

Comment: Several commenters requested clarification of the definition of a nurse aide. A few requested that the term "nursing assistant" be used instead of nurse aide. Many were concerned that the definition as proposed in § 483.75(g)(6) (now redesignated as § 483.75(e)(1)) would encompass licensed nurses, secretaries, physical therapy assistants, or dietary assistants, as well as other individuals, such as medication aides, activity aides, and unit aides, who do not perform the complete range of nurse aide duties. Others believed that the definition of a nurse aide should be broadened to include aides in all health facilities. Several commenters requested that the definition be revised to exclude individuals who do not ordinarily function as nurse aides but provide nurse aide services to relieve nurse aides, or who perform only one or a few nurse aide tasks. One commenter asked how the requirements apply to individuals who perform only a few nurse aide services. Finally, one commenter requested that we include the statutory definition of a licensed health professional in the regulations.

Response: We have retained ...e use of the term "nurse aide" and the statutory definition of nurse aide contained in sections 1819(b)(5)(F) and 1919(b)(5)(F) of the Act in our final regulations. (These sections of the statute were amended by sections 4008(h)(2)(F) and 4801(e)(6) of OBRA '90 to specify that a registered dietitian is not a nurse aide. We have revised our regulations at § 483.75(e)(1) to reflect this change.) The term "nurse aide" is used and defined in these sections of the statute, and we do not believe that changing it will provide additional benefits to our regulations. The statutory definition clearly indicates that nurse aides are individuals who provide nursing or nursing-related services in nursing or skilled nursing facilities. If an individual provides these services, regardless of the frequency with which they are provided or the scope of services provided, the individual must be competent to do so to be used by a facility. We note that physical therapy assistants and licensed nurses are included within the definition of a licensed health professional and are therefore not required to meet nurse aide requirements. It is unclear why secretaries or dieticians' assistants would be providing nursing or nursing-related services, but if they do, they must meet the nurse aide requirements. The omission of the statutory definition of a licensed health professional in the NPRM was inadvertent, and we are revising § 483.75(g)(6) (now redesignated as § 483.75(e)(1)) to include this definition.

Comment: A few commenters suggested that the definition of a nurse aide be revised to indicate that persons certified or registered under State law are not nurse aides.

Response: We believe that facilities are capable of determining which, if any, persons certified or registered under State law are included in the definition specified in the regulations.

Comment: Several commenters requested that we provide a definition of nursing or nursing-related services in our regulations. One commenter asked that we remove "nursing-related services" from the definition of nurse aide.

Response: We have used the statutory definition of nurse aide contained in sections 1819(b)(5)(F) and 1919(b)(5)(F) of the Act in these requirements, and we do not believe that adding a definition of nursing-related services would be helpful. We believe, however, that removing "nursing-related services" from the definition of a nurse aide would greatly decrease the accuracy of the definition because the term helps to clarify that an individual must be directly involved in patient care to meet the definition of nurse aide. For example, an individual who makes unoccupied beds or fills water pitchers would not necessarily be a nurse aide and therefore may not have to meet the nurse aide requirements.

Comment: A few commenters requested that we add a definition of a nurse aide trainee to the regulations.

Response: A nurse aide trainee is an individual enrolled in a NATCEP.

Summary of Changes to Section 483.75(g) (Now Redesignated as Section 483.75(e))

In response to comments, in addition to minor technical or editorial changes, we are making the following changes to § 483.75(e):

- To maintain consistency and clarity in the regulations, we have redesignated paragraphs (1) through (6) under § 483.75(e).
- We are revising § 483.75(e)(1) to indicate that a registered dietitian is not a nurse aide.
- We are adding a requirement at § 483.75(e)(3) that a facility may not use as nurse aides individuals who are not permanent employees unless they have completed a NATCEP or CEP and are competent to provide nursing and nursing-related services.
- We are revising § 483.75(e)(4), Competency, to reflect more accurately the provisions in sections 1819(b)(5) and 1919(b)(5) of the Act that a facility may only permit an individual who has worked less than four months in the facility, and has not completed a CEP or NATCEP or been deemed to have met the requirement or for whom the State has waived the requirements, to serve as a nurse aide or provide services for which the individual has not demonstrated competence through an approved program when the individual is a full-time employee in a training and competency evaluation program approved by the State.
- We have removed from paragraph (e)(4) the requirement for registry verification prior to employment by a facility and have placed the requirement in a new § 483.75(e)(5), Registry verification. We have further amended § 483.75(e)(5) to allow for an exception to registry verification prior to employment by a facility if the individual can prove that he or she has recently successfully completed a NATCEP or a CEP and has not yet been included on the registry, or the individual is in a NATCEP approved by the State.
- We have added a new § 483.75(e)(6), Multi-State registry verification, which specifies that, before allowing an individual to serve as a nurse aide, facilities must seek information from every State nurse aide registry the facility believes will include information on the individual.
- In § 483.75(e)(7), Required retraining, we have permitted individuals who have performed no nursing or nursing-related services for monetary compensation for a period of 24 consecutive months since their most

recent completion of a NATCEP to take either a new NATCEP or a new CEP.

• In § 483.75(e)(8), Required in-service education, we have specified 12 hours as the minimum amount of in-service education to be conducted annually and have further specified that performance reviews must be conducted at least every 12 months.

Section 483.150 Deemed Meeting of Requirements, Waiver of Requirements

Summary of NPRM Provisions

Section 483.150 specified the criteria individuals must meet to be deemed as meeting the nurse aide training and competency evaluation requirements or to have the competency evaluation requirements waived.

Comments and Responses

General

Comment: A few commenters suggested we expand the scope of the deeming and waiver provisions for nurse aides.

Response: We do not believe we have the authority to provide any new deeming or waiver provisions or to modify the current provisions for two reasons. First, the statute does not authorize the Secretary to provide for any such additions or modification. Second, the current deeming and waiver provisions are described very specifically in section 6901(b)(4) of OBRA '89. The absence of additional provisions suggests a lack of congressional intent for such provisions. However, we note that sections 1819(f)(2)(B)(ii) and 1919(f)(2)(B)(ii) of the Act permit States to deem individuals who, before July 1, 1989, completed a NATCEP the State determines would have met the requirements for approval at the time it was offered to have completed an approved program. This was inadvertently omitted from the NPRM, and we have included it in our final regulations at § 483.150(b)(2).

Comment: One commenter recommended that we develop procedures for deeming home health aides as meeting nurse aide requirements.

Response: The separate requirements for home health aide training and competency evaluation located at 42 CFR 484.36 are mandated by different statutory requirements, some of which are not the same as the nurse aide requirements in sections 1818 and 1919 of the Act. As a result, it is not possible to deem home health aides as meeting the nurse aide requirements.

Comment: Some commenters were confused about whether individuals must have been trained or employed in facilities that met the requirements for approval and withdrawal of approval of NATCEPs (which were proposed in §§ 483.151(b)(2) and 483.151(e) of the NPRM) at the time the training was conducted in order to be deemed as meeting nurse aide requirements or to have these requirements waived.

Response: The statutory requirements upon which §§ 483.151(b)(3) and 483.151(e) are based were changed by sections 4008(h)(1)(F) and 4801(e)(6) of OBRA '90, and were given a statutory effective date of January 1, 1989. However, because these changes were not known at the time by which the requirements for § 483.150 must have been met, we believe it would be unreasonable to apply §§ 483.151(b)(3) and 483.151(e) for purposes of § 483.150.

Comment: One commenter indicated that we should require States to have guidelines indicating what evidence they will require for the deeming or waiving of the nurse aide training and competency evaluation requirements.

Response: Because the State decision to waive the competency evaluation requirement is voluntary, we believe to mandate States to develop guidelines as to what evidence they will require for this provision is inappropriate. We believe, however, that States will develop guidelines for both waiving and deeming regardless of whether we require them to do so.

Section 483.150(a)

Summary of NPRM Provisions

Paragraph (a) of § 483.150 specified that a nurse aide is deemed to satisfy the requirement of completing a training and competency evaluation approved by the State if (1) the aide would have satisfied the requirement as of July 1, 1989, if a number of hours (not less than 60 hours) were substituted for "75 hours" in sections 1819(f)(2) and 1919(f)(2) of the Act, respectively, and the aide had received, before July 1, 1989, at least the difference in the number of hours in supervised practical nurse aide training or in regulation in-service nurse aide education; or (2) the aide was found competent (whether or not by the State), before July 1, 1989, after the completion of a course of nurse aide training of at least 100 hours duration.

Comments and Responses

Comment: One commenter indicated that an individual should be working as a nurse aide to be deemed under § 483.150(a) (1) and (2) as meeting the training and competency evaluation requirements.

Response: We do not require other individuals to be working as nurse aides to meet the training and competency evaluation requirements, and we believe that it would be unreasonable and discriminatory to expect deemed individuals to do so. We note, however, that the retraining required in § 483.75(e) does apply to deemed individuals.

Comment: One commenter wanted to know if there would be specific requirements for the 100 hours of training discussed in § 483.150(a)(2).

Response: Section 6901(b)(4)(C) of OBRA '89 does not specify requirements for the 100 hours of training necessary to be deemed as meeting the nurse aide training and competency requirements, and we have not added any to the regulations in order to make this requirement as flexible as possible.

Comment: Several commenters had questions or suggestions on the competency finding following the 100 hours of training specified in § 483.150(a)(2). One commenter recommended that the competency finding be a CEP approved by the State or a State-determined equivalent. Another commenter wondered if graduating from a 100-hour nurse aide course would constitute a finding of competency. One commenter wanted to know who could make determinations of competency for purposes of this provision.

Response: Section 6901(b)(4)(C) of OBRA '89 does not place strictures on which entities may determine competency after the 100 hours of training. In fact, the statute is very vague. We have therefore made this requirement as flexible as possible. Because the statute specifies that the finding of competency does not have to be done by the State, we do not believe that it is appropriate to restrict competency findings to those approved by the State.

Section 483.150(b)

Summary of NPRM Provisions

Paragraph (b) of § 483.150 specified that a State may waive the requirement for an individual to complete a CEP approved by the State for any individual who can demonstrate to the satisfaction of the State that he or she has served as a nurse aide at one or more facilities of the same employer in the State for at least 24 consecutive months before December 19, 1989.

Comments and Responses

Comment: One commenter requested that we remove the requirement allowing for a waiver of individuals

described in § 483.150(b)(1). A few commenters requested various expansions of this provision, such as more flexibility in employment locations or a more recent time frame within which to meet the requirement.

Response: This provision is required by section 6901(b)(4)(D) of OBRA '89, and we are therefore committed to implementing the statute as written.

Comment: One commenter wanted to know when the 24 months of employment begin for purposes of § 483.150(b)(1).

Response: Section 6901(b)(4)(D) explicitly indicates that an individual must be employed for 24 consecutive months before December 19, 1989 (the date of the enactment of OBRA '89) to have the nurse aide competency requirements waived. Therefore, any nurse aide who worked consecutively from December 19, 1987 to December 19, 1989 for one or more facilities of the same employer in the State will be eligible for waiver by the State.

Comment: Several commenters requested clarification of whether individuals who met the requirements for waiver by the State would be required to be trained or to complete a competency evaluation to be employed by a facility.

Response: If an individual meets all of the requirements listed in § 483.150(b)(1), the State may waive the competency evaluation requirement for him or her. Because facilities can employ individuals who have completed either a NATCEP or CEP approved by the State, individuals who have the competency evaluation requirement waived are employable by facilities. If, however, a facility wishes to train aides for whom the State has waived the competency evaluation requirement, the facility is free to do so.

Comment: A number of commenters requested clarification of how much an individual would be required to work for purposes of § 483.150(b)(1).

Response: Section 6901(b)(4)(D) of OBRA '89 does not specify how much an individual must work for purposes of this provision. We have not provided any requirements in our regulations because we wish to give States as much freedom as possible in their waiver determinations.

Comment: A few commenters suggested that HCFA mandate a method for determining which aides are eligible for waiver by States or suggested that HCFA define what should satisfy State requirements.

Response: State waiver of the competency evaluation requirement is voluntary, and, as such, we wish to give States as much freedom as possible in implementing this provision if they choose to do so. Also, we believe that States may already have developed mechanisms for determining which, if any, nurse aides may have the competency evaluation requirements waived, and we do not wish to disturb systems that are functioning well.

Comment: One commenter indicated that nurse aides for whom the State waives the competency evaluation requirement should be required to be currently working as nurse aides to be placed on the registry.

Response: We do not require individuals who complete a CEP to be currently working as nurse aides to be placed on the registry. We believe it would be unfair to have a different requirement for those individuals for whom the State has waived the competency evaluation requirement.

Summary of Changes to § 483.150

After consideration of the public comments, and for the reasons stated in our responses to those comments, we are revising proposed § 483.150 to add a requirement permitting States to deem to have completed a State-approved NATCEP those individuals who, before July 1, 1989, completed a NATCEP the State determines would have met the requirements for approval at the time the program was offered.

Section 483.151 State Review and Approval of Nurse Aide Training and Competency Evaluation Programs

Summary of NPRM Provisions

Section 483.151 specified requirements for State review and administration of NATCEPs, requirements for approval of programs, time frames for acting on a request for approval, and requirements for withdrawal of approval.

Comments and Responses

General

Comment: A few commenters had concerns about which agency of the State government should be allowed to have control over the review and approval of NATCEPs and CEPs. Some commenters suggested various State entities that could review and approve programs, while others requested that we allow any State entity to perform this function. One commenter indicated that the State survey agency is not the appropriate entity to approve NATCEPs.

Response: Sections 1819(e)((1) and 1919(e)(1) of the Act do not require that any particular State entity be responsible for the review and approval of NATCEPs and CEPs. Therefore, we have not specified in our regulations which agency of the State government may review and approve programs but have, instead, allowed States the flexibility to use the entity best suited to this task. We believe that some commenters may have been confused by the requirement in paragraph (a)(4) of § 483.151, which indicates that the State survey agency must determine whether the requirements of § 483.75(g) (now redesignated as § 483.75(e)) are met. Section 483.75(g) deals with facility compliance with nurse aide training requirements, not program review and approval.

Comment: Several commenters expressed concerns about permitting facility-based or non-facility-based training and competency evaluation programs. Some of these commenters requested specific requirements for non-facility-based programs, citing the need for regulatory requirements to contain costs as justification for the requirements. Taking full-time RNs away from resident care was the primary concern of those opposed to facility-based programs. A few commenters believed that the requirements should apply to both facility-based and non-facility-based programs, or that we should develop specific requirements for both settings.

Response: Sections 1819 and 1919 of the Act permit both types of programs and so we will continue to allow both facility-based and non-facility-based NATCEPs. Both types of programs enjoy prevalence in different States, and we believe that the use of both types of programs is necessary to permit facilities and States to meet the nurse aide requirements effectively. These requirements apply to both facility-based and non-facility-based programs.

Section 483.151(a) State Review and Administration

Summary of NPRM Provisions

Paragraph (a)(1) of § 483.151 specified that a State must offer a NATCEP that meets the requirements of § 483.152 and/or a CEP that meets the requirements of § 483.154; and/or specify any NATCEPs not offered by the State that the State approves as meeting the requirements of § 483.152 and/or CEPs not offered by the State that the State approves as meeting the requirements of § 483.154.

Paragraph (a)(2) specified that the State may not delegate or subcontract the approval of these programs to an entity outside of the State government.

Paragraph (a)(3) specified that if the State does not choose to offer one or both of the programs specified in paragraph (a)(1) of § 483.151, the State

must review and approve or disapprove NATCEPs when requested to do so by any facility.

Paragraph (a)(4) specified that the State survey agency must, in the course of all surveys, determine if the requirements of § 483.75(g) (now redesignated as § 483.75(e)) are met.

Comments and Responses

Comment: A few commenters suggested that we revise paragraph (a)(3) of § 483.151 to require States that do not offer a NATCEP and/or a CEP to review both facility-based and non-facility-based programs that request approval of a program.

Response: We agree with this comment and have revised this requirement in § 483.151(a)(3) to indicate that States who do not offer a NATCEP and/or a CEP must review all programs upon request.

Comment: One commenter believed that States should be required to review all programs.

Response: Sections 1819(e) and 1919(e) of the Act indicate that States must approve programs that meet the requirements for approval of NATCEPs and CEPs. We believe the intent of these statutory provisions is to ensure that each State has approved programs. A State may meet these statutory requirements by offering its own program; however, if it does not choose to offer its own program, then it must review all programs upon request.

Comment: One commenter wanted to know if there would be procedures for surveyors to use to determine facility compliance with the requirements of § 483.75(g) (now redesignated as § 483.75(e)) by October 1, 1990. A number of other commenters suggested various methods for surveyors to determine facility compliance with the nurse aide training requirements or wanted to know how facility compliance would be determined.

Response: The appropriate vehicle for delineating surveyor methodologies is the survey and certification regulations at 42 CFR 488. HCFA is revising these regulations, and until the revised regulations are final, the current survey and certification procedures remain in effect and will be used to determine whether facilities meet the requirements of § 483.75(g) (now redesignated as § 483.75(e)).

Comment: A few commenters had concerns about who should survey facilities to determine compliance with NATCEP requirements. One commenter indicated that facility compliance with NATCEP requirements should be determined by the State survey agency but that other agencies should be allowed to review and approve programs. A few commenters indicated that facilities should not be surveyed to determine compliance with the nurse aide training and competency evaluation requirements.

Response: We have retained our requirement that the State survey agency must survey facilities to ensure that they meet the requirements in § 483.75(g) (now redesignated as § 483.75(e)). Compliance with these requirements is a facility responsibility, and we believe that the surveys required by section 1819(g) and 1919(g) of the Act are necessary to ensure that compliance is being met. We agree that agencies other than the State survey agency may review and approve NATCEPs and have not specified which State agency should evaluate programs.

Section 483.151(b) Requirements for Approval of Programs, and Section 483.151(e) Withdrawal of Approval

Summary of NPRM Provisions

Paragraph (b)(1) of § 483.151 specified that before a State approves a NATCEP or CEP, the State must (1) determine whether the NATCEP meets the course requirements of § 483.152; and (2) determine whether the CEP meets the requirements of § 483.154.

Paragraph (b)(2) specified that a State may not approve a NATCEP or CEP offered by a SNF or NF that has been found out of compliance with any of the requirements for participation in Part 483, Subpart B, within any of the 24 consecutive months prior to the State's review of the program.

Paragraph (e)(1) of § 483.151 specified that a State must withdraw approval of a facility-based NATCEP when it makes a determination that the facility is out of compliance with a requirement for participation, as specified in Part 483, Subpart B.

Paragraph (e)(2) specified that a State may withdraw approval of a NATCEP or CEP if the State determines that any of the applicable requirements of §§ 483.152 and 483.154 are not met by the program.

Paragraph (e)(3) specified that a State must withdraw approval of a NATCEP or a CEP if the entity providing the program refuses to permit unannounced visits by the State.

Comments and Responses

Comment: Many commenters discussed the appropriateness of pre-approval site visits. A majority of these commenters believed that a pre-approval site visit was unnecessary for a program's first approval because the program may not be operational prior to approval. A few commenters suggested that a review of the last survey report could replace an on-site visit or that the annual certification survey could constitute the site visit. Several commenters requested post-approval site visits. Other commenters suggested that site visits were inappropriate, indicating that the NATCEP curriculum should be the basis of approval. A few commenters agreed with the proposed pre-approval site visit.

Response: We agree that it may be inappropriate to require an on-site visit prior to the first review of a program because the program may not be operational, and that a review of written course materials and procedures may be an effective alternative to a site visit. Therefore, we have revised the requirement in § 483.151(b)(1) to indicate that the State must visit the entity providing the program in all reviews except for the initial review. We have retained the requirement that on-site visits are required for subsequent reviews of the program because we believe that such visits are useful tools in gaging the quality of the program.

Comment: We received a large number of comments on the NPRM requirement at § 483.151(b)(2), which prohibits States from approving NATCEPs and CEPs conducted by a facility that is out of compliance with any of the requirements for participation in part 483, subpart B, within any of the 24 consecutive months prior to the request for approval of the program, and the requirement at § 483.151(e)(1), which requires States to withdraw approval of such a program when a deficiency is found. A majority of the commenters objected to the requirements while other commenters had suggestions or questions about the provisions.

Response: These requirements were established under sections 1819(f)(2)(B)(iii)(I) and 1919(f)(2)(B)(iii)(I) of the Act which, prior to the enactment of OBRA '90, stated that the Secretary's requirements for approval of NATCEPs and CEPs must prohibit State approval of programs offered by or in any facility which has been determined out of compliance with the requirements of section 1819 (b), (c), or (d) or section 1919 (b), (c), or (d) of the Act within the previous two years. However, sections 4008(h)(1)(F)(i) and 4801(a)(6)(A) of OBRA '90 amended sections 1819(f)(2)(B)(iii)(I) and 1919(f)(2)(B)(iii)(I) of the Act to remove this requirement and replace it with other requirements. Accordingly, we have revised §§ 483.151(b)(2) and 483.151(e)(1) to indicate that States may not approve (and must withdraw approval from)

NATCEPs and CEPs offered by or in a facility that, within the previous two years—

- In the case of a skilled nursing facility, has operated under a waiver under section 1819(b)(4)(C)(ii)(II) of the Act;
- In the case of a nursing facility, has operated under a waiver under section 1919(b)(4)(C)(ii) of the Act that was granted on the basis of a demonstration that the facility is unable to provide nursing care required under section 1919(b)(4)(C)(i) of the Act for a period in excess of 48 hours per week;
- Has been subject to an extended (or partial extended) survey under sections 1819(g)(2)(B)(i) or 1919(g)(2)(B)(i) of the Act;
- Has been assessed a civil money penalty described in section 1819(h)(2)(B)(ii) or 1919(h)(2)(B)(ii) of the Act of not less than $5,000; or
- Has been subject to a remedy described in sections 1819(h)(2)(B)(i) or (iii), 1819(h)(4), 1919(h)(1)(B)(i), or 1919(h)(2)(A)(i), (iii), or (iv) of the Act.

We have also added a new § 483.151(b)(3) which indicates that States may not, until two years since the assessment of the penalty (or penalties) has elapsed, approve a NATCEP or CEP offered by or in a facility that, within the two-year period beginning October 1, 1988,—

- Had its participation terminated under title XVIII of the Act or under the State plan under title XIX of the Act;
- Was subject to a denial of payment under title XVIII or title XIX;
- Was assessed a civil money penalty of not less than $5,000 for deficiencies in facility standards;
- Operated under temporary management appointed to oversee the operation of the facility and to ensure the health and safety of its residents; or
- Pursuant to State action, was closed or had its residents transferred.

This addition is necessary to comply with sections 4008(h)(1)(F)(ii) and 4801(a)(6)(B) of OBRA '90, which indicate that States may not approve NATCEPs or CEPs offered by or in facilities that, within the two-year period beginning October 1, 1988, had certain sanctions applied to them. (See H.R. Rep. No. 964, 101st Cong., 2nd Sess. 852).

Comment: A few commenters asked when these provisions will be effective.

Response: These provisions have a statutory effective date of January 1, 1989. Therefore, States must remove approval from programs that do not meet the statutory requirements. However, as we have noted earlier in this preamble, individuals who, prior to the issuance of these regulations, completed NATCEPs or CEPs that were approved using pre-OBRA '90 criteria are not required to complete a new program.

Comment: A few commenters indicated that 24 months was too long a period to deny a facility a training program and suggested alternative time periods. One commenter believed that there should be intermediate sanctions before program approval is withdrawn. A few commenters suggested that we include a method for reinstatement of programs whose approval has been withdrawn.

Response: The time frame about which commenters were concerned is based on sections 1819(f)(2)(B)(iii)(I) and 1919(f)(2)(B)(iii)(I) of the Act, which clearly indicate that States may not approve programs offered by or in certain facilities, described in sections 1819(f)(2)(B)(iii)(I) and 1919(f)(2)(B)(iii)(I) of the Act, within the previous two years. Because of the clarity with which this requirement is stated, and because the statute does not provide for the use of intermediate sanctions before withdrawal of program approval, the Secretary does not have the authority to provide for such intermediate sanctions. We have not developed a procedure for reinstatement because we believe that programs seeking reinstatement should follow the same procedure as programs seeking initial approval.

Comment: A few commenters wanted to allow non-facility-based NATCEPs or interactive video programs to be offered in a facility against which penalties or waivers, described in sections 1819(f)(2)(B)(iii)(I) and 1919(f)(2)(B)(iii)(I) of the Act, have been imposed within the previous two years. Other commenters requested that we revise our regulation to reflect more closely the wording of the statutory provision, which states that programs offered by or in certain facilities cannot obtain State approval, instead of specifying that the State must withdraw approval of a facility-based NATCEP.

Response: Because sections 1819(f)(2)(B)(iii)(I) and 1919(f)(2)(B)(iii)(I) of the Act clearly prohibit approval of programs offered by or in a facility described in those sections, we cannot allow States to approve any program that operates in such a facility. We have accepted the suggestion to use the wording of the statutory provision because we believe it improves the clarity of these regulations, and have revised § 483.151(e)(1) to indicate that the State must withdraw approval of a NATCEP or CEP if it is offered by or in a facility against which penalties or waivers, described in sections 1819(f)(2)(B)(iii)(I) and 1919(f)(2)(B)(iii)(I) of the Act, have been imposed.

Comment: One commenter asked if these provisions would apply to a facility that had changed ownership.

Response: When a facility changes ownership, all sanctions levied against the facility prior to the change continue to apply. Therefore, these provisions apply to facilities that undergo a change in ownership.

Comment: Several commenters asked us to include various specific program approval and program performance provisions contained in the State Operations Manual and State Medicaid Manual instructions (see Transmittals 223 and 62, respectively) in the final regulations.

Response: We have implemented requirements for CEPs and NATCEPs in sections 1819(f)(2) and 1919(f)(2) of the Act in §§ 483.152 and 483.154. Many of the areas required to be reviewed by the State Operations Manual and the State Medicaid Manual instructions are included in the requirements in these sections of our regulations. We believe that the additional detail in the instructions, which were intended as guidance for States to consider in designing programs, is inappropriate for inclusion in regulations. Additionally, we believe that States will develop their own additional criteria for program performance, and we wish to allow them as much flexibility as possible in this regard.

Comment: One commenter wanted student comments to be considered when program approval is withdrawn.

Response: We believe that States should have maximum flexibility in determining which programs they will allow to operate, and have therefore mandated only general requirements. We will allow States to develop their own specific review criteria.

Comment: A few commenters requested clarification of § 483.151(e)(2), which specifies that States may withdraw approval of a NATCEP or CEP that is out of compliance with any of the requirements for those programs. One commenter believed that we should require States to withdraw approval of any program that failed to meet any of the requirements for these programs instead of allowing States the option to do so.

Response: We have continued to allow States the option to withdraw approval of NATCEPs and CEPs that do not meet the requirements of §§ 483.152 and 483.154, respectively because we believe that States should have flexibility to develop standards for

CORRECTION

THE FOLLOWING DOCUMENT(S)
HAVE BEEN REFILMED TO
ASSURE LEGIBILITY OR PAGINATION

NATCEPs and CEPs offered by or in a facility that, within the previous two years—

- In the case of a skilled nursing facility, has operated under a waiver under section 1819(b)(4)(C)(ii)(II) of the Act;
- In the case of a nursing facility, has operated under a waiver under section 1919(b)(4)(C)(ii) of the Act that was granted on the basis of a demonstration that the facility is unable to provide nursing care required under section 1919(b)(4)(C)(i) of the Act for a period in excess of 48 hours per week;
- Has been subject to an extended (or partial extended) survey under sections 1819(g)(2)(B)(i) or 1919(g)(2)(B)(i) of the Act;
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We have also added a new § 483.151(b)(3) which indicates that States may not, until two years since the assessment of the penalty (or penalties) has elapsed, approve a NATCEP or CEP offered by or in a facility that, within the two-year period beginning October 1, 1988,—

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- Was subject to a denial of payment under title XVIII or title XIX;
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- Operated under temporary management appointed to oversee the operation of the facility and to ensure the health and safety of its residents; or
- Pursuant to State action, was closed or had its residents transferred.

This addition is necessary to comply with sections 4008(h)(1)(F)(ii) and 4801(a)(6)(B) of OBRA '90, which indicate that States may not approve NATCEPs or CEPs offered by or in facilities that, within the two-year period beginning October 1, 1988, had certain sanctions applied to them. (See H.R. Rep. No. 964, 101st Cong., 2nd Sess. 852).

Comment: A few commenters asked when these provisions will be effective.

Response: These provisions have a statutory effective date of January 1, 1989. Therefore, States must remove approval from programs that do not meet the statutory requirements. However, as we have noted earlier in this preamble, individuals who, prior to the issuance of these regulations, completed NATCEPs or CEPs that were approved using pre-OBRA '90 criteria are not required to complete a new program.

Comment: A few commenters indicated that 24 months was too long a period to deny a facility a training program and suggested alternative time periods. One commenter believed that there should be intermediate sanctions before program approval is withdrawn. A few commenters suggested that we include a method for reinstatement of programs whose approval has been withdrawn.

Response: The time frame about which commenters were concerned is based on sections 1819(f)(2)(B)(iii)(I) and 1919(f)(2)(B)(iii)(I) of the Act, which clearly indicate that States may not approve programs offered by or in certain facilities, described in sections 1819(f)(2)(B)(iii)(I) and 1919(f)(2)(B)(iii)(I) of the Act, within the previous two years. Because of the clarity with which this requirement is stated, and because the statute does not provide for the use of intermediate sanctions before withdrawal of program approval, the Secretary does not have the authority to provide for such intermediate sanctions. We have not developed a procedure for reinstatement because we believe that programs seeking reinstatement should follow the same procedure as programs seeking initial approval.

Comment: A few commenters wanted to allow non-facility-based NATCEPs or interactive video programs to be offered in a facility against which penalties or waivers, described in sections 1819(f)(2)(B)(iii)(I) and 1919(f)(2)(B)(iii)(I) of the Act, have been imposed within the previous two years. Other commenters requested that we revise our regulation to reflect more closely the wording of the statutory provision, which states that programs offered by or in certain facilities cannot obtain State approval, instead of specifying that the State must withdraw approval of a facility-based NATCEP.

Response: Because sections 1819(f)(2)(B)(iii)(I) and 1919(f)(2)(B)(iii)(I) of the Act clearly prohibit approval of programs offered by or in a facility described in those sections, we cannot allow States to approve any program that operates in such a facility. We have accepted the suggestion to use the wording of the statutory provision because we believe it improves the clarity of these regulations, and have revised § 483.151(e)(1) to indicate that the State must withdraw approval of a NATCEP or CEP if it is offered by or in a facility against which penalties or waivers, described in sections 1819(f)(2)(B)(iii)(I) and 1919(f)(2)(B)(iii)(I) of the Act, have been imposed.

Comment: One commenter asked if these provisions would apply to a facility that had changed ownership.

Response: When a facility changes ownership, all sanctions levied against the facility prior to the change continue to apply. Therefore, these provisions apply to facilities that undergo a change in ownership.

Comment: Several commenters asked us to include various specific program approval and program performance provisions contained in the State Operations Manual and State Medicaid Manual instructions (see Transmittals 223 and 02, respectively) in the final regulations.

Response: We have implemented requirements for CEPs and NATCEPs in sections 1819(f)(2) and 1919(f)(2) of the Act in §§ 483.152 and 483.154. Many of the areas required to be reviewed by the State Operations Manual and the State Medicaid Manual instructions are included in the requirements in these sections of our regulations. We believe that the additional detail in the instructions, which were intended as guidance for States to consider in designing programs, is inappropriate for inclusion in regulations. Additionally we believe that States will develop their own additional criteria for program performance, and we wish to allow them as much flexibility as possible in this regard.

Comment: One commenter wanted student comments to be considered when program approval is withdrawn.

Response: We believe that States should have maximum flexibility in determining which programs they will allow to operate, and have therefore mandated only general requirements. We will allow States to develop their own specific review criteria.

Comment: A few commenters requested clarification of § 483.151(e)(2), which specifies that States may withdraw approval of a NATCEP or CEP that is out of compliance with any of the requirements for those programs. One commenter believed that we should require States to withdraw approval of any program that failed to meet any of the requirements for these programs instead of allowing States the option to do so.

Response: We have continued to allow States the option to withdraw approval of NATCEPs and CEPs that do not meet the requirements of §§ 483.152 and 483.154, respectively because we believe that States should have flexibility to develop standards for

withdrawing approval of programs that do not meet the requirements.

Comment: A few commenters had concerns about the requirement in the NPRM that specified that States must withdraw approval of a program in an entity that refuses to allow unannounced visits. A few commenters suggested that the unannounced visits should be incorporated into the annual certification survey. One commenter believed that unannounced visits should be required for both facility-based and non-facility-based programs. One commenter believed that unannounced visits are an inappropriate way of determining the quality of training and competency evaluation programs.

Response: We believe that unannounced visits are an appropriate and useful tool for determining the ongoing quality of a program and have therefore retained the requirement as written in the NPRM. We believe that the unannounced visits could be incorporated into the annual certification survey, but because entities other than the survey and certification agency may be responsible for review and approval of NATCEPs, the State may want the entity responsible for review and approval to perform the unannounced visits. We have not distinguished between facility-based and non-facility-based programs for purposes of this requirement; both types of programs must accept unannounced visits.

Comment: Several commenters requested that we provide a mechanism for ensuring that approval is withdrawn from programs of poor quality. A few commenters suggested that failure rates on the competency evaluation should be used as a measure of program quality. One commenter suggested that we require States to develop performance standards for NATCEPs.

Response: States are permitted great flexibility in approving programs, and we believe that they should have similar flexibility in withdrawing approval. We believe that States will withdraw approval from poor programs regardless of whether we specify a specific mechanism to be used. We are not specifically requiring that States develop performance standards for programs (and we have not specified particular measures of program quality) because we believe that States will develop standards even in the absence of a Federal requirement and wish to allow them as much flexibility as possible in this regard.

Comment: Several commenters asked that we provide requirements for withdrawal of program approval. Many of these commenters suggested that States provide written notice indicating the reason(s) for withdrawal of program approval, and that students who had already started a program should be allowed to complete it.

Response: We agree with these comments and have added a provision in § 483.151(e) specifying that the notice of withdrawal of program approval must be in writing and must specify the reason(s) for withdrawal of approval and that students who are in a program at the time approval is withdrawn will be allowed to complete it.

Section 483.151(c) Time for Acting on a Request for Approval

Summary of NPRM Provisions

Paragraph (c) of 483.151 specified that a State must, within 90 days of the date of a request under paragraph (a)(3) of § 483.151 or receipt of additional information from the requester, advise the requester of the action taken by the State on the request, or request additional information from the requesting entity.

Comments and Responses

Comment: Many commenters suggested that States be allowed less time to review a program because facilities need more timely responses. The alternative number of days suggested ranged from 10 days to 60 days. A few commenters were pleased with the time limit specified in the NPRM.

Response: Although we understand facilities' desire to receive an immediate response to a request for approval, we have retained the time limit specified in the NPRM because we believe it may reasonably take 90 days to approve a program, especially since a visit to the training site may be necessary.

Comment: One commenter believed that we should clarify that a State must actually have made a decision on whether to approve a program within 90 days unless additional information is required.

Response: We agree and have clarified this requirement in § 483.151(c) to specify this.

Section 483.151(d) Duration of Approval

Summary of NPRM Provisions

Paragraph (d) of § 483.151 specified that a State may not grant approval of a NATCEP for a period longer than two years.

Comments and Responses

Comment: Many commenters had suggestions on the duration of approval for NATCEPs and CEPs. A few commenters stated that approval should be on an annual basis and should coincide with annual surveys. Several others requested that approval be effective for a longer period of time than the two years specified in the NPRM and cited various reasons. A few commenters stated that programs meeting certain additional requirements should be allowed to have longer approval periods. Some indicated that re-approval should only be required when there are changes to a program. Several commenters agreed that a two-year approval period was appropriate. Finally, one commenter agreed that review of programs should occur every two years but stated that approval should not necessarily expire.

Response: We continue to believe that two years is the maximum approval period a program should have in order to preserve the intent of the nurse aide requirements of maintaining the quality and integrity of NATCEPs. We have therefore retained this provision in our final regulations but have clarified it to indicate that a program must also be reviewed when there are substantive changes to the program. We believe that a review when there are substantive changes to the program is necessary to ensure that the program continues to meet the requirements of §§ 483.152 and 483.154.

Comment: One commenter suggested that re-approval be required when ownership of a program changes.

Response: We do not believe that a change in ownership will necessarily result in a substantive change in a program and have therefore not accepted this suggestion. However, if substantial changes do occur, then a review would be required under § 483.151(d)(2).

Summary of Changes to Section 483.151

In response to comments, in addition to minor technical or editorial changes, we are making the following changes:

- To more accurately reflect the scope of this section of the regulation, we are revising the section title to read "State review and approval of nurse aide training and competency evaluation programs and competency evaluation programs."
- We have clarified § 483.151(a)(1) to indicate more clearly that it is a State option to offer NATCEPs and CEPs.
- After further analysis of sections 1819(e)(1) and 1919(e)(1) of the Act, we are not making final proposed § 483.151(a)(2).
- In § 483.151(b)(1)(iii), we are not making final the proposed requirement

for an initial pre-approval site visit for NATCEPs.

- We are revising § 483.151(b)(2) to indicate that States may not approve a NATCEP or CEP offered by or in a facility against which a penalty or waiver, described in sections 1819(f)(2)(B)(iii)(I) and 1919(f)(2)(B)(iii)(I) of the Act, has been imposed.
- In § 483.151(b)(3), we are adding a requirement prohibiting States from approving NATCEPs and CEPs offered by or in a facility against which an action(s) described in section 4008(h)(1)(F)(ii) or section 4801(a)(6)(B) of OBRA '90 has been levied until two years from the date the action(s) was imposed has elapsed.
- In § 483.151(c)(1), we have clarified that States must inform a requestor whether or not a program has been approved.
- In § 483.151(d), we are adding a provision that a facility must notify the State and the State must review that facility's program when there are substantive changes made to the facility's NATCEP within a 2-year approval period.
- We are revising § 483.151(e)(1) to indicate that States may not approve a CEP or NATCEP offered by or in a facility described in § 483.151(b) (2) or (3).
- In § 483.151(e)(4), we are adding a provision that the State may withdraw approval of a NATCEP with an unusually high student failure rate on the evaluation.
- In § 483.151(e)(5), we are adding a provision that if a State withdraws approval of a NATCEP or CEP, the State must notify the facility in writing and must allow students who have started a NATCEP from which approval has been withdrawn to complete the course.

Section 483.152 Requirements for Approval of a Nurse Aide Training and Competency Evaluation Program

Summary of NPRM Provisions

Section 483.152 specified the minimum requirements for State approval of a NATCEP, and lists the curriculum requirements for NATCEPs. It also specified the prohibition of charges for individuals enrolled in a NATCEP.

Comments and Responses

General

Comment: One commenter believed that only individuals who are actually employed in a facility should be allowed to take a NATCEP.

Response: We believe that such a requirement is discriminatory and would lead to shortages of nurse aides. We also believe it is inappropriate to restrict access to NATCEPs. We note that one commenter agreed with this position.

Comment: One commenter requested that all high school students who complete a health occupations course be certified as meeting the nurse aide requirements.

Response: A program must meet the requirements in § 483.152 to be approved by the State, and we are not confident that all health occupations courses meet these requirements.

Comment: Several commenters requested that we protect nurse aides against programs that are not approved by the State or that we provide a mechanism for informing prospective nurse aides of the types and costs of programs. One commenter believed that we should require all trade and proprietary schools to provide written notice to students advising them of Federal and State laws for nurse aide training, especially those laws relating to prohibition of charges for programs and requirements to be listed on the nurse aide registry.

Response: We believe it is inappropriate for us to require that such information be provided to nurse aides because such protection is within the purview of the State. We do agree, however, with the intent of the comments and encourage all States to inform individuals that they must complete a State-approved NATCEP or CEP to be employable by a facility and to protect students from non-approved programs when possible. We note that § 483.154(A) does require States to notify individuals that successful completion of a CEP will result in placement on the nurse aide registry.

Comment: One commenter suggested that we require NATCEPs to have an appeals process for disputes regarding training and testing.

Response: While we agree that it may be useful for individual NATCEPs to have processes for resolving disputes, we believe that dispute resolution could also be accomplished through non-NATCEP entities. We have not established a process for resolving disputes regarding training because we wish to allow States maximum flexibility in determining what methods of dispute resolution they will use or require.

Comment: A number of commenters requested that we require students in a NATCEP to be distinguishable from other nurse aides for easy identification when on duty in a facility.

Response: Sections 1819(b)(5) and 1919(b)(5) of the Act restrict the activities of student nurse aides but do not require that they wear distinctive identification tags. We believe that such a requirement goes beyond the statutory requirements for nurse aides and would be inappropriate in our regulations.

Comment: Some commenters asked that we require nurse aide orientation in addition to the training program.

Response: We believe that providing orientation to students is standard practice for educational programs and that it is not necessary to place such a requirement in our regulations.

Section 483.152(a)

Summary of NPRM Provisions

Paragraph (a) of § 483.152 specified that for a NATCEP to be approved by the State, it must, at a minimum—

- Consist of no less than 75 hours of training;
- Include at least the subjects specified in § 483.152(b);
- Include at least 16 hours of supervised practical training;
- Meet the requirements specified in § 483.152(a)(4) for instructors who train nurse aides; and
- Contain competency evaluation procedures as specified in § 483.154.

Comments and Responses

Comment: A few commenters suggested that the number of required hours for training programs be changed. Some commenters suggested 30 hours instead of the 75 hours specified in the NPRM. Others believed that 75 hours was insufficient to adequately train a nurse aide. A few commenters asked that we clarify whether the 75 hours of required training were 60 minute clock hours or 50 minute classroom hours.

Response: Sections 1819(f)(2)(A)(i) and 1919(f)(2)(A)(i) of the Act clearly indicate that our requirements for NATCEPs must specify that such programs are at least 75 hours duration These provisions do not allow HCFA the flexibility to change the number of required hours for training programs to less than 75 hours. We have clarified in § 483.152(a)(1) that a nurse aide training program must consist of no less than 75 clock hours of training.

Comment: A number of commenters believed that NATCEPs should not be required to contain competency evaluation procedures because States cannot delegate competency evaluation to facilities. A few commenters suggested that we specify in the regulations that a facility has a responsibility to the students in its training program until the competency evaluation is completed.

Response: The NATCEP requirements in sections 1819 and 1919 of the Act address only training and competency

evaluation programs for nurse aides, not training programs alone. Therefore, we will continue to require that NATCEPs contain competency evaluations which meet the requirements in § 483.154. Although facilities are not permitted to perform competency evaluations for the nurse aides they train, they clearly need to be aware of the competency evaluation procedures as part of their planning and implementation of training programs. Also, because a NATCEP is not completed until the competency evaluation program is completed, it is reasonable to state that the NATCEP has a responsibility to be available to answer questions from its students until the competency evaluation has been completed.

Comment: A number of individuals commented on the required hours of supervised practical training. A few commenters agreed with the 16 hours proposed in the NPRM. Several others recommended additional hours of supervised practical training ranging from 30 to 75 hours. Some commenters asked that we specify in our regulations that students may not perform services for which they have not been trained and found competent. One commenter asked that we state specifically that students be allowed to perform only those services for which they have been trained. Several commenters indicated that all services provided by students should be supervised. One commenter indicated that experienced nurse aides should be allowed to supervise students after the initial 16 hours of training.

Response: We believe that many of the curriculum requirements in § 483.152(b) can be met through several different methods, including supervised practical training. We have not required additional hours of supervised practical training because we believe that programs should have flexibility in determining what teaching methods to use. We have added a provision to § 483.152(a) requiring that a NATCEP ensure that students do not perform any services for which they have not been trained and found proficient by the instructor and that all students in a NATCEP be under the general supervision of a licensed or registered nurse when they are performing services for residents. We do not believe that an experienced nurse aide is qualified to supervise students.

Comment: Some commenters had suggestions on the proper setting for supervised practical training. A few commenters believed that supervised practical training should be performed only in a facility, while others requested that we allow it in a laboratory setting.

Response: We believe it is overly restrictive to require that supervised practical training be performed only in a facility. We have retained the provision in the NPRM, which specifies that supervised practical training may be performed in a laboratory or other setting, because we believe that this provision allows for maximum flexibility in practical training methods.

Comment: A few commenters requested that we clarify the meaning of "direct supervision" for purposes of § 483.152(a)(3).

Response: "Direct supervision" means that a licensed nurse or registered nurse is actually observing students performing tasks.

Comment: One commenter requested that we allow training to occur on the floor of the facility rather than in the classroom. Several other commenters requested that we specify the ratio of clinical training hours to classroom training hours and suggested appropriate ratios. One commenter expressed displeasure in the cutback of clinical training hours.

Response: We believe that training can be successfully performed in many different locations. To allow maximum flexibility in the development and approval of programs, we have not specified that training must be performed in a classroom rather than on the floor of a facility or that there be a particular ratio of hours of clinical training to hours of classroom training.

Comment: In the NPRM, we requested public comment on the credentials that instructors in NATCEPs should be required to have, and received many comments on this issue. Most commenters believed that licensed nurses were capable of instructing nurse aides. A large number of commenters believed that licensed nurses, generally supervised by the director of nursing, a registered nurse, or other individuals in a facility, could properly instruct nurse aides. Several commenters suggested that a licensed nurse should be allowed to be an instructor in facility-based programs only, while others believed that we should require the same instructor credentials for facility-based and non-facility-based programs. A few commenters requested that we require instructors to meet the guidelines contained in the State Operations Manual Transmittal 223 and the State Medicaid Manual Transmittal 63 guidance. Some commenters suggested that licensed nurses be instructors only if they had sufficient experience in nursing or instructing nurse aides. A few commenters believed that licensed nurses should provide instruction only in certain areas or that registered nurses must provide certain training. A few commenters believed that only a registered nurse was qualified to provide training, or stated that State law did not allow licensed nurses to teach. One commenter suggested that registered nurses could provide training under the general supervision of the director of nursing or assistant director of nursing. Several commenters suggested that licensed nurses could be supplemental instructors. A few commenters suggested grandfathering in licensed nurses currently providing instruction. Several commenters asked that the requirements for instructors of nurse aides and instructors of home health aides be identical to facilitate the development of uniform programs.

Response: After considering the comments, we have retained the NPRM's provision which requires nurse aide training to be performed by or under the general supervision of a registered nurse. This provision allows licensed nurses to act as instructors in NATCEPs as long as a registered nurse maintains responsibility for the program and is available to provide instruction in areas in which a licensed nurse may lack technical expertise. We have not differentiated between credentials for instructors in facility-based and non-facility-based programs because we believe that the same level of expertise is required in both settings. We believe that it is unnecessary for instructors who are registered nurses to be supervised. Also, we have not permitted licensed nurses with additional experience in nursing or instructing nurse aides to supervise programs because we believe that the knowledge base of a registered nurse is necessary to supervise a program. We note that these credentials are the same as those for home health aide instructors. Although the statutory requirements in section 1891(a)(3) of the Act for home health aide training are sufficiently different from the nurse aide training requirements to prevent a single set of Federal requirements for training both nurse aides and home health aides, we would like the requirements to be as similar as possible to allow for the possibility of unified programs.

Comment: A few commenters asked that we clarify the difference between general supervision and performing training.

Response: Performing training is the actual teaching of course material. General supervision is providing necessary guidance for the program and maintaining ultimate responsibility for the course.

Comment: Several commenters provided suggestions about the amount and type of experience instructors should be required to have. Commenters' suggestions on the amount of experience an instructor should have ranged from no experience to four years. Some commenters believed that only general experience should be required, or that experience in geriatrics, rehabilitation nursing, adult care, care of the chronically ill, or care of the cognitively impaired should be required in addition to or instead of general experience in long-term care facility services. A few commenters suggested various alternatives that we could require instead of actual experience. A couple of commenters agreed with the experience requirement proposed in the NPRM.

In addition, a number of commenters believed that all instructors of nurse aides should be required to have some kind of expertise in teaching. Commenters' suggestions ranged from requiring instructors to have completed a course in teaching adults to requiring experience in adult education. One commenter suggested that we phase in this requirement by 1993. One commenter believed that HCFA should require evaluation of instructors.

Response: We have retained the requirement in § 483.152(a)(4) (now redesignated as § 483.152(a)(5)) that the registered nurse required to perform or supervise the training should have a minimum of two years of experience, at least one year of which is in the provision of long-term care facility services. We believe that this type and amount of experience is necessary to assure proper instruction of nurse aide students. We have not provided any substitutions for experience because we believe that any such substitutions would be inferior to experience. We note, however, that licensed nurses providing training under the general supervision of a registered nurse with training and experience need not meet this requirement.

We agree that all instructors of nurse aides should be required to have some kind of expertise in teaching or otherwise instructing nurse aides and have added a requirement in § 483.152(a)(4) (now redesignated as § 483.152(a)(5)) that nurse aide instructors must have completed a course in teaching adults or must have experience in teaching adults or supervising nurse aides. We have not provided any delay in implementation of this requirement because we do not believe it will cause a hardship on instructors or facilities providing nurse aide training programs. We have not required that States evaluate instructors because we believe that there are many other ways of ensuring quality programs, and we wish to allow States flexibility in this area.

Comment: A few commenters suggested that all instructors be required to be on a State roster.

Response: We believe that establishing and maintaining a roster of all nurse aide instructors would be expensive and burdensome for States and have therefore not accepted this comment.

Comment: A number of commenters were concerned about permitting directors of nursing (DONs) to perform or supervise nurse aide training. Many commenters supported allowing the DON to supervise training, but others were concerned that allowing the DON to perform training would take him or her away from other important duties. Some commenters suggested that, if DONs are allowed to train, we should require that there be sufficient staff available to ensure that all of the DON functions are being met. One commenter believed that allowing a DON to conduct or supervise training would violate the requirement that the DON be a full-time position. A few commenters said that DONs should not conduct or supervise nurse aide training because there should be a separate registered nurse for staff development.

Response: We have retained the provision to allow DONs to supervise nurse aide training. However, we have added an additional provision to § 483.152(a)(4) (now redesignated as § 483.152(a)(5)) to prohibit DONs from performing the actual training because we believe that allowing a DON to train would take too much time away from patient care and other duties. Permitting a DON to supervise training does not relieve a facility of its responsibility to have sufficient staff to perform all duties. Because the long-term care requirements at 42 CFR part 483, subpart B, specify only that a facility must have a full-time DON, not the duties that individual must perform, permitting a DON to supervise nurse aide training does not violate the long-term care requirement. We have not required that facilities who have training programs have a separate registered nurse for staff development because we believe that many facilities may have difficulty recruiting such an individual and because we believe that such a requirement could be costly for facilities.

Comment: A few commenters requested that we require all NATCEPs to supplement the instructor with other health professionals. One commenter asked that we allow supplementation at the discretion of the instructor. A few commenters requested that we require various levels of experience for supplemental personnel.

Response: We have not required the use of supplemental personnel because we do not believe that the participation of such individuals is required to produce competent nurse aides. However, we have continued to give NATCEPs the option of allowing supplemental personnel to assist in their programs because we believe that the use of such individuals can enhance the training of nurse aides. We agree that supplemental personnel should be required to have a certain level of experience and have revised § 483.152(a)(4) (now redesignated as § 483.152(a)(5)) to require all supplemental personnel to have at least one year of experience in their respective fields. We believe that one year of experience is required to ensure a certain level of expertise but believe that a more stringent requirement might unnecessarily curtail the use of supplemental personnel.

Comment: Several commenters suggested that we add individuals from various health professions to the list of personnel who may supplement the instructor.

Response: While we agree that instruction from individuals from the professions suggested could be useful, the list in our regulations is not intended to be exhaustive and does not preclude professionals who are not on the list from participating in the training of nurse aides. As long as the individual meets the requirements for nurse aide instructors, he or she would be eligible to supplement the primary instructor.

Comment: One commenter asked what types of professionals would qualify as resident rights experts.

Response: Individuals from many different professions, including ombudsmen, medical records practitioners, and nursing home administrators, could serve as residents rights experts. Other individuals, especially residents and family members, could also be expert in residents' rights. The regulation places no restrictions upon the individuals who may provide this instruction.

Section 483.152(b)

Summary of NPRM Provisions

Paragraph (b) of § 483.152 specified the curriculum requirements of nurse

aide training programs. The requirements include—

- At least a total of 16 hours in areas specified in § 483.152(b)(1) (i) through (v);
- Basic nursing skills as specified in § 483.152(b)(2) (i) through (v);
- Personal care skills as specified in § 483.152(b)(3) (i) through (viii);
- Mental health and social service needs as specified in § 483.152(b)(4) (i) through (v);
- Care of cognitively impaired residents as specified in § 483.152(b)(5) (i) through (v);
- Basic restorative services as specified in § 483.152(b)(6) (i) through (vi); and
- Resident's rights as specified in § 483.152(b)(7) (i) through (vi).

Comments and Responses

Comment: One commenter believed that HCFA should require a national curriculum.

Response: Sections 1819(e) and 1919(e) of the Act require States to approve programs that meet the requirements for CEPs and NATCEPs. Our requirements for CEPs and NATCEPs are general in nature because we believe that States should have the flexibility to add to the requirements in accordance with their individual needs and preferences.

Comment: A few commenters believed that the level of knowledge required for the curriculum in § 483.152(b) was too difficult for nurse aides.

Response: We believe that this level of knowledge is essential for an individual to be a competent nurse aide as did many commenters who expressed general agreement with the curriculum requirements contained in § 483.152(b).

Comment: Several commenters suggested that we require training in certain specific subjects, such as measurement of fluid intake and recognition of fecal impactions, or that we require a greater emphasis on certain areas, e.g., infection control or specialized communication skills. One commenter requested that the care of the cognitively impaired should be integrated into each segment of the curriculum, not just § 483.152(b)(5).

Response: Many topic areas must be covered in a short time frame during a nurse aide training and competency evaluation program. We believe that our requirements should be general in nature to allow for maximum flexibility. While we agree that the care of cognitively impaired residents needs to be covered during the course of a training program, we do not believe it is appropriate to integrate care of cognitively impaired residents into all curriculum segments.

Comment: One commenter believed that HCFA overstepped its statutory mandate to develop requirements for nurse aide training and competency evaluation programs by requiring that the topics in the subject areas at § 483.152 (b)(2), (b)(3), (b)(4), (b)(5), (b)(6), and (b)(7) be covered.

Response: Sections 1819(f)(2)(A)(i) and 1919(f)(2)(A)(i) of the Act require the Secretary to develop requirements for approval of NATCEPs and specify the minimum topic areas to be included in those requirements. However, by specifying only the minimum topic areas to be included, the statute allows the Secretary to include other topics that we believe are necessary to ensure that nurse aides have the education, practical knowledge, and skills needed to care for residents of facilities properly. The Secretary may also specify other topics under the authority granted in sections 1819(d)(4), 1819(f)(1), 1919(d)(4), and 1919(f)(1) of the Act.

Comment: One commenter requested that we require education on AIDS/HIV or other blood-borne diseases.

Response: We believe that this area is subsumed in the infection control category and have therefore not accepted this comment. If a facility has a resident who has the AIDS virus or is HIV positive or has other blood-borne diseases, that facility may need to provide additional information to all of its employees.

Comment: One commenter requested that we include a section in our regulations on the limitations of nurse aide practice.

Response: We believe that limits on nurse aide practice are, at least in part, determined by individual facilities as well as by individual State nurse practice acts. We believe that it is a facility's responsibility to inform all new nurse aides of their roles within the facility.

Comment: A large number of commenters remarked on cardiopulmonary resuscitation (CPR). Most commenters indicated that CPR certification should not be required as part of the NATCEP. A few commenters suggested that we require knowledge of CPR but not CPR certification. One commenter suggested that we recommend but not require CPR. One commenter believed that HCFA should require CPR if the 75 hours were expanded or should require it to be taught in the first six months of in-service. One commenter believed that a certain percentage of nurse aides should be required to be trained in CPR. Some suggested that NATCEPs be required to instruct students on varying resident opinions about heroic measures. A few commenters believed that CPR should be required. One commenter requested that we require facilities to inform residents about their policies regarding CPR at the time of admission. One commenter suggested that HCFA delay a decision on whether to require CPR until after consideration of additional issues.

Response: We have not required that NATCEPs include training in CPR because we do not believe that nurse aides perform CPR frequently enough to justify the time it would take from other areas of the training and competency evaluation program. However, we have not prohibited that it be taught and note that it may well be included among the emergency procedures listed at § 483.152(b)(1)(iii). We also note that if a facility allows its nurse aides to perform CPR, the facility must ensure that they are competent to perform CPR. We have not included a specific requirement for facilities to inform residents of their policies on CPR at the time of admission because we already require facilities to inform residents of facility policies (see 42 CFR 483.12).

Comment: Many commenters had concerns about § 483.152(b)(1), which specifies the amount and types of training a student in a NATCEP must have before direct contact with a resident. Some commenters said that we should require no training prior to resident contact or that we should require less than the 16 hours proposed in the NPRM. Others agreed with the requirement as proposed. A few commenters believed that students should receive more training before direct contact or that students should not be allowed to have direct contact with residents until the course is complete. One commenter asked us to define "direct contact" for purposes of § 483.152(b)(1). Finally, one commenter requested that we state the broad goals behind requiring training before contact with a resident.

Response: We have retained the requirement for 16 hours of training before direct contact with a resident. We believe that basic training before contact with residents is necessary to safeguard residents. We have not increased the amount of training required before contact with residents because we believe that resident contact during the training process can be a useful learning tool for students and can be beneficial to residents as well. We note that we have required that students be competent to perform any services they are providing for residents, and

that a registered nurse or licensed nurse must provide general supervision for all students (see § 483.152(a)(4)). We define "direct contact" as any activity that requires physically touching a resident.

Comment: A few commenters suggested different topics for the initial training specified in § 483.152(b)(1) or suggested that more topics be covered. Other commenters indicated that the Heimlich maneuver should be required.

Response: We believe that overall coverage of the topics listed in § 483.152(b)(1) is sufficient to prepare students for direct contact with residents. However, we agree that the Heimlich maneuver should be required and have added it to § 483.152(b)(1)(iii) under Safety/emergency procedures. Aides frequently feed residents or assist residents in eating. The Heimlich maneuver takes little time to learn, and we believe that requiring it could save lives.

Comment: A few commenters asked that we clarify in our regulations that the training specified in § 483.152(b)(1) does not include orientation.

Response: We believe it is clear from the provision in § 483.152(b)(1) that the 16 hours of initial training must be in the areas specified. We did not explicitly include or exclude orientation from the overall training curriculum because, while sections 1819(f)(2)(A)(i) and 1919(f)(2)(A)(i) of the Act require that the program be at least 75 hours and authorize establishment of a minimum curriculum, they do not limit the content of the training nor the length of time allowed to provide it.

Comment: One commenter believed that the range of services that a student can perform should be limited.

Response: We have not accepted this comment because students are already appropriately limited by their own demonstrated proficiency. We believe that students should be allowed to perform any services for which they have been trained and judged proficient by the instructor as long as they are supervised as required in § 483.152(a)(4) of the final rule.

Comment: A few commenters indicated that recognition of signs and symptoms of common diseases and conditions is beyond the scope of nurse aides. One commenter requested that we delete this provision. One commenter suggested that we not qualify recognition of signs and symptoms.

Response: For clarification, we have revised this provision in § 483.152(b)(2) to indicate that nurse aide training and competency evaluation programs must teach recognition of abnormal changes in body functioning and the importance of reporting such changes to a supervisor.

Comment: One commenter believed that proposed § 483.152(b)(4), Mental health and social service needs, required too much psychology for a nurse aide.

Response: Sections 1819(f)(2)(A)(i) and 1919(f)(2)(A)(i) of the Act require that mental health and social service needs of residents be addressed in NATCEPs. After considering the comments, we have modified some of the requirements in § 483.152(b)(4), and we believe that the final requirements reflect an appropriate knowledge level for nurse aides.

Comment: A few commenters stated that identifying age-associated developmental tasks is beyond the scope of nurse aides. One commenter suggested that we require NATCEPs to teach nurse aides that age-associated developmental tasks exist and to teach them to be aware of their impact on residents.

Response: We have accepted this suggestion and have revised § 483.152(b)(4) to require that NATCEPs must teach awareness of age-associated developmental tasks.

Comment: Many commenters indicated that modifying, identifying, managing, and changing behavior are beyond the scope of a nurse aide. One commenter suggested removing the requirement to modify aides' behavior in response to residents' behavior. Commenters suggested a variety of alternatives, most of which emphasized teaching communication skills and appropriate nurse aide responses to resident behavior. A few commenters suggested that this provision in § 483.152(b)(4) be narrowed to behavior of individuals with dementia. A few commenters suggested that we permit behavior modification in accordance with the resident's care plan.

Response: We agree that identifying the need for and planning a program of behavior modification is beyond the scope of a nurse aide. We have changed this requirement in § 483.152(b)(4) to indicate that nurse aides must be taught how to respond to resident behavior, i.e., how to carry out behavior modification planned by a skilled professional. We have not added a specific requirement for communication skills to this provision because we already require under § 483.152(b)(1)(i) that NATCEPs cover communication skills. We have not narrowed this provision to responding to residents with dementia because we believe that nurse aides should know how to respond to the behavior of all residents, and there is already a specific portion of the training devoted to individuals with cognitive impairments. Finally, we have not accepted the suggestion to teach behavior modification in accordance with the resident's care plan. We believe it is sufficient that nurse aides are taught how to response to resident behavior.

Comment: One commenter suggested that we change the requirement that nurse aide training and competency evaluation programs teach understanding the behavior of cognitively impaired residents to understanding the underlying causes of cognitive impairments. A small number of commenters suggested that we delete the requirement to teach reducing the effects of cognitive impairments from the curriculum.

Response: We believe that an understanding of the behavior of cognitively impaired residents would include an understanding of the underlying causes of cognitive impairments, but that the reverse would not necessarily be true. We believe that an understanding of the behavior of cognitively impaired residents is important knowledge for nurse aides to properly care for residents of facilities. Likewise, we believe that methods of reducing the effects of cognitive impairments are also important knowledge for nurse aides.

Comment: A few commenters suggested that we require nurse aides be trained in promoting resident self care rather than training residents in self care.

Response: We have not accepted this comment because we believe that many residents may need retraining in how to care for themselves. Nurse aides should know how to provide this retraining.

Comment: A number of commenters believed that providing assistance in resolving disputes and grievances is not a nurse aide function. Several commenters suggested that we require training in reporting or seeking assistance in resolving disputes and grievances or that we restrict the training in dispute resolution to that required of a nurse aide.

Response: We agree that dispute resolution is not a skill that all nurse aides will need. However, we do not believe it is necessary to require training in how to report a dispute. We have therefore deleted this requirement from the final regulations.

Comment: A few commenters suggested that we require training in understanding care and security of residents' personal possessions rather than in maintaining care and security of residents' personal possessions.

Response: We do not see any advantages in requiring training in understanding care and security of residents' personal possessions rather than in maintaining care and security of residents' personal possessions.

Comment: A few commenters suggested that we change the NPRM provision indicating that NATCEPs should provide instruction in providing care that maintains the resident free from abuse, mistreatment, and neglect and the need to report any instances of such treatment to appropriate facility staff. One commenter was unclear on how to implement this requirement. Some commenters suggested that we require only training in the need to report abuse, mistreatment, and neglect to appropriate facility staff. Others requested that students be trained in promoting the resident's right to be free from abuse, mistreatment, and neglect.

Response: We have revised this requirement in § 483.152(b)(7) to indicate that NATCEPs must teach promotion of the resident's right to be free from abuse, mistreatment, and neglect. We believe that this language more clearly expresses our intent, which is to ensure that nurse aides do not abuse, mistreat, or neglect residents.

Comment: A number of commenters suggested that we alter our provision regarding use of restraints. Many commenters suggested that we not mention restraints in our curriculum requirements. Others suggested that we stress the need to instruct nurse aides on restraint-free environments. A few commenters suggested that we require instruction on how to reduce or avoid restraints as indicated in the resident's care plan. A few commenters suggested instruction on the resident's right to be free from restraints except when imposed to ensure the safety of the resident or others. One commenter was unclear on how to implement this requirement. Finally, one commenter suggested that students should be instructed in reasons not to use restraints and alternatives to restraints.

Response: After consideration of these comments, we have revised § 483.152(b)(7) to specify that NATCEPs must provide instruction on the need to avoid restraints in accordance with current professional standards. The use of restraints is the subject of another proposed rule, and we would like our requirements to be flexible enough to allow for the curriculum to be updated.

Section 483.152(c) Prohibition of Charges, and Section 483.154(c)(2)

Summary of NPRM Provisions

Paragraph (c) of § 483.152 specified that no nurse aide may be charged for any portion of a NATCEP, including any fees for textbooks or other required course materials.

Paragraph (c) of § 483.154, Nurse aide competency evaluation, specified that no charges for the competency evaluation may be imposed on any nurse aide.

Comments and Responses

Comment: A number of commenters requested clarification of the requirement that States may not approve NATCEPs or CEPs that charge nurse aides for any costs for the program. Several commenters requested that this provision be deleted and indicated a variety of difficulties that would arise if it were required. Commenters also proposed a variety of alternatives to this provision. A large number of commenters requested that this provision be clarified to indicate that the prohibition against charges should only apply to individuals who meet the definition of a nurse aide. Several commenters asked us to allow aides to be reimbursed for the costs of NATCEPs rather than prohibiting State approval of programs that charge nurse aides. These commenters believed that providing for nurse aides to be reimbursed after a specified period of time was tantamount to prohibiting charges. A few commenters agreed with the requirements as written.

Response: The provisions at §§ 483.152(c) and 483.154(c)(2) are required by sections 1819(f)(2)(A) and 1919(f)(2)(A) of the Act. Sections 4008(h)(1)(E) and 4801(a)(5) of OBRA '90 have clarified these sections of the Act to indicate that the individuals who cannot be charged for any costs related to a NATCEP or CEP are those nurse aides who are employed by, or who have an offer of employment from, a facility. We have incorporated this change in our regulations. We are not permitting nurse aides who are employed by, or who have an offer of employment from, a facility to be reimbursed for the costs of NATCEPs and CEPs because we believe the law clearly prohibits the approval of programs that charge these individuals, regardless of whether they are later reimbursed. However, we stress that FFP can be available for any State-approved program, not only programs operated by the facilities that employ the nurse aides. Additionally, we note that sections 4008(h)(1)(E) and 4801(a)(5) of OBRA '90 require that those nurse aides who do not have an employment relationship with a facility at the time they enter a CEP or NATCEP but who become employed by, or who obtain an offer of employment from, a facility not more than 12 months after completion of the program must be reimbursed for the costs of the program by the State on a pro rata basis for the period during which they are employed as nurse aides. This means that States must provide for reimbursement of costs over a reasonable period of time while the individual is employed as a nurse aide. Payments stop when the individual ceases to be employed as a nurse aide. We have also added this requirement to our regulations.

Comment: One commenter asked that facilities and other entities that conduct NATCEPs be allowed to charge nurse aides for makeup time if the aides miss class.

Response: Sections 1819(f)(2)(A) and 1919(f)(2)(A) of the Act do not allow States to approve programs that charge nurse aides for any part of the program, including makeup classes. We believe it would be inappropriate for us to allow for such charges in our regulations.

Comment: One commenter asked that we allow facilities to have contracts that indicate that nurse aides will have to repay the facility for their training if they do not remain with the facility for a specified period of time.

Response: The cost of nurse aide training and competency evaluation is borne by the Medicare and Medicaid programs. It is inappropriate for a facility to ask a nurse aide to repay the facility for an expense for which it has already been paid.

Comment: A number of commenters had questions or comments on the application of these provisions to facility-based and non-facility-based NATCEPs. Several commenters either requested clarification of whether these provisions should apply only to facility-based programs or indicated that we should not require these provisions to apply to non-facility-based programs. A few commenters believed that facility-based programs should be allowed to charge non-employees.

Response: The nurse aide requirements in sections 1819 and 1919 of the Act do not distinguish between facility-based and non-facility-based NATCEPs; therefore, the provisions in §§ 483.152(c) and 483.154(c)(2) apply to both types of programs. No programs that charge fees to any nurse aides who are employed by, or who have an offer of employment from, a facility may be approved by the State.

Comment: A few commenters asked about the effective date for these provisions or wondered if there is a time limit on how long the provisions will apply.

Response: Section 0901(b)(6)(B) of OBRA '89 specifies that these provisions are effective 90 days after OBRA '89 was enacted, or March 19, 1990. Because this provision was inserted into sections 1819(f)(2)(A) and 1919(f)(2)(A) of the Act, which contain requirements with which States must comply even in the absence of final Federal regulations, States have been prohibited from approving NATCEPs that charge nurse aides since March 19, 1990. There are no limits on the length of time that these provisions will remain effective.

Comment: One commenter asked that we address the disposition of nurse aides who have been charged for NATCEPs and CEPs.

Response: As long as a nurse aide has successfully completed a NATCEP approved by the State, regardless of whether he or she was charged for that program, he or she must be placed on the nurse aide registry and is employable by a facility.

Comment: One commenter asked whether a facility must pay for a facility-based NATCEP for a nurse aide who does not want to take the program available in the facility in which he or she is employed.

Response: We believe that it is a facility's right to determine where it will train its employees.

Comment: One commenter requested that nurse aides be allowed to pay for CPR certification.

Response: Because we are not requiring that CPR be included in NATCEPs, we have no authority to prevent nurse aides from enrolling in CPR programs at their own expense. However, if CPR is included in a State-approved program, nurse aides may not be charged for it. Also, if CPR is included in a State-approved program, Federal funds may be used to pay for it, just as in the case of other nurse aide training curriculum items.

Comment: One commenter asked how nurse aides will be informed that programs may not charge them.

Response: We believe this comes under the States' purview and have therefore not developed a mechanism for providing nurse aides with this information. However, we do encourage States to make this information known to nurse aides.

Comment: Many commenters requested that programs be allowed to charge nurse aides for repeat competency evaluations.

Response: Sections 1819(f)(2)(A) and 1919(f)(2)(A) of the Act specifically require that States may approve no NATCEP or CEP that charges nurse aides. This requirement does not permit us to allow States to approve programs that charge for repeat competency evaluations.

Summary of Changes to Section 483.152

In response to comments, in addition to minor technical or editorial changes, we are making the following changes:

- In § 483.152(a)(4), we have added a provision that requires a NATCEP to ensure that students do not perform any services for which they have not been trained and been found proficient by the instructor, and that students who are providing services to residents are under the general supervision of a licensed or registered nurse.
- In § 483.152(a)(5), we have added a provision that instructors of nurse aides must have completed a course in teaching adults or have experience in teaching adults or supervising nurse aides, that directors of nursing not perform the actual nurse aide training, and that supplemental personnel have at least one year of experience in their fields.
- In § 483.152(b), we have deleted several topic areas for the nurse aide curriculum and have added several other topic areas based on comments about the appropriateness or inappropriateness of the topics, as discussed in the comments and responses.
- We have revised § 483.152(c) to indicate that certain individuals may not be charged for NATCEPs and certain individuals must be reimbursed for NATCEPs.
- We have revised § 483.154(c) to indicate that certain individuals may not be charged for CEPs and certain individuals must be reimbursed for CEPs.

Section 483.154 Nurse Aide Competency Evaluation

Summary of NPRM Provisions

Section 483.154 specified requirements for the notification, content, and administration of the nurse aide CEP. It also specified requirements for facility proctoring of the CEP, establishment of standards for successful completion of the CEP, and actions to be taken upon unsuccessful completion of the CEP.

Comments and Responses

General

Comment: One commenter asked when an individual is considered to be in a CEP.

Response: An individual is considered to be in a CEP when he or she is actually in the process of performing the competency evaluation.

Comment: A couple of commenters suggested that HCFA should evaluate national competency evaluations.

Response: The Secretary is required by sections 1819(f)(2) and 1919(f)(2) of the Act to develop requirements for approval of CEPs. States are required by sections 1819(e)(1) and 1919(e)(1) of the Act to review and approve CEPs as meeting the Secretary's requirements. Thus, we believe States should have the freedom to approve any CEPs that meet these requirements. Any Federal approval or recommendation of a CEP could adversely affect this freedom, and we therefore believe it would be inappropriate for us to approve or recommend any national CEPs.

Section 483.154(a) Notification to Individual

Summary of NPRM Provisions

Paragraph (a) of § 483.154 specified that a State must advise in advance any individual who takes the CEP that a record of the successful completion of the CEP will be included in the State's nurse aide registry.

Comments and Responses

Comment: One commenter believed that advance notification indicating that successful completion of the CEP will result in being placed on the nurse aide registry is unnecessary because the registry does not disclose confidential information.

Response: Without this notification nurse aides might not know that they will be placed on the registry. It would be unfair to place individuals on a registry without their knowledge. Also, since prospective nurse aides will be asked whether they are included on the registry, it is important to know that this is so.

Comment: One commenter asked if notification at the time of application to take the competency evaluation would serve as advance notice.

Response: We have not specified at what point the notification must be given, only that it be provided in advance of the competency evaluation. Therefore, notification at the time of application would meet this requirement.

Section 483.154(b) Content of the Competency Evaluation Program

Summary of NPRM Provisions

Paragraph (b) of § 483.154 specified that a written or oral competency evaluation must—

- Allow an aide, at his or her option, to establish competency through methods other than passing a written examination;
- Address each course requirement specified in § 483.152(b);
- Be developed from a pool of test questions, only a portion of which is used in any one examination; and
- Use a system that prevents disclosure of both the pool of questions and the individual examinations.

It also specified that the CEP must include an acceptable demonstration of the tasks the individual will be expected to perform as part of his or her function as a nurse aide.

Comments and Responses

Comment: One commenter believed that the competency evaluation should take place during the training process. Another commenter believed that a CEP is unnecessary if an individual successfully completes a training program.

Response: Sections 1819 and 1919 of the Act refer to a training and competency evaluation program. We therefore believe that a formal evaluation of competency is required separate from the training process.

Comment: A number of commenters requested additional information on or requirements for competency evaluations in foreign languages. A few commenters suggested that States should be allowed to limit the foreign languages in which competency evaluations may be given. Other commenters asked that we use the guidance contained in the State Operations Manual Transmittal 223 and the State Medicaid Manual Transmittal 62. One commenter asked that we clarify the provisions contained in these transmittals.

Response: We have not imposed any requirements regarding competency evaluations in foreign languages because we believe that this is an area in which States should be given discretion. The guidance given in the State Operations Manual and the State Medicaid Manual indicated that competency evaluations should be administered in English unless a nurse aide will be working in a facility where the predominant language is not English. This means that nurse aides who work (or will work) in a facility in which most of the residents speak a particular foreign language could take the competency evaluation in that language. We continue to believe that this is good advice. However, we also believe that States should have the flexibility to decide if and under what circumstances they will allow competency evaluations to be administered in languages other than English.

Comment: A number of commenters asked that we specify the alternatives to a written examination. One commenter asked that States be allowed to decide what alternatives they will accept. A few commenters believed that the alternative to a written examination should be an oral examination. Several commenters believed that we should not allow oral examinations or that we should only allow them under certain circumstances. A few commenters believed that it would be unwise to allow illiterate individuals to become nurse aides. Others expressed concern that it would be difficult to prevent prompting during an oral exam and suggested that either an audio tape or standard pronunciation be used, or that an individual who is unfamiliar with the content of the test read the questions to the individual taking the oral examination. One commenter believed that it would be difficult to develop an oral examination in a multiple choice format. Another commenter believed that oral examinations should not be multiple choice.

Response: Sections 1819(f)(2)(A) and 1919(f)(2)(A) of the Act specify that nurse aides must be given the option of establishing competency through methods other than a written examination. We have revised § 483.154(b)(1)(i) to clarify that the alternative to a written CEP is an oral examination. While we can understand concerns about illiterate nurse aides, we believe that an oral examination is a reasonable alternative to a written examination. We have required that oral examinations be read from a prepared text to assure that the questions are read in a neutral manner. We have not required that the examination be pre-recorded on an audio tape because we do not wish to require extra equipment for the administration of the examination. We also have not specified whether an oral examination should be in a multiple choice format because we want to allow facilities flexibility in determining the format for the examination. We have not allowed States to accept additional alternatives to a written examination because we believe that the majority of information required of nurse aides in CEPs can best be tested by an examination.

Comment: Some commenters remarked on the administration of the alternative to the written examination. A few commenters believed that we should allow an alternative to the written examination only when there is a special reason to do so and special requirements are met. Others asked if nurse aides would be allowed to decide which type of examination to take at the time the competency evaluation is administered. One commenter asked if the training entity would be responsible for modifying the examination.

Response: As discussed above, sections 1819(f)(2)(A) and 1919(f)(2)(A) of the Act require that nurse aides be given an alternative to a written CEP. We do not believe that the statute allows for restricting the circumstances under which a nurse aide may choose an oral examination. We have not specified at what point a nurse aide must decide whether he or she will take the oral examination, but we believe that it would be reasonable for States to establish procedures for individuals to make such a decision in advance of the competency evaluation. The entity responsible for administering the competency evaluation is the entity responsible for providing the oral examination.

Comment: A few commenters believed that a CEP should consist of a skills demonstration only, and that a written or oral examination should be an alternative to the CEP. One commenter suggested that either a skills demonstration or an examination should be allowed to constitute a CEP.

Response: We believe that both a skills demonstration and an oral or written examination are necessary to determine if an individual is competent to be a nurse aide. We believe that a nurse aide's ability to perform tasks can best be tested by a skills demonstration, and a nurse aide's knowledge of certain abstract concepts can best be tested by an examination.

Comment: One commenter believed that HCFA is overstepping its authority by requiring that the CEP include all of the curriculum items listed in § 483.152(b). This commenter believed that we should require evaluation only on the statutorily mandated categories.

Response: Sections 1819(f)(2)(A)(ii) and 1919(f)(2)(A)(ii) of the Act require the Secretary to promulgate requirements for CEPs and specify the minimum topics to be included in those requirements. However, by specifying only the minimum subject areas to be evaluated, the statute allows the Secretary to include other topics that we believe are necessary to ensure that

nurse aides are competent to provide nursing and nursing-related services to residents of facilities. The Secretary may also specify other topics under the authority granted in sections 1819(d)(4), 1819(f)(1), 1919(d)(4), and 1919(f)(1) of the Act. Thus, we believe we are not overstepping our authority by requiring that the CEP include all of the curriculum items listed in § 483.152(b).

Comment: Several commenters believed that the CEP should consist of a random sample of the pool of test questions.

Response: We agree and have revised this requirement at § 483.154(b)(iii) to allow for the use of this method.

Comment: One commenter requested we require that examination questions be rotated quarterly. Another commenter observed that interactive video systems, when used as a method of training nurse aides, might not protect against disclosure of test questions.

Response: It is a State's responsibility to protect examinations and approve only those programs that prevent disclosure of both the pool of test questions and the individual examinations. We believe that States should have the flexibility to develop their own methods for protecting examinations and have therefore not placed specific requirements in our regulations.

Comment: Many commenters were concerned that the skills demonstration required inclusion of all of the tasks an individual would be expected to perform in a facility. Most commenters advocated a pool of skills of which a random sample would be demonstrated. Various minimum numbers of tasks were suggested. Commenters believed that requiring all tasks to be demonstrated would be intimidating, or that implementing this requirement would make evaluations too time consuming and costly. A few commenters requested that we delete the skills demonstration portion of the CEP. One commenter believed that we should require a demonstration of all the tasks an individual would be expected to perform. Several commenters believed that demonstrating all of the skills an individual will perform in a facility might be insufficient. A few commenters suggested standards for skills demonstrations. One commenter requested clarification of what is expected in the skills demonstration.

Response: We agree that testing a random sample of skills is an effective method for testing competency. Therefore, we have revised § 483.154(b)(2) to specify that the skills demonstration must consist of a demonstration of randomly selected items drawn from a pool consisting of the tasks generally performed by nurse aides. This pool of skills must include all of the personal care skills listed in § 483.152(b)(3). We note that facilities must ensure that the nurse aides are competent to perform all of the services they are expected to provide, even if these skills are not tested in the CEP. We have not deleted the skills demonstration of the CEP because we believe that demonstrating a skill is the most effective method of determining an individual's competency in that skill. We have not required that an individual demonstrate all of the tasks he or she will be expected to perform in the facility because we believe that performance of a random sampling of the skills is adequate to permit a general inference about an individual's abilities, especially since nurse aides are subject to continuing supervision by registered nurses in the course of their daily duties. We note that we came to a different conclusion with respect to the evaluation of home health aides because they typically perform their duties unaccompanied and unsupervised and thus have fewer opportunities for imperfect skills to be observed and corrected.

Comment: Several commenters had concerns about the use of mannequins in skills demonstrations. Some commenters believed that the use of mannequins should be prohibited in skills demonstrations or that they should be used only when no live subjects are available. A few commenters believed that either mannequins or live subjects would be acceptable. One commenter believed that only mannequins should be allowed. One commenter requested that informed consent forms be signed when residents are used in the skills demonstration.

Response: We do not believe that a mannequin can substitute for a live subject for the skills demonstration. However, we are not requiring that residents be used during the skills demonstration—any human subject is permissible. We note that residents may not be used for skills demonstrations without their consent.

Comment: One commenter suggested that skills demonstrations might not be necessary in the future because programs will be stringent and monitored.

Response: We believe that skills demonstrations will continue to be an important component of the CEP. As we have indicated above, we believe that a skills demonstration is the most effective method of testing competency in the actual tasks nurse aides perform.

Comment: Several commenters suggested that we adopt the suggestion made in the State Operations Manual Transmittal 223 and the State Medicaid Manual Transmittal 62 to have performance records for all competency evaluations.

Response: As we have noted previously in this preamble, the instructions in the State Operations Manual and the State Medicaid Manual were intended as guidance to help States in developing and approving NATCEPs and CEPs in the absence of Federal regulations. We believe that the degree of detail in these instructions is inappropriate for inclusion in regulations.

Comment: Several commenters believed that we should require facilities and other entities that conduct training programs to keep a list of skills that are performed successfully during the training program instead of requiring a skills demonstration. One commenter suggested allowing skills to be demonstrated during the normal provision of services.

Response: We believe that a formal skills demonstration is required to determine if an individual is competent to be a nurse aide and have therefore not accepted these comments.

Section 483.154(c) Administration of the Competency Evaluation

Summary of NPRM Provisions

Paragraph (c)(1) of § 483.154 specified that the competency examination must be administered and evaluated only by the State directly or a State-approved entity which is neither a skilled nursing facility that participates in Medicare nor a nursing facility that participates in Medicaid.

Paragraph (c)(2) of § 483.154 specified that no charges for the competency evaluation may be imposed on any nurse aide.

Paragraph (c)(3) of § 483.154 specified that the skills demonstration part of the evaluation must be performed in a facility or laboratory setting comparable to the setting in which the individual will function as a nurse aide and 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.

Comments and Responses

Comment: One commenter believed that we should require a standardized competency evaluation in lieu of the requirements in 483.154(c). Several commenters believed that facilities should be certified to perform their own

competency evaluations or that it is inappropriate to prohibit States from delegating competency determinations to facilities. A few commenters asked that personnel from other facilities be allowed to determine competency.

Response: Sections 1819(f)(2)(B)(iii)(II) and 1919(f)(2)(B)(iii)(II) of the Act require the Secretary's regulations to prohibit State approval of NATCEPs and CEPs unless the State makes the determination of competency. These sections of the Act, as amended by sections 4008(h)(1)(G) and 4801(a)(7) of OBRA '90, further prohibit a State from delegating its responsibility to determine competency, through subcontract or otherwise, to SNFs that participate in the Medicare program and NFs that participate in the Medicaid program. (Statutory provisions prior to OBRA '90 did not contain the phrase "through subcontract or otherwise".) We believe that these statutory requirements clearly indicate that States or State-approved entities which are not SNFs or NFs must make determinations of competency, and we have developed regulations that reflect the statutory requirements.

Comment: One commenter believed that the individual administering the written or oral examination should have sufficient knowledge to answer questions during the examination.

Response: We believe that many States will not want individuals who are administering the test to answer questions on the content of the test, and we believe States should have the flexibility to prohibit this if they wish to do so.

Comment: One commenter believed that all skills demonstrations should be performed in facilities.

Response: We have required in § 483.154(d)(1) that all nurse aides have the option to take the CEP in the facility at which they are or will be employed unless that facility does not meet certain requirements. In cases where the nurse aide does not have an employment relationship with a facility, the facility does not meet certain requirements, or the nurse aide does not want to take the CEP at the facility, we believe that a laboratory setting may be the only available location for the skills demonstration. We also believe that it is possible to determine competence when skills are demonstrated in a laboratory setting.

Comment: A number of commenters expressed the opinion that licensed nurses should be allowed to administer and evaluate the competency evaluation. A few commenters believed that licensed nurses should be allowed to evaluate nurse aides under the general supervision of a registered nurse or if they are qualified to teach. One commenter believed that licensed nurses should be allowed to observe standardized skills demonstrations when an outside entity makes the determination of competency but that evaluators who make determinations of competency should be registered nurses. A few commenters agreed that an evaluator must be a registered nurse who has the experience specified in the NPRM.

Response: We have retained the requirement that the skills demonstration portion of the CEP be administered and evaluated by a registered nurse. We believe that the knowledge and education of a registered nurse are necessary to make a sound judgment of a nurse aide's competency. Because even standardized skills demonstrations require an evaluator to make judgments about the competency of nurse aides, we believe it is important for all evaluators to meet the required qualifications.

Comment: One commenter suggested that we require evaluators to take a course in training nurse aides or some other similar specialized course, or have teaching or skills experience.

Response: We have not developed such requirements because we believe that the requirements we have established are an appropriate floor and that additional requirements would restrict the number of individuals who could serve as evaluators.

Comment: A few commenters suggested that evaluators and instructors should have the same qualifications.

Response: We have required that instructors have experience in long-term care because we believe that instructors should have experience in the type of care that nurse aides provide. We believe that the tasks performed by nurse aides are largely similar to those performed by aides in hospitals, home health agencies, and other health care entities. We believe that a registered nurse who has experience in providing care for the elderly or the chronically ill of any age will be better able to judge if a nurse aide is competent to provide services than someone who has not had that experience.

Section 483.154(d) Facility Proctoring of the Competency Evaluation

Summary of NPRM Provisions

Paragraph (d)(1) of § 483.154 specified that the competency evaluation may be conducted at the facility at which the aide is (or will be) employed unless the facility is out of compliance with any of the requirements for participation within any of the 24 consecutive months prior to the competency evaluation.

Paragraph (d)(2) of § 483.154 specified that a State may permit the examination to be proctored by facility personnel if the State finds that the procedure adopted by the facility assures that the CEP is secure from tampering; is standardized and scored by a testing, educational, or other organization approved by the State; and requires no scoring by facility personnel.

Paragraph (d)(3) of § 483.154 specified that a State may not permit facility personnel to proctor the skills demonstration portion of the evaluation.

Paragraph (d)(4) of § 483.154 specified that a State must retract the right to proctor nurse aide competency evaluations from facilities in which the State finds any evidence of impropriety, including evidence of tampering by facility staff.

Comments and Responses

Comment: Several commenters were concerned about locations for competency evaluations. A few commenters were concerned because they believed we were going to force nurse aides to take competency evaluations in the State capital or other locations many miles from their communities. Some commenters believed that we should prohibit competency evaluations from being held in facilities, while others believed that evaluations should be permitted in a facility. A few commenters requested that we allow schools to be evaluation sites.

Response: Sections 1819(f)(2)(A)(iv) and 1919(f)(2)(A)(iv) of the Act require NATCEPs and CEPs to give nurse aides the option to take the CEP at the facility in which they are or will be employed unless the facility is described in section 1819(f)(2)(B)(iii)(I) or 1919(f)(2)(B)(iii)(I) of the Act. If a nurse aide does not choose to take the evaluation in the facility in which he or she is employed or will be employed, if he or she does not have an offer of employment, or if the facility in which he or she is or will be employed is described in section 1819(f)(2)(B)(iii)(I) or 1919(f)(2)(B)(iii)(I) of the Act, the evaluation may be held at a school or other location acceptable to the State. We did not propose that competency evaluations should be administered in State capitals or remote locations and are therefore unclear as to why this concern arose.

Comment: Many commenters believed that facility compliance should not be a factor in whether a nurse aide is allowed to take the CEP in the facility in which he or she is or will be employed.

Response: As discussed above, nurse aides must be given the option to take the competency evaluation at the facility in which they are or will be employed unless the facility is described in section 1819(f)(2)(B)(iii)(I) or 1919(f)(2)(B)(iii)(I) of the Act. Prior to the enactment of OBRA '90, these sections of the Act dealt with facility compliance with certain long-term care requirements. Sections 4008(h)(1)(E) and 4801(a)(6) of OBPA '90 modified sections 1819(f)(2)(B)(iii)(I) and 1919(f)(2)(B)(iii)(I) of the Act so that facility compliance with long-term care requirements, while relevant to program approval, is no longer specifically discussed. (See preamble discussion on §§ 483.151(b)(2), 483.151(b)(3), and 483.151(e)(1) for a complete discussion of this change.) We have modified § 483.154(d)(1) to conform our regulations with the change in the statute.

Comment: A few commenters asked that we define proctoring.

Response: We define proctoring as supervising an examination and believe the regulation makes the meaning of that term clear.

Comment: A number of commenters believed that we should not allow facility proctoring of the examination component of the competency evaluation. A few commenters believed that no individual who has an interest in the outcome of the CEP should be allowed to proctor the skills demonstration.

Response: Sections 1819(f)(2)(B)(iii)(II) and 1919(f)(2)(B)(iii)(II) of the Act prohibit States from delegating their responsibilities for approval and administration of the CEP to SNFs that participate in Medicare and NFs that participate in Medicaid. We believe, however, that States can be in compliance with these sections of the Act if they allow facilities to supervise examinations that are evaluated by the State and meet the requirements in § 483.154(b)(1). We note that many commenters believed that proctoring is desirable. We have not prohibited individuals who have an interest in the competency evaluation from proctoring because we believe that there is no statutory basis for such a prohibition.

Comment: A few commenters believed that it could be difficult to determine if a facility used proctoring methods that compromised the examination.

Response: We believe that States are capable of determining if a facility has used improper proctoring methods, for example, by noting unusual variations in pass/fail rates. We also believe that the vast majority of facilities will proctor the competency evaluation correctly. Therefore, we have not altered our requirement.

Comment: One commenter believed that facility staff should be at evaluations to provide moral support for nurse aides.

Response: As long as no prompting occurs, we do not believe that our regulations prohibit the presence of facility personnel.

Comment: One commenter asked what could be done about facilities who form new companies to evaluate nurse aides.

Response: The statutory prohibition against facility-conducted competency evaluation programs and the limitations on facility-based training programs cannot be overcome simply by a name change when it is clear that the facility is the entity performing the function. We would expect States to avoid approval of programs where they determine that a facility is attempting to evaluate its own nurse aides. On the other hand, we do not believe it inappropriate for facilities to pool resources and form an organization for the purpose of conducting training and competency evaluation for their employees and prospective employees. In fact, such a practice may well be necessary to assure that such programs will be available in certain localities and will have access to experienced instructors and evaluators. The law does not prevent individuals employed from serving in such programs as well, and we have not prohibited it in these regulations.

Comment: In the NPRM, we asked for public comment on whether facility staff should be allowed to read a multiple choice or objective examination to nurse aides. There were equal numbers of proponents for and against allowing facility staff to read oral examinations. Both sides suggested individuals who would be acceptable readers.

Response: After consideration of these comments, we have revised § 483.154(b)(v) to allow oral examinations only when they are read from a prepared text. Facility members may read a prepared examination to nurse aides.

Comment: A large number of commenters requested that facilities be allowed to proctor the skills demonstration portion of the CEP and cited a variety of reasons. A number of different facility staff members were suggested as appropriate proctors. Some commenters believed that facility staff should be able to proctor the skills demonstration if the State or other contracting agency determines who passes. Several commenters believed that facilities should not be allowed to proctor the skills demonstration.

Response: We have deleted the proposed requirement in § 483.154(d)(3) that facility personnel not be permitted to proctor the skills demonstration portion of the competency evaluation because we believe that standardized skills checklists enable outside organizations to make determinations competency. We also believe that facility proctoring is an efficient and economical method of performing competency evaluations.

Comment: One commenter requests that we require States to develop requirements for proctoring.

Response: We have not required States to develop requirements for proctoring because we believe that it is reasonable for facilities to develop procedures and submit them for State approval.

Section 483.154(e) Successful Completion of the Competency Evaluation Program

Summary of NPRM Provisions

Paragraph (e)(1) of § 483.154 specified that a State must establish a standard for satisfactory completion of the competency evaluation which demonstrates that an individual, at a minimum, successfully demonstrate all of the personal care skills specified in § 483.152(b)(3) and any others that he or she would be permitted to perform in the facility.

Paragraph (e)(2) of § 483.154 specified that a record of successful completion of the CEP must be included in the nurse aide registry provided in § 483.156 within 30 days of the date the individual is found to be competent.

Comments and Responses

Comment: A number of commenters were displeased by the requirement in the NPPM which indicated that an individual could not be considered to have successfully completed a CEP unless he or she successfully completed all of the personal care skills listed in § 483.152(b)(3) and any others he or she would be expected to perform in the facility. Commenters listed a variety of reasons why this requirement should not be finalized. Most of the commenters believed that we should require testing using the random sampling method discussed in the responses to comments in § 483.154(b)(2).

Response: As we indicated in the response to the comments on § 483.154(b)(2), we believe that a random sampling method of testing is an effective and appropriate method to

employ in the competency evaluation of nurse aides, and have revised § 483.154(b)(2) to reflect this. In addition, we have moved the reference to completion of skills proposed in § 483.154(e) to § 483.154(b)(2), which we believe is a more logical location.

Comment: One commenter requested that we indicate clearly that an individual must complete an examination and a skills demonstration to successfully complete a CEP. Another commenter questioned whether an individual who fails either the examination or the skills demonstration can be considered to have successfully completed the CEP. One commenter requested that we allow States to determine what constitutes competency.

Response: We have revised § 483.154(e)(1) to indicate that successful completion of the CEP can only be achieved through successful completion of both the skills demonstration and the examination. We have given States significant flexibility to determine what constitutes competency. However, we believe that we must specify at least that an individual must complete both an examination and a skills demonstration.

Comment: A number of commenters suggested that we change the number of days in which a record of successful completion of a CEP must be placed on the nurse aide registry. Some commenters suggested that the number of days be shortened from the 30 proposed in the NPRM. One commenter asked that information be included in five days. A few commenters wanted information to be included within 10 days. Other commenters wanted more time and suggested that 45 to 60 days be allowed. Some commenters believed the amount of time allotted in the NPRM was appropriate.

Response: We recognize that inclusion on the registry is very important for the employment prospects of nurse aides because facilities must check with the registry before hiring an individual as a nurse aide, and we believe that records of successful completion of CEPs should be placed on the registry as soon as possible. However, we believe that States may require 30 days to place individuals on the registry. The provision at § 483.75(e)(5), which allows facilities to employ nurse aides who can provide evidence indicating that they have recently successfully completed a NATCEP and have not yet been placed on the registry, should eliminate any hardship that may be associated with the 30 day registry placement time.

Comment: A few commenters believed that we should develop a special provision that would allow persons with physical or mental challenges incapable of performing all of the duties generally performed by nurse aides to work as nurse aides.

Response: We have not established alternate standards for competency evaluations for individuals with physical or mental challenges because States must already follow the requirements of section 504 of the Rehabilitation Act of 1973 (Pub. L. 93-112). In light of section 504 of the Rehabilitation Act of 1973, challenged individuals have a right to demonstrate that they are otherwise qualified to work as nurse aides.

Section 483.154(f) Unsuccessful Completion of the Competency Evaluation

Summary of NPRM Provisions

Paragraph (f)(1) of § 483.154 specified that if an individual fails to complete the competency evaluation satisfactorily, the individual must be advised of the areas in which he or she was inadequate; and that he or she has at least three opportunities to take the evaluation.

Paragraph (f)(2) of § 483.154 specified that a State may impose a maximum upon the number of times an individual may attempt to complete the competency evaluation successfully, but the maximum may be no less than three.

Comments and Responses

Comment: Several commenters had suggestions on the number of times an individual should be allowed to take the competency evaluation. Many commenters believed that an individual should be allowed to take the competency evaluation no more than three times. Other commenters believed that individuals who have not passed the competency evaluation after three times should be allowed to retake it only under certain circumstances, such as completing additional requirements or obtaining permission from the facility. A couple of commenters indicated that the second and third competency evaluations should have an oral examination. A few commenters wondered if we were going to prescribe a minimum amount of time that must elapse before an individual is allowed to retake the competency evaluation or suggested specific amounts of time that they believed should be allowed to elapse before an individual is allowed to retake the competency evaluation. Some commeters believed that we should not limit the number of times an individual should be allowed to take the competency evaluation program. A few commenters asked if we were going to establish a maximum number of times an individual could attempt the competency evaluation. One commenter wanted to know the consequences if an individual fails to complete the test successfully after three attempts.

Response: We have continued to require that an individual must be allowed at least three attempts to pass the competency evaluation, but there is no limit on the number of times or the frequency with which the State may allow additional evaluations. Nurse aides often do not have extensive experience with tests, and we believe that it is imperative that they are allowed sufficient attempts to complete the competency evaluation. We have not developed special standards for repeat competency evaluations because we do not wish to place additional barriers to successful completion of a competency evaluation. We note that nurse aides always have the option to take an oral examination. We have not set a maximum number of times an individual can take the competency evaluation because we believe that this decision should be made by the State. If an individual does not complete the competency evaluation successfully after three attempts, it is up to the State to determine when and if he or she will be permitted to attempt the CEP again. We would like to clarify that the minimum number of attempts is per program, not per individual. Thus, each time an individual takes a CEP, he or she must have at least three attempts to complete that CEP satisfactorily.

Comment: One commenter believed that individuals who did not pass the competency evaluation should not be told what items they missed because this would compromise the integrity of the test.

Response: We have not required that individuals who do not successfully complete a CEP be informed of the specific items they missed. However, we do believe that individuals should be generally informed of the areas they did not pass so that they are able to improve those areas before attempting the evaluation again. Therefore, we have retained the provision in § 483.154(f)(1) that an individual who does not successfully complete the CEP must be advised of the areas which he or she did not pass.

Comment: A few commenters asked whether individuals who did not successfully complete the CEP must continue to be employed by the facility or whether facilities must pay such individuals unemployment.

Response: We believe such issues are not within HCFA's purview. We note

that facilities may not use full-time employees as nurse aides for more than four months unless the individuals have completed a CEP or NATCEP or have met this requirement through the deeming or waiver requirements in § 483.150. Non-permanent nurse aides must have already completed a CEP or NATCEP or have met requirements in § 483.150 to work as a nurse aide in a facility.

Comment: One commenter indicated that HCFA should require that training be taken early in the first four months of employment so that there is time to take repeat CEPs if necessary.

Response: Sections 1819(b)(5) and 1919(b)(5) of the Act indicate generally that a full-time nurse aide must have completed a CEP or NATCEP by the time he or she has worked for a facility for four months. We believe that it is unnecessary for us to make additional requirements in this regard.

Summary of Changes to Section 483.154

In response to comments, in addition to minor technical or editorial changes, we are making the following changes:

- In § 483.154(b)(1)(i), we are designating an oral competency examination as the alternative to a written competency examination.
- In § 483.154(b)(2), we are revising the requirements for the skills demonstration part of the competency evaluation by allowing that the skills demonstration consist of a demonstration of randomly selected items instead of demonstration of all tasks performed by a nurse aide.
- In § 483.154(d), we are revising the paragraph title to read "Facility proctoring of competency evaluation" to more accurately reflect the scope of this section of the regulations. In § 483.154(d)(1), we are revising our regulations to indicate that the competency evaluation may be conducted in the facility in which a nurse aide is or will be employed unless the facility is described in § 483.151(b)(2). In § 483.154(d)(2), we are not prohibiting facility personnel from proctoring the skills demonstration part of the competency evaluation, as proposed in our NPRM.
- In § 483.154(e)(1), we have clarified that an individual must pass both the written or oral examination and the skills demonstration to successfully complete the competency evaluation.
- In § 483.154(f)(2), we have clarified that individuals have a minimum of three attempts to pass the competency evaluation per program.

Section 483.156 Registry of Nurse Aides

Summary of NPRM Provisions

Section 483.156 specified the requirements for States for the establishment, operation, and content of a registry of nurse aides. It also specified the requirements for the disclosure of information on the registry.

Comments and Responses

General

Comment: One commenter suggested that all nurse aides be registered in a national registry.

Response: Sections 1819(e)(2) and 1919(e)(2) of the Act require each State to establish and maintain a nurse aide registry but do not require reciprocity of data among States. We believe that such a registry would place an unnecessary administrative burden on States.

Comment: One commenter believed that the registry requirements will make the occupation of nurse aide less appealing.

Response: We do not believe that the registry requirements are onerous for nurse aides who have been found competent. On the contrary, we believe that requiring nurse aides to be registered will enhance their professional prestige.

Section 483.156(a) Establishment of Registry

Summary of NPRM Provisions

Paragraph (a) of § 483.156 specified that a State must establish and maintain a registry of nurse aides that meets the requirements of § 483.156. It also specified that the registry—

- Must include as a minimum the information proposed in § 483.156(c);
- Must be accessible to the public and health providers on a fixed schedule set by the State at least six hours per day between the hours of 7 a.m. and 6 p.m. local time, Monday through Friday, except for State and Federal holidays, and notify facilities in advance of changes in the hours of operation;
- May include home health aides who have successfully completed a home health aide competency evaluation program approved by the State;
- Must include a process for timely responses to written and telephone inquiries that request information from the registry; and
- Must provide that any response to an inquiry that includes a finding of abuse, neglect, or misappropriation of property also include any statement disputing the finding made by the nurse aide.

Comments and Responses

Comment: A number of commenters suggested changes in the required hours of operation of nurse aide registries for a variety of reasons. While some commenters believed that the hours proposed in the NPRM were sufficient, others requested various increases, which ranged from 8 hours per day, Monday through Friday to 24 hours per day, 7 days per week.

Response: We understand commenters' concern that the registry be available to meet their needs. However, we believe that registry needs will vary from State to State. Requiring certain hours of operation could lead to insufficient service in some States and waste in others. Therefore, we have required that the registry must be sufficiently accessible to meet the needs of the public and health care providers.

Comment: Two commenters asked that we remove provisions allowing the registry to be closed on Federal as well as State holidays, remarking that many States do not observe Federal holidays.

Response: We agree and have deleted this provision to allow each State the flexibility to decide which, if any, holidays its registry will observe.

Comment: Several commenters requested that we require registries to provide facilities with 30 days written notice prior to the implementation of changes in the hours of operation of the registry. A few commenters asked that we delete the requirement for a fixed registry schedule and advance notification of changes in operation. One commenter believed that we should require registries to operate according to State law instead of requiring a fixed schedule.

Response: We do not agree that we should require a specific number of days notice prior to changes in registry operating hours because we believe that prior notification of changes in registry operation is included in the requirement that the registry be sufficiently accessible to meet the needs of the public and health care providers.

Comment: Many commenters had advice on whether to allow States to include home health aides on the nurse aide registry. A number of commenters believed that nurse aides and home health aides should be required to take the same course. Commenters provided a variety of suggestions for unified examinations for health aides and nurse aides. Many commenters were pleased that we proposed to allow home health aides to be included on the registry. One commenter suggested that home health aides who were found to have abused or

neglected patients or to have misappropriated patient property should be included on the registry. A few commenters believed that home health aides should not be included on the registry because they do not qualify or because it would violate their rights. One commenter asked for clarification of why home health aides could be on the registry and wondered if home health aides who were on the registry would be allowed to work as nurse aides in facilities.

Response: We have retained our provision to allow States to place home health aides who have completed a home health aide competency evaluation on the nurse aide registry. Although no registry is required for home health aides, we believe that some States will wish to use the registry as a mechanism for identifying home health aides who are competent as well as those who have adverse findings against them. Requirements for home health aide training and competency evaluation located at section 1891(a)(3) of the Act are sufficiently different from those for nurse aides to prevent us from establishing one set of minimum requirements. We do not believe that placing home health aides on the nurse aide registry violates their rights or misrepresents their qualifications because, in permitting home health aides to be listed on the registry, we also require the State to differentiate between home health aides and nurse aides. Placing home health aides on the nurse aide registry does not allow them to work in skilled nursing facilities or nursing facilities.

Comment: Several commenters believed that hospital aides should be required to have the same training as nurse aides and be placed on the nurse aide registry. Some commenters provided suggestions on course content.

Response: The statute does not require hospital aides to complete training and competency evaluations. Because there are no statutory standards for assuring that hospital aides are competent, we believe that it would be inappropriate to allow them to be included on the registry of aides for whom such standards exist.

Comment: A few commenters remarked that it is discriminatory to require a registry only for nurse aides or asked why registries were not required for other health care settings. Several other commenters requested clarification on whether certain individuals should be placed on the nurse aide registry. A few commenters believed that an individual should be working as a nurse aide in a facility to be placed on the registry. Some commenters indicated that individuals who were deemed as meeting the requirement of completing a NATCEP or for whom the competency evaluation was waived should be included on the registry.

Response: Sections 1819(e)(2)(A) and 1919(e)(2)(A) of the Act, as modified by OBRA '90, require the nurse aide registry to include the individuals who have completed a NATCEP or a CEP or who have been deemed to have completed a NATCEP or CEP or have had the NATCEP or CEP waived by the State. (Sections 4008(h)(2)(K) and 4801(e)(2) of OBRA '90 amended sections 1819(e)(2)(A) and 1919(e)(2) (A) of the Act to add individuals who have been deemed to have completed a NATCEP or CEP or who have had the requirement to complete a NATCEP or CEP waived by the State to the list of those who must be placed on the nurse aide registry.) These provisions do not make this requirement for any other individuals nor do they require that an individual be working in a facility as a nurse aide to be placed on the registry.

Comment: A few commenters asked that the registry be expanded to include any facility employees who are found by the State to have abused or neglected a resident or misappropriated resident property.

Response: We do not believe that the intent of sections 1819(e)(2) and 1919(e)(2) of the Act is to permit such an expansion of the registry. We note that the National Practitioners Data Bank, operated by the U.S. Public Health Service, contains information on abuse by health professionals. We also note that States are required by sections 1819(g)(1)(C) and 1919(g)(1)(C) of the Act to notify the licensing agency when they make an adverse finding against a licensed individual.

Comment: One commenter requested that we require that the nurse aide registry maintain sufficient telephone service and personnel to serve the needs of facilities.

Response: We have not specifically required registries to maintain certain staff levels and telephone services because we have already required the registry to meet the needs of users in § 483.156(a)(2).

Comment: Many commenters indicated concern about the requirement in § 483.156(d) concerning the timeliness of the registry's disclosure of information. Most commenters believed that 10 days to respond to a request for information on a specified individual was too long. Some commenters indicated that certain State laws required faster disclosure of information. A large number of different response times were recommended, but the vast majority of commenters requested that the registry be required to respond immediately to telephone inquiries and to send written confirmation within 10 days. Some commenters suggested that different response times could be required for different types of requesters. One commenter asked that we clarify whether we require different response times for different requestors. One commenter requested that registries be allowed more than ten days to respond to inquiries.

Response: We recognize that facilities need prompt access to information on the registry and that ten days (or any arbitrary time frame) may not be sufficient to meet the needs of facilities. We are also concerned that we do not preempt State laws regarding disclosure of public information. Therefore, we have revised § 483.156(b) to indicate that information on the registry must be provided promptly. We believe it is possible for most inquiries to be answered within 24 hours with written confirmation within ten days.

Comment: One commenter believed that the process for obtaining information from the registry is cumbersome.

Response: We have not mandated any process for obtaining registry information and therefore are unable to respond to this comment.

Comment: A few commenters believed that the use of the registry should be free to facilities. One commenter suggested that the public and non-facility users of the registry could be charged a fee.

Response: Sections 1819(e)(2) and 1919(e)(2) require that the registry information be available to the public, but neither requires nor prohibits the practice of charging fees. While we believe that fees could limit public accessibility, we also believe it would be inappropriate to include a provision dealing with user fees in these regulations.

Comment: A few commenters suggested that we require registries to provide a toll free number or a hotline for facilities.

Response: We believe that such choices should be left to the States and do not believe that this degree of detail is appropriate for inclusion in this regulation.

Comment: One commenter asked that we require written responses to note the time and date of the original request.

Response: The regulation already requires information on the registry to be provided promptly, and we do not

believe that this degree of detail is appropriate for inclusion in our regulations.

Comment: A few commenters requested that registry information be made available through modems or fax transmissions.

Response: Although States are free to make registry information available through innovative methods, we wish to allow States the flexibility to make individual determinations on which methods best fit their budgets and the needs of their users. We suggest that States who are considering allowing computer access to the registry may want to consider security measures to protect the information contained in the registry.

Comment: One commenter believed that HCFA should develop a method for facilities to obtain registry information from other States.

Response: We do not believe the development of a method for facilities to obtain information from registries in other States is necessary because facilities may call or write to such registries.

Comment: A few commenters believed that the only information that should be disclosed over the telephone is whether an individual is on the registry.

Response: The only reason for restricting the information available over the telephone would be to prevent information from being given to unauthorized requesters. Because there are no unauthorized requesters, we do not believe we need to provide additional restrictions.

Comment: One commenter believed that HCFA should sanction registries if they do not provide information on a timely basis.

Response: Sections 1819(e)(2) and 1919(e)(2) of the Act do not provide for specific sanctions for failure to comply with the nurse aide registry requirements. However, proper operation of the registry is a State Medicaid requirement, and if the State does not comply with the registry requirements, HCFA can pursue a compliance action under section 1904 of the Act, which permits discontinuance of payments to States for Medicaid if the Secretary finds that a State has failed to comply substantially with any provision in the State Plan.

Section 483.156(b) Registry Operation

Summary of Provisions

Paragraph (b) of § 483.156 specified the nurse aide registry operation requirements. These requirements specified that—

- A State may contract the daily operation and maintenance of the registry to a non-State entity but that the State must maintain accountability for overall operation of the registry and compliance with these regulations;
- Only the State survey and certification agency may place on the registry findings of abuse, neglect, or misappropriation of property;
- A State must require renewal and updating of a nurse aides' registration at least once every two years on a schedule set by the State; and
- A State may charge registration fees from individuals listed in the registry.

Comments and Responses

Comment: A few commenters requested that we not allow the State to contract the daily operation of the nurse aide registry to a non-State entity because they believed that the responsibility of the registry was too great to delegate and because they were afraid that a facility group would get the contract.

Response: We have required the State to maintain accountability for the overall operation of the registry and we believe that this is sufficient protection against possible mishandling of the registry. Also, we note that some commenters agreed that allowing the State to contract out the registry was a good idea.

Comment: One commenter asked that we encourage State boards of nursing to operate the registry.

Response: A State may allow any agency to operate the registry, and we believe it would be inappropriate for us to recommend a particular agency.

Comment: Many commenters recommended agencies that should be allowed to place adverse findings on the registry. Several commenters believed that any State-designated agency should be allowed to place findings on the registry, while others suggested various specific agencies. One commenter suggested that there should be a coordinated effort among all of the investigatory agencies in the State and requested that we define this effort. One commenter suggested requiring the State survey agency to consider findings from other agencies. Another commenter believed that only the State licensing agency should be allowed to place findings on the registry. One commenter asked whether the State survey and certification agency could place findings from other agencies on the registry.

Response: Sections 1819(g)(1)(C) and 1919(g)(1)(C) of the Act require the State survey agency to place adverse findings on the nurse aide registry. We can understand that many different agencies may want to place findings on the registry, but the statute permits only the State survey agency to perform this function. We do not believe that this requirement will place an undue burden on States because any agency of the State is permitted to conduct investigations and make findings. These findings may, in turn, be communicated to the State survey agency, who may place them on the registry.

Comment: In the NPRM, we proposed that nurse aide registries re-register nurse aides every two years to eliminate individuals who had not performed any nursing or nursing-related services for monetary compensation for a period of 24 consecutive months and who therefore could not serve as nurse aides in facilities without completing a new NATCEP. Many commenters cited a variety of reasons why we should not require nurse aides to re-register every two years. A large number of commenters suggested that the registry could accomplish the purpose of re-registration by requiring facilities to submit an annual list of nurse aides they had employed during the year. A few commenters suggested other methods or recommended that registration occur at longer intervals. Some commenters believed that it should be a facility's responsibility to determine if an individual had not provided nursing or nursing-related services for monetary compensation for 24 months. A number of commenters asked that States be allowed to devise their own methods for determining whether individuals had performed nursing or nursing-related services for monetary compensation. A few commenters agreed that nurse aides should be required to re-register. One commenter believed that re-registration should be required for all individuals who are on the registry, not just nurse aides.

Response: Sections 1819(e)(2) and 1919(e)(2) of the Act require States to establish and maintain a registry of all individuals who have satisfactorily completed a NATCEP or a CEP approved by the State. Because it is the States' responsibility to list on the registry all individuals who have completed a NATCEP or a CEP or who are described in § 483.150 (and are thus employable by a facility), we believe it is also the States' responsibility to identify and remove from the registry those individuals who have not provided nursing or nursing-related services for monetary compensation for 24 consecutive months (and must therefore complete a new NATCEP to be employable as a nurse aide). We received many comments objecting to

the method we had proposed for accomplishing this purpose and many varied suggestions for alternatives. We, therefore, have revised § 483.156(b)(3) to allow each State to determine how it will keep track of individuals who have not completed nursing or nursing-related services for monetary compensation for 24 consecutive months. We note that deriving this information exclusively from facilities will not achieve the purpose of the statutory requirement because individuals may provide nursing or nursing-related services in any location, not just a facility, and remain employable as nurse aides. The State must also assure that the registry contains current information as to whether individuals who are listed in the registry are considered competent to provide services.

Comment: One commenter indicated that the names of individuals should be deleted from the registry when they do not complete continuing education requirements.

Response: Sections 1819(b)(5)(E) and 1919(b)(5)(E) of the Act address only the responsibility of facilities to provide in-service training to nurse aides. Completion of in-service education is not a prerequisite for being found competent or for remaining on the registry.

Comment: A large number of commenters believed that we should not allow nurse aide registries to charge registration fees. A few commenters believed that we should allow registration fees or that we should allow charging a fee if the amount of the fee were minimal. Some commenters suggested appropriate caps on registration fees. A couple of commenters asked that we allow one-time-only registration fees or asked that we clarify whether re-registration requires a fee. One commenter wanted registration fees to be reimbursable if facilities pay them.

Response: Prior to the enactment of OBRA '90, sections 1819(e)(2) and 1919(e)(2) neither required nor prohibited the imposition of fees for the registry However, sections 4008(h)(2) (K) and 4801(a)(13) of OBRA '90 amended sections 1819(e)(2) and 1919(e)(2) of the Act to prohibit States from imposing any charges relating to the registry on nurse aides. We have modified § 483.156(b)(4) to comport with this change in the statute.

Section 483.156(c) Registry Content

Summary of NPRM Provisions

Paragraph (c) of § 483.150 specified the requirements for States for the contents of the nurse aide registry. Paragraph (c)(1) specified that—

- The registry must contain at least the following information on each individual who has successfully completed a NATCEP which meets the requirements of § 483.152 or a CEP which meets the requirements of § 483.154 and has been found by the State to be competent to function as a nurse aide or who may function as a nurse aide because of meeting criteria in § 483.150:
- The individual's full name, including a maiden name and any other surnames used;
- The individual's last known home address;
- The registration number assigned by the State to the individual when he or she successfully completes the competency evaluation program. The registration number must include a modifier which indicates the type of registration;
- The individual's date of birth;
- The individual's last known employer and the date of hiring and termination by that employer;
- For an individual who qualifies under § 483.150, an explanation of how the individual met the criteria of that section;
- The date that the individual passed the competency evaluation and the date of the expiration of the individual's current registration;
- The name and address of the State-approved entity which administered the competency evaluation and any control or identification number if the State chooses to assign such a number, and
- The following information on any finding by the State survey agency of abuse, neglect or misappropriation of property by the individual:

—Documentation of the State's investigation, including the nature of the allegation and the evidence that led the State to conclude that the allegation was valid;
—The date of the hearing, if the individual chose to have one, and its outcome; and
—A statement by the individual disputing the allegation, if he or she chooses to make one.

We proposed that this information must be included in the registry within 30 days of the finding and must remain in the registry for at least five years.

Paragraph (c)(2) of § 483.150 specified that the registry may exclude entries for individuals whose registrations have been expired for 24 consecutive months or for individuals who have ceased to function as a nurse aides for compensation for a period of 24 consecutive months when the individual ceases to be qualified to function as a nurse aide unless the individual's registry entry includes documented findings of abuse, neglect, or misappropriation of patient property.

Comments and Responses

Comment: Some commenters expressed concern about the collection of the information required to be on the registry. A few commenters asked that the information collection requirements not be applied retroactively. One commenter requested a one-year grace period for States to collect the information. One commenter asked that States be allowed to collect the required information at a schedule set by the State.

Response: We agree that applying the information collection requirements retroactively would be unfair and burdensome to States. We are requiring that States collect this information for the registry as of the effective date of these regulations.

Comment: A number of commenters suggested various minimum requirements for registry content. A few commenters suggested that we should allow States to determine minimum requirements for registry content. One commenter suggested that we should only mandate collection of the bare minimum of information required by law and allow States to collect additional information if they wish.

Response: We believe it is important and helpful for us to specify minimum requirements for registry content. However, after consideration of the comments concerning registry content, we have made significant modifications to the requirements in the NPRM (see Provisions of the Final Rule), and we believe that the final regulations represent the minimum requirements necessary to operate the registry in an efficient manner. States are free to collect additional information if they wish.

Comment: A few commenters believed that we should not require the registry to collect maiden names or other previously used surnames. Some commenters suggested that a person's social security number could be used as an identifier. A couple of commenters asked that we not require the registry to record an individual's last known home address or asked that this information only be collected at re-registration or other times. One commenter asked that we remove the requirement for the registry to give each individual on the registry a registration number.

Response: We believe it is necessary for States to maintain sufficient information to identify individuals on the registry. However, the comments indicated numerous possible methods of identification. Therefore, we have deleted requirements to collect such information as previously used surnames and dates of birth and have required only that information sufficient to identify each individual on the registry be collected and maintained. We note that it is illegal to require an individual to disclose his or her social security number. We also note that the State may wish to maintain information on home addresses in order to provide nurse aides with information required to be sent at the time of registration and when there are changes or additions to the registry information.

Comment: A few commenters asked us to clarify the type of registration or the purpose of a modifier attached to a registration number. One commenter requested that HCFA require standard modifiers for all States. Another commenter believed that a modifier should not be required and that the registry should indicate the type of registration when responding to inquiries.

Response: As we indicated above, we have required neither registration numbers nor modifiers. However, we believe that a modifier could be used to differentiate between nurse aides and home health aides.

Comment: Several commenters suggested that we not require the registry to collect information on an individual's last known employer and hiring and termination dates with that employer or requested that this information only be collected at re-registration.

Response: We have deleted this requirement from proposed § 483.156(c)(1)(v) because we wish to allow States flexibility in how they will determine if an individual has not performed any nursing or nursing-related services for monetary compensation for a period of 24 consecutive months.

Comment: Several commenters believed that we should not require a description of how individuals who were deemed to have met nurse aide training and competency evaluation requirements or for whom competency evaluation requirements were waived came to meet the requirements for deeming or waiver. Other commenters asked that we require that individuals who were deemed or waived be included on the registry in a non-discriminatory manner. A few commenters asked what distinctions should be made on the basis of deeming or type of registration.

Response: We agree that it is not necessary for the registry to indicate how any individual came to meet the nurse aide requirements, and we have deleted this requirement from proposed § 483.156(c)(1)(vi). No distinctions should be made on the basis of deeming or type of registration. We reiterate that all nurse aides, including those who were deemed to have met the requirements of completing a NATCEP or for whom the State waived the requirement to complete a CEP, who have not performed any nursing or nursing-related services for monetary compensation for a period of 24 consecutive months, must be removed from the nurse aide registry.

Comment: Many commenters requested that we not include the date individuals passed a competency evaluation and the date of expiration. A few commenters believed that we should not require inclusion of the name of the entity that administered the competency evaluation.

Response: We agree that it is not necessary for the registry to include the name of the entity that administered the competency evaluation, and we have deleted this requirement from proposed § 483.156(c)(1)(viii). We have also deleted from proposed § 48.156(c)(1)(vii) the requirement that States include the date of expiration of registration because we have not required that registrations expire. We continue to believe that it is important for a record of the date an individual passed a competency evaluation to be maintained on the registry. We have clarified this requirement to indicate that a record of the date an individual became eligible to be placed on the registry must be maintained. This clarification is necessary to ensure that a date is maintained for individuals who are on the registry through meeting the requirements of § 483.150.

Comment: One commenter asked that we consider adding information on whether a nurse aide has received a Hepatitis B vaccine.

Response: We have not added this information to the information that must be collected in the registry because the registry is intended to contain information pertinent to an individual's competence to be employed as a nurse aide.

Comment: A few commenters asked that we define abuse, neglect, and misappropriation of property. One commenter suggested a definition of misappropriation of property. One commenter asked if job abandonment constitutes neglect.

Response: Abuse, neglect, and misappropriation of property will be defined in the survey and certification regulations, which are currently being revised. We believe that whether or not job abandonment could be considered neglect would depend upon the impact of the action on the residents under the nurse aide's care at the time the action is taken. We note that sections 4008(h)(2)(L) and 4801(a)(13) of OBRA '90 amended sections 1819(e)(2) and 1919(e)(2) of the Act to specify that a State may not make a finding that an individual has neglected a resident if the individual demonstrates that such neglect was caused by factors beyond his or her control.

Comment: Some commenters asked that we define findings.

Response: Findings are determinations made after considering the evidence and after a hearing as discussed in sections 1819(g)(1)(C) and 1919(g)(1)(C) of the Act.

Comment: Many commenters asked that we add due process requirements to these regulations before findings can be placed on the registry. Several commenters suggested possible due process requirements that could be included, including the due process requirements that will be contained in the survey and certification regulations. One commenter requested that only validated findings should be placed on the registry. A few commenters suggested that the section requiring findings of abuse to be placed on the registry should not be finalized until due process requirements are in place.

Response: The due process requirements for making adverse findings on nurse aides will be defined in the survey and certification regulations currently being developed. We have not included any of the suggestions for due process requirements in our final regulations because we believe that these suggestions should be directed toward the survey and certification regulations when they are proposed. We have not delayed finalizing requirements for recording abuse, neglect, and misappropriation of property because this information is required to be collected by the State under sections 1819(e)(2) and 1919(e)(2) of the Act. We note that sections 1819(g)(1)(C) and 1919(g)(1)(C) of the Act, which became effective January 1, 1989, require that nurse aides under investigation must be given a fair hearing and that individuals found to have abused or neglected residents or to have misappropriated resident property must be allowed to rebut findings in the registry.

Comment: A few commenters requested that we require a course in how to make determinations of resident abuse or neglect or misappropriation of resident property for the individuals who will be making such determinations.

Response: We believe that the agency or agencies who make these investigations should have the latitude to establish and impose requirements for their investigators.

Comment: Several commenters believed that we should shorten the amount of time in which adverse findings on nurse aides must be placed on nurse aide registries. Several commenters believed that adverse findings should be included in the registry immediately. Other times, ranging from three to five days, were also suggested.

Response: We agree that it is vital that adverse findings on nurse aides be placed on the registry as quickly as possible. However, we also believe that it may not be possible for States to place findings on the registry in less than ten working days. We have therefore required that adverse findings be placed on the registry within this time.

Comment: A number of commenters requested clarification on whether convictions in a court of law must be placed on the registry. Some commenters believed that only individuals who have been convicted should have a notation of abuse, neglect, or misappropriation of property entered on the registry. A few commenters believed that criminal convictions should be required to be included on the registry in addition to adverse findings by the State. A few commenters suggested requiring a nurse aide to sign a statement disclosing all crimes or adverse findings against him or her before being placed on the registry. One commenter believed that findings should be reported to criminal authorities.

Response: Because some States indicated that they would have difficulty in obtaining criminal records, we have not required States to place notations of criminal convictions on the registry. However, we recognize that some States may wish to place criminal findings on the registry, and we have not prohibited them from doing so. Because we have not required States to place criminal findings on the registry, we have not required nurse aides to sign a statement disclosing all crimes. Furthermore, we have not required that findings be reported to the criminal authorities because we believe alleged criminal activity should be reported to the criminal authorities when it occurs, rather than some time after hearings and findings are made.

Comment: A number of commenters reacted to the suggestion in the preamble of the NPRM that States check on adverse findings made by other States before placing individuals in the registry. There were equal numbers of commenters on both sides of this issue. One commenter believed that checking should be required if it can be done in a time-effective manner. A few commenters believed that States should only have to check with bordering States or a central checkpoint. Some commenters requested that checking be required only if an individual is known to have worked in a particular State or if there is reason to suspect findings in neighboring States. One commenter suggested that we develop a mechanism for transferring findings among States.

Response: We have not required States to check with all other States before placing an individual on the registry because sections 4008(h) (1) (C) and 4801 (a) (3) of OBRA '90 amended sections 1819(b)(5)(C) and 1919(b) (5) (C) to require facilities to check with all State nurse aide registries they have reason to believe will include information on an individual before using that individual as a nurse aide. To require States also to check with other States would be duplicative.

Comment: A number of commenters responded to our request for comments on the length of time adverse findings should remain on the registry. Several commenters believed that findings should remain on the registry indefinitely or be removed only when they were found to have been made in error or when the life of the offender is over. One commenter believed that findings should be removed when an individual is found innocent in a court of law. Various numbers of years for findings to remain on the registry were volunteered, ranging from 1 year to 10 years; some commenters indicated dissatisfaction with the 5 years proposed in the NPRM without recommending a set number of years. Some commenters suggested that the length of time findings should remain on the registry should depend on the severity of the finding. One commenter suggested that adverse findings should remain on record as long as the penalty is in effect. Some commenters believed that individuals who were found to have abused or neglected a resident or misappropriated resident property should be removed from the registry, either permanently or for various lengths of time. One commenter believed that individuals with findings against them should not be reinstated.

Response: We have required that adverse findings may not ordinarily be removed from the registry because nurse aides who are found to have abused or neglected a resident or misappropriated resident property may not be employed by a facility. We believe that facilities must be able to know which individuals they may not employ. We have indicated that findings must be removed when the findings were found to have been made in error or if an individual has been found not guilty in a court of law because it would be unfair and unjust to maintain incorrect information in the registry. Findings may also be removed when the State is informed of an individual's death. We have not required that individuals who were found to have abused or neglected a resident or misappropriated resident property be removed from the registry because sections 1819(c) (2) and 1919(e) (2) of the Act require that notations of findings must be placed on the nurse aide registry.

Comment: One commenter asked that notations of misappropriation of employer property be placed on the registry. One commenter requested that we require notations of rehabilitation to be placed on the registry along with documentation of adverse findings.

Response: We have not accepted these comments because we believe that only instances of actions against residents are intended to be placed on the registry. We also believe that it would be too difficult for States to define what constitutes rehabilitation.

Comment: One commenter believed that facilities should not be held responsible if an adverse finding is made against a nurse aide.

Response: While facilities are responsible for all of the care provided to their residents, we understand that some circumstances are beyond facility control. Whether or not a facility is at fault is an issue that is not related to the operation of the registry.

Comment: One commenter believed that findings on a nurse aide should trigger a full investigation of the facility where the nurse aide was employed.

Response: We do not believe that the isolated actions of one employee necessarily warrants a facility-wide investigation. However, if there are reasons for a State to believe that a facility has a problem with resident abuse, neglect, or misappropriation of property, then the State should initiate an investigation.

Comment: One commenter believed that registries should keep a record of allegations of abuse, neglect, or misappropriation of property because a

pattern of abuse could be the only evidence against a nurse aide.

Response: We believe that it would be unfair to leave a blemish on the record of a nurse aide against whom no allegations have been substantiated.

Comment: A few commenters asked that States be protected from liability from defamation suits.

Response: Such protections are beyond the scope of these regulations and it would therefore be inappropriate to include them in the nurse aide requirements.

Comment: One commenter asked that we define penalties for those who do not report resident abuse or neglect or misappropriation of resident property. Another commenter asked that we establish a method for facilities to report abuse and track nurse aides suspected of abuse.

Response: We have not defined penalties for those who do not report abuse because we believe that many States have their own laws which define such penalties. We believe the reporting of abuse is a fairly straightforward procedure and therefore have not established any reporting methods in our regulations. Facilities can ask the agency or agencies responsible for investigating adverse allegations against nurse aides whether investigations are pending against an individual.

Comment: One commenter questioned whether an inquiry to the registry would alert the employer of a nurse aide accused of abuse, neglect, or misappropriation of property.

Response: If the State has made a finding that a nurse aide has abused or neglected a resident or misappropriated resident property, this information must be disclosed by the registry as indicated in § 483.156(d). We have not required the registry to keep information on whether an individual is under investigation, so an employer would not necessarily be informed by the registry if an individual is accused of resident abuse or neglect or misappropriation of resident property.

Comment: One commenter asked that we not require all documentation of investigations preceding adverse findings to be included on the registry. This commenter believed that limited documentation should be available with a written transcript available on request.

Response: We agree that a complete transcript does not need to be on the registry, and we did not propose that all documentation must be included. We believe that a summary containing all of the information required in § 483.156(c)(1)(iv) would be sufficient to meet this requirement.

Comment: One commenter believed that facilities should be required to keep copies of any findings reported to them on file. Another commenter believed that findings should be reported to the State board of registration.

Response: These regulations require findings to be placed on the nurse aide registry. We believe it would be unnecessary and burdensome to facilities to require them to keep information on individuals that they cannot employ. We do not see any benefit in reporting findings to the State board of registration.

Comment: A number of commenters wanted to know if nurse aides found to have abused or neglected residents or misappropriated resident property can be employed by a facility. One commenter believed that employment should not necessarily be terminated in non life-threatening cases. A few commenters believed that individuals against whom States made adverse findings should be allowed to seek new employment after a set period of time or after certain conditions had been met. One commenter requested that States be allowed to deviate from the established time limit on employment in special circumstances. Some commenters wanted to know if facilities could employ nurse aides who had been found by the State to have abused or neglected residents or misappropriated resident property but had not been convicted in a court of law. Other commenters wanted assurances that a prohibition of employment for individuals found to have abused or neglected a resident or misappropriated resident property did not conflict with State laws regarding discrimination based on criminal records. A few commenters wanted to know how long a prohibition on employment would last. One individual questioned whether a nurse aide could work during the time allowed to correct inaccuracies.

Response: According to 42 CFR 483.13(c), which delineates resident behavior and facility practices for long-term care facilities, facilities may not employ any individual who has been found by the State to have abused or neglected a resident or misappropriated resident property or who has been convicted of such an offense in a court of law. To maintain consistency in our regulations, we have not made an exception to this provision in the nurse aide requirements. We believe it would be irresponsible for us to allow nurse aides who have abused or neglected residents or misappropriated resident property to have the opportunity to jeopardize resident safety again. There is no provision to allow an individual who has been found by the State to have abused or neglected a resident or to have misappropriated resident property but who has not been convicted in a court of law to be employed by a facility. We believe that it is a facility's choice whether or not to use an individual who is appealing the accuracy of a finding.

Section 483.156(d) Disclosure of Information

Summary of NPRM Provisions

Paragraph (d) of § 483.156 specified that—

- The State must disclose to any requester within ten working days a minimum of whether an individual specified by the requester is included on the registry and, if so, the date of the individual's competency evaluation and the name of the entity that performed the competency evaluation. The State may disclose other information it deems appropriate.
- The State must disclose all information contained in the registry within ten working days to any Medicare or Medicaid participating skilled nursing facility, nursing facility, home health agency, hospital, ombudsman, or any other representative of an official agency with a need to know, upon receipt of a written request for such information, which must include the reason for the request.
- The State must provide the nurse aide with a copy of all information contained in the registry on him or her within 30 days of the date the individual is placed on the registry. The State must also provide the nurse aide with a copy of all information contained in the registry on him or her within 30 days of any changes or additional to this information. The nurse aide must be permitted at least 30 days within which to correct any misstatements or inaccuracies contained in the information maintained by the registry on that individual.

Comments and Responses

Comment: A number of commenters were concerned about release of registry information to the public. Several commenters believed that we should not allow any registry information to be released to the public. A few commenters wanted us to prohibit States from divulging information to individuals seeking credit references and mailing lists or were concerned that release of information to the public could jeopardize the safety of individuals on the registry. Some commenters believed that we should

only permit States to tell the public whether an individual is on the registry or that only information relating to training and competency evaluation should be released. A few commenters believed that all requesters should be told whether there are adverse findings on an individual. A few commenters believed that we should require States to give all information to the public. One commenter agreed that information should be released as proposed in the NPRM.

Response: Sections 1819(e)(2) and 1919(e)(2) of the Act require that information in the registry be available to the public. However, we agree with commenters that it is not necessary to disclose personal information on individuals on the registry. Therefore, the only information we have required to be disclosed by the registry is the date an individual became eligible to be placed on the registry and information relating to adverse findings as discussed in § 483.156(c)(iv). States have the option of disclosing other information they deem necessary. Because we do not believe that it is necessary to disclose personal information to any requester, we have deleted the list of entities proposed in § 483.156(d)(2).

Comment: A few commenters believed that release of registry information to the public should be done in accordance with State laws.

Response: We believe that we have defined the minimum information that States must collect to be in compliance with sections 1819(e)(2) and 1919(e)(2) of the Act. We do not believe that we have preempted any State laws in requiring this information to be disclosed.

Comment: Several commenters had various questions on or suggestions for additions to entities in proposed § 483.156(d)(2). One commenter was concerned that registries could not refuse to provide information to entities in proposed § 483.156(d)(2) because we did not list unacceptable reasons for requesting information. One commenter believed that ombudsmen should not be required to give reasons for their requests to the registry.

Response: As we indicated earlier, we have required information on the registry to be disclosed to all requesters and have therefore deleted § 483.156(d)(2). Section 483.156(d)(2) also contained a requirement to request information in writing and to provide a reason for the request. These requirements were deleted because we do not wish to limit access to registry information.

Comment: One commenter believed that facilities should have access to information on nurse aides categorized by facility.

Response: We have deleted from the final rule any requirements that the registry maintain information on individuals' employers. We therefore believe that it would be extremely burdensome, if not impossible, for a State to provide registry information on nurse aides categorized by facility.

Comment: A few commenters believed that nurse aides should only receive the information the registry contains on them when they request such information or that nurse aides should only receive some information. One commenter believed it was unclear whether providing a copy of the registry information to nurse aides was a necessary expense. Another commenter believed that information on the registry should be given to nurse aides once per year or on the request of the nurse aide. One commenter believed that nurse aides should not receive this information because it is their responsibility to provide accurate information to the registry.

Response: Because of the importance of the registry to the employment prospects of nurse aides, we believe that nurse aides must be given a reasonable opportunity to review and correct the information the registry maintains on them. However, we do not believe that all nurse aides will wish to inspect the information the registry contains on them. Therefore, we have required that the State provide to individuals the information the registry contains on them when adverse findings are placed on the registry and otherwise, upon the individual's request. It is necessary for individuals to receive a copy of adverse findings because sections 1819(e)(2) and 1919(e)(2) of the Act require that nurse aides be permitted to rebut adverse findings.

Comment: One commenter believed that not all changes or additions to the registry require notification to the nurse aide and cited examples.

Response: We have reduced the amount of information required to be on the registry, and we believe that all of the information now required to be on the registry is sufficiently important to warrant notification of registrants.

Comment: One commenter believed that we should require States to provide individuals who are on the registry with a picture identification card. This commenter believed that registries would not have to give registry information to nurse aides if such a card were used.

Response: We have not accepted this comment because we do not believe that such identification cards are necessary for the efficient operation of a nurse aide registry.

Comment: Many commenters suggested adding a provision to protect facilities from liability when they receive incorrect information from the registry or wondered if facilities were protected.

Response: Facilities are responsible for using only nurse aides who are competent to provide services. In paper violations (i.e., the registry incorrectly indicated that an individual met training and competency evaluation requirements, but no incompetent care was provided), we believe that evidence of registry error will be considered in determining whether the facility should receive a deficiency.

Comment: A few commenters believed that an individual should be provided a copy of all of the information on him or her in the registry in less than the 30 days proposed in § 483.156(d)(3) of the NPRM. Some commenters believed that individuals on the registry should have the same response time as requesters. Other commenters suggested three days or ten days as appropriate time limits for registries to provide individuals with copies of their files. One commenter believed that individuals should receive copies of their files immediately when they make the request in person.

Response: We believe that nurse aides are entitled to the same services as inquirers and have therefore required that the State promptly provide individuals on the registry with the information contained on them when they request it. In addition, as noted earlier, the State must provide individuals with the information the registry contains on them when adverse findings are placed on the registry. We believe it is reasonable to expect that information will usually be provided within ten days.

Comment: A few commenters believed that individuals who are on the registry should only have 15 days to correct any inaccuracies on the registry instead of the 30 days proposed in the NPRM. One commenter agreed with the proposed time frame.

Response: While we believe it is beneficial for all concerned to have inaccuracies on the registry corrected as soon as possible, we do not believe that 15 days would always be adequate time to allow for corrections. To ensure that nurse aides have enough time to correct inaccuracies, we have required that individuals on the registry must have sufficient time to correct any misstatements or inaccuracies contained in the registry.

Comment: One commenter believed that nurse aides should be allowed access to all information on individuals in the registry.

Response: Nurse aides have the same access to registry information on other individuals as other members of the public.

Summary of Changes to Section 483.156

In response to comments, in addition to minor technical or editorial changes, we are making the following changes:

- We have deleted several proposed requirements and have added several other requirements for the establishment, operation, and content of a nurse aide registry, as discussed in the comments and responses.
- In § 483.156(b)(4), we have prohibited States from charging registration fees to individuals listed in the registry.
- In § 483.156(d)(1), we have required that the information specified in § 483.156(c)(1) (iii) and (iv) be disclosed to all requesters.
- In § 483.156(d)(2), we have clarified that the registry must (1) promptly provide all individuals on the registry with a copy of the information contained in the registry on them when adverse findings are placed on the registry and upon request; and (2) allow individuals on the registry sufficient time to correct any misstatements or inaccuracies.

Section 483.158 FFP for Nurse Aide Training and Competency Evaluation

Summary of NPRM Provisions

Section 483.158 specified that State expenditures for NATCEPs and CEPs are administrative costs and are matched as indicated in § 433.15(b) (8) of chapter IV of 42 CFR. It also specified that FFP is only available for State expenditures associated with training and evaluation of persons employed by a facility or who have a commitment to be employed by a facility.

Comments and Responses

Comment: One commenter asked who is required to pay for NATCEPs.

Response: The provisions in § 483.158 address only the availability of FFP. They do not address the specific issue of who is required to pay for NATCEPs. While no individuals are prohibited from paying for NATCEPs and CEPs, we note that States are prohibited from approving programs that charge fees to nurse aides who are employed by, or who have an offer of employment from, a facility. We also note that States must provide for the reimbursement of costs associated with NATCEPs and CEPs for nurse aides who become employed by (or who receive an offer of employment from) a facility not later than 12 months after completion of a NATCEP or CEP.

Comment: One commenter believed that Medicaid should only pay for the training and competency evaluation of nurse aides who work in Medicaid nursing facilities.

Response: Section 6901(b) (5) (B) of OBRA '89 requires that, until October 1, 1990, Medicaid must pay for NATCEPs and CEPs for nurse aides who are employed in SNFs certified by Medicare and NFs certified by Medicaid. After October 1, 1990, these costs will be apportioned between Medicare and Medicaid.

Comment: Several commenters addressed the issue of payment for the training and competency evaluation of aides employed by temporary agencies. Some of these commenters believe that no money should be available for the training and competency of these individuals, but others believe that not paying for these individuals would be discriminatory.

Response: We cannot permit FFP to be used to match payments for the training and competency evaluation of nurse aides who work for temporary agencies because we do not believe we have the authority to match expenditures for training and competency evaluation of individuals who do not have an employment relationship with a facility.

Comment: Some commenters requested that certain salary and employer/employee relations issues such as salary rate, payment for in-service training, and workers compensation be addressed in the regulations.

Response: We do not consider salary and employer/employee relations issues as being within our realm of authority and have therefore not addressed them in our regulations.

Comment: Several commenters believed that neither nurse aides nor facilities should have to pay for NATCEPs or that facilities should be reimbursed for programs. A few commenters asked whether facility reimbursement for programs that included various content, e.g., CPR, could be sought.

Response: Sections 1819(f) (2) (A) and 1919(f) (2) (A) prohibit States from approving NATCEPs and CEPs that charge fees to nurse aides who are employed by, or who have an offer of employment from, a facility. Facilities may be reimbursed by the State for the costs associated with all State-approved NATCEPs and CEPs.

Comment: One commenter wanted to know who must pay for the training and competency evaluation of individuals who do not work in facilities or who are unemployed. Another commenter asked if individuals who are not employed as nurse aides may pay for their own training. One commenter believed that FFP should only be available for the training and competency evaluation of nurse aides who are actually employed in a facility.

Response: Any number of persons or entities, including individuals not employed as nurse aides in a facility, could pay for such training. However, FFP is only available for costs associated with NATCEPs and CEPs for nurse aides who are employed by, or who have an offer of employment from, a facility, or who obtain employment with (or an offer of employment from) a facility not later than 12 months after completing a NATCEP or CEP.

Summary of Changes to Section 483.158

After consideration of the public comments and changes contained in OBRA '90, we have revised § 483.158(b) of our regulation to permit FFP for NATCEPs and CEPs for nurse aides who obtain employment with, or an offer of employment from a facility not later than 12 months after completing a NATCEP or CEP.

IV. Summary of Effective Dates

These regulations are effective on April 1, 1992. However, requirements at sections 1819(b) (5), 1819(e) (1), 1819(e) (2), 1819(f) (2), 1919(b) (5), 1919(e) (1), 1919(e) (2), and 1919(f) (2) of the Act have specific statutory effective dates and are effective on those dates regardless of the effective date of these regulations. These statutory provisions are summarized below.

- January 1, 1989—Sections 1819(e) (1) and (2) and 1919(e) (1) and (2) of the Act require that States must have specified those NATCEPs and CEPs that they have approved as meeting the requirements in sections 1819(f) (2) and 1919(f) (2) of the Act, and must have established a nurse aide registry, which may not charge nurse aides for the registry.
- January 1, 1990—Sections 1819(e)(1) and 1919(e)(1) of the Act require that States must have provided for review and approval of NATCEPs and CEPs.
- October 1, 1990—Sections 1819(b)(5) and 1919(b)(5) of the Act make certain requirements on facilities, including—

—A facility must not use any individual as a nurse aide in the facility on a full-time basis for more than four months unless the individual has completed a State-approved NATCEP or CEP, and

is competent to provide nursing or nursing-related services;

—A facility must have provided, for individuals used as nurse aides by the facility as of January 1, 1990, for a CEP and such preparation as may be necessary for them to have completed the CEP by October 1, 1990;

—A facility must not permit an individual to serve as a nurse aide or provide services of a type for which the individual has not demonstrated competence except when the individual is in a NATCEP approved by the State and the facility has inquired of any State registry that the facility believes will include information on the individual;

—A facility must require an individual to complete a new NATCEP or a new CEP when an individual has not performed nursing or nursing-related services for monetary compensation for a continuous period of 24 consecutive months since the most recent completion of a NATCEP;

—A facility must provide regular performance review and regular in-service education to ensure that individuals used as nurse aides are competent to perform services as nurse aides.

• January 1, 1991—Sections 1819(b)(5)(A)(ii) and 1919(b)(5)(A)(ii) of the Act require that a facility must not use an individual on a temporary, per diem, leased, or any basis other than permanent employee as a nurse aide unless the individual has completed a NATCEP or CEP and is competent to provide nursing and nursing-related services.

V. Regulatory Impact Statement

Executive Order 12291 (E.O. 12291) requires us to prepare and publish a final regulatory impact analysis for any final regulation that meets one of the E.O. 12291 criteria for a "major rule"; that is, that will be likely to result in—

• An annual effect on the economy of $100 million or more;

• A major increase in costs or prices for consumers; individual industries; Federal, State, or local government agencies; or geographic regions; or

• Significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

In addition, we generally prepare a final regulatory flexibility analysis that is consistent with the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 through 612), unless the Secretary certifies that a final regulation will not have a significant economic impact on a substantial number of small entities. For purposes of the RFA, we consider all Medicaid and Medicare certified SNFs and NFs as small entities. Individuals and States are not included in the definition of a small entity.

In addition, section 1102(b) of the Act requires the Secretary to prepare a regulatory impact analysis for any final rule that will have a significant impact on the operations of a substantial number of small rural hospitals. Such an analysis must conform to the provisions of section 603 of the RFA. For purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital that is located outside a Metropolitan Statistical Area and has fewer than 50 beds.

These changes primarily conform the regulations to the legislative provisions of section 4201(a) (for Medicare) and 4211(a) (for Medicaid) of the Omnibus Budget Reconciliation Act of 1987 (OBRA '87), section 6901(b) of the Omnibus Budget Reconciliation Act of 1989 (OBRA '89), and sections 4008 and 4801 of the Omnibus Budget Reconciliation Act of 1990 (OBRA '90).

The provisions of this final rule set forth the State requirements to ensure that nurse aides have the education, practical knowledge, and skills needed to care for residents of facilities participating in the Medicare and Medicaid programs. These provisions also set forth State requirements for establishing and maintaining a nurse aide registry.

The majority of the comments that we received concerning the impact statement published in the proposed rule (March 23, 1990 at 55 FR 10946) suggested that these provisions will result in costs which exceed $100 million, and thus commenters believed this to be a major rule. Many of the major cost items cited by commenters have been addressed in the comment response section and by changes in the provisions of this final rule. Although we expect costs to be incurred, they will accrue as a direct result of implementing the statutory provisions named above. To help offset the increased costs, Congress provided for temporary enhanced Federal funding for States taking action by October 1, 1990 to implement these provisions.

As set forth by the statutes, the effective dates of these provisions have already passed or soon will be effective. We believe that entities already exist in most States that provide some degree of training and competency evaluation of nurse aides. This should enable States to meet and continue to comply with these provisions.

We believe that benefits to individuals far outweigh the costs of implementing these provisions. For example, we expect improvement in the quality of life and care for individuals as a direct result of the education curriculum for nurse aides as presented in this final rule. We also expect to minimize the incidents of neglect, abuse, and misappropriation of property of individuals in facilities through monitoring of the State nurse aide registry.

For the reasons stated above, together with responses provided elsewhere in the preamble to this final rule, we have determined that the threshold criteria of E.O. 12291 would not be met, and a regulatory impact analysis is not required. Further, we have determined, and the Secretary certifies, that these final regulations do not have a significant economic impact on a substantial number of small entities and do not have a significant impact on the operations of a substantial number of small rural hospitals.

VI. Information Collection Requirements

Ordinarily, we would be required to estimate the public reporting burden for information collection requirements for these regulations in accordance with chapter 35 of title 44, United States Code. However, sections 4202(b) and 4214(d) of OBRA '87 provide for a waiver of Paperwork Reduction Act requirements for these regulations.

List of Subjects

42 CFR Part 431

Grant programs-health, Health facilities, Medicaid, Privacy, Reporting and recordkeeping requirements.

42 CFR Part 433

Administrative practice and procedure, Claims, Grant programs-health, Medicaid, Reporting and recordkeeping requirements.

42 CFR Part 483

Grant programs-health, Health facilities, Health professions, Health records, Medicaid, Nursing homes, Nutrition, Reporting and recordkeeping requirements, Safety.

Chapter IV of title 42 is amended as set forth below:

PART 431—STATE ORGANIZATION AND GENERAL ADMINISTRATION

A. Part 431 is amended as follows:

1. The authority citation for part 431 continues to read as follows:

Authority: Sec. 1102 of the Social Security Act (42 U.S.C. 1302).

2. A new § 431.120 is added to subpart C to read as follows:

§ 431.120 State requirements with respect to nursing facilities.

(a) *State plan requirements.* A State plan must—

(1) Provide that the requirements of subpart D of part 483 of this chapter are met; and

(2) Specify the procedures and rules that the State follows in carrying out the specified requirements, including review and approval of State-operated programs.

(b) *Basis and scope of requirements.* The requirements set forth in part 483 of this chapter pertain to the following aspects of nursing facility services and are required by the indicated sections of the Act.

(1) Nurse aide training and competency programs, and evaluation of nurse aide competency (1919(e)(1) of the Act).

(2) Nurse aide registry (1919(e)(2) of the Act).

PART 433—STATE FISCAL ADMINISTRATION

B. Part 433 is amended as follows:

1. The authority citation for part 433 is revised to read as follows:

Authority: Secs. 1102, 1137, 1902(a)(4), 1902(a)(25), 1902(a)(45), 1903(a)(3), 1903(d)(2), 1903(d)(5), 1903(o), 1903(p), 1903(r), 1912 and 1919(e) of the Social Security Act; 42 U.S.C. 1302, 1320b-7, 1396a(a)(4), 1396a(a)(25), 1396a(a)(45), 1396b(a)(3), 1396b(d)(2), 1396b(d)(5), 1396b(o), 1396b(p), 1396b(r) and 1396k, unless otherwise noted.

2. Section 433.15 is amended by adding a new paragraph (b)(8) to read as follows:

§ 433.15 Rates of FFP for administration.

* * * * *

(b) * * *

(8) Nurse aide training and competency evaluation programs and competency evaluation programs described in 1919(e)(1) of the Act: for calendar quarters beginning on or after July 1, 1988 and before July 1, 1990: The lesser of 90% or the Federal medical assistance percentage plus 25 percentage points; for calendar quarters beginning on or after October 1, 1990: 50%. (Section 1903(a)(2)(B) of the Act.)

PART 483—REQUIREMENTS FOR STATES AND LONG TERM CARE FACILITIES

C. Part 483 is amended as follows:

1. The heading of part 483 is revised to read as set forth above.

1a. The authority citation for part 483 is revised to read as follows:

Authority: Secs. 1102, 1819(a)-(f), 1905(c) and (d), and 1919(a)-(f) of the Social Security Act (42 U.S.C. 1302, 1395i(3)(a)-(f), 1396d (c) and (d), and 1396r(a)-(f)).

2. The table of contents for part 483 is amended by redesignating existing subpart D (consisting of §§ 483.400-483.480), Conditions of Participation for Intermediate Care Facilities for the Mentally Retarded, as subpart I, and adding a new subpart D containing §§ 483.150 through 483.158 to read as follows:

* * * * *

Subpart D—Requirements That Must Be Met by States and State Agencies: Nurse Aide Training and Competency Evaluation

Sec.

Subpart B—Requirements for Long Term Care Facilities

3. In subpart B, the heading of § 483.75 is revised, the introductory text is republished and paragraph (e) is revised to read as follows:

§ 483.75 Administration.

A facility must be administered in a manner that enables it to use its resources effectively and efficiently to attain or maintain the highest practicable physical, mental, psychosocial well-being of each resident.

* * * * *

(e) *Required training of nursing aides*—(1) *Definitions.*

Licensed health professional means a physician; physician assistant; nurse practitioner; physical, speech, or occupational therapist; physical or occupational therapy assistant; registered professional nurse; licensed practical nurse; or licensed or certified social worker.

Nurse aide means any individual providing nursing or nursing-related services to residents in a facility who is not a licensed health professional, a registered dietitian, or someone who volunteers to provide such services without pay.

(2) *General rule.* A facility must not use any individual working in the facility as a nurse aide for more than 4 months, on a full-time basis, unless:

(i) That individual is competent to provide nursing and nursing related services; and

(ii)(A) That individual has completed a training and competency evaluation program, or a competency evaluation program approved by the State as meeting the requirements of §§ 483.151-483.154 of this part; or

(B) That individual has been deemed or determined competent as provided in § 483.150 (a) and (b).

(3) *Non-permanent employees.* A facility must not use on a temporary, per diem, leased, or any basis other than a permanent employee any individual who does not meet the requirements in paragraphs (e)(2) (i) and (ii) of this section.

(4) *Competency.* A facility must not use any individual who has worked less than 4 months as a nurse aide in that facility unless the individual—

(i) Is a full-time employee in a State-approved training and competency evaluation program;

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

(iii) Has been deemed or determined competent as provided in § 483.150 (a) and (b).

(5) *Registry verification.* Before allowing an individual to serve as a nurse aide, a facility must receive registry verification that the individual has met competency evaluation requirements unless—

(i) The individual is a full-time employee in a training and competency evaluation program approved by the State; or

(ii) The individual can prove that he or she has recently successfully completed a training and competency evaluation program or competency evaluation program approved by the State and has not yet been included in the registry. Facilities must follow up to ensure that such an individual actually becomes registered.

(6) *Multi-State registry verification.* Before allowing an individual to serve as a nurse aide, a facility must seek information from every State registry established under sections 1819(e)(2)(A) or 1919(e)(2)(A) of the Act the facility believes will include information on the individual.

(7) *Required retraining.* If, since an individual's most recent completion of a training and competency evaluation program, there has been a continuous period of 24 consecutive months during none of which the individual provided nursing or nursing-related services for

monetary compensation, the individual must complete a new training and competency evaluation program or a new competency evaluation program.

(8) *Regular in-service education.* The facility must complete a performance review of every nurse aide at least once every 12 months, and must provide regular in-service education based on the outcome of these reviews. The in-service training must—

(i) Be sufficient to ensure the continuing competence of nurse aides, but must be no less than 12 hours per year;

(ii) Address areas of weakness as determined in nurse aides' performance reviews and may address the special needs of residents as determined by the facility staff; and

(iii) For nurse aides providing services to individuals with cognitive impairments, also address the care of the cognitively impaired.

4. Subpart D of part 483 is redesignated as subpart I and a new subpart D (§§ 483.150 through 483.156) is added to read as follows:

Subpart D—Requirements That Must Be Met by States and State Agencies; Nurse Aide Training and Competency Evaluation

§ 483.150 Deemed meeting of requirements, waiver of requirements.

(a) A nurse aide is deemed to satisfy the requirement of completing a training and competency evaluation approved by the State if he or she successfully completed a training and competency evaluation program before July 1, 1989 if—

(1) The aide would have satisfied this requirement if—

(i) At least 60 hours were substituted for 75 hours in sections 1819(f)(2) and 1919(f)(2) of the Act, and

(ii) The individual has made up at least the difference in the number of hours in the program he or she completed and 75 hours in supervised practical nurse aide training or in regular in-service nurse aide education; or

(2) The individual was found to be competent (whether or not by the State) after the completion of nurse aide training of at least 100 hours duration.

(b) A State may—

(1) Waive the requirement for an individual to complete a competency evaluation program approved by the State for any individual who can demonstrate to the satisfaction of the State that he or she has served as a nurse aide at one or more facilities of the same employer in the state for at least 24 consecutive months before December 19, 1989; or

(2) Deem an individual to have completed a nurse aide training and competency evaluation program approved by the State if the individual completed, before July 1, 1989, such a program that the State determines would have met the requirements for approval at the time it was offered.

§ 483.151 State review and approval of nurse aide training and competency evaluation programs and competency evaluation programs.

(a) *State review and administration.* (1) The State—

(i) Must specify any nurse aide training and competency evaluation programs that the State approves as meeting the requirements of § 483.152 and/or competency evaluations programs that the State approves as meeting the requirements of § 483.154; and

(ii) May choose to offer a nurse aide training and competency evaluation program that meets the requirements of § 483.152 and/or a competency evaluation program that meets the requirements of § 483.154.

(2) If the State does not choose to offer a nurse aide training and competency evaluation program or competency evaluation program, the State must review and approve or disapprove nurse aide training and competency evaluation programs and nurse aide competency evaluation programs upon request.

(3) The State survey agency must in the course of all surveys, determine whether the nurse aide training and competency evaluation requirements of § 483.75(e) are met.

(b) *Requirements for approval of programs.* (1) Before the State approves a nurse aide training and competency evaluation program or competency evaluation program, the State must—

(i) Determine whether the nurse aide training and competency evaluation program meets the course requirements of §§ 483.152;

(ii) Determine whether the nurse aide competency evaluation program meets the requirements of § 483.154; and

(iii) In all reviews other than the initial review, visit the entity providing the program.

(2) The State may not approve a nurse aide training and competency evaluation program or competency evaluation program offered by or in a facility which, in the previous two years—

(i) In the case of a skilled nursing facility, has operated under a waiver under section 1819(b)(4)(C)(ii)(II) of the Act;

(ii) In the case of a nursing facility, has operated under a waiver under section 1919(b)(4)(C)(ii) of the Act that was granted on the basis of a demonstration that the facility is unable to provide nursing care required under section 1919(b)(4)(C)(i) of the Act for a period in excess of 48 hours per week;

(iii) Has been subject to an extended (or partial extended) survey under sections 1819(g)(2)(B)(i) or 1919(g)(2)(B)(i) of the Act;

(iv) Has been assessed a civil money penalty described in section 1819(h)(2)(B)(ii) of 1919(h)(2)(A)(ii) of the Act of not less than $5,000; or

(v) Has been subject to a remedy described in sections 1819(h)(2)(B) (i) or (iii), 1819(h)(4), 1919(h)(1)(B)(i), or 1919(h)(2)(A) (i), (iii) or (iv) of the Act.

(3) A State may not, until two years since the assessment of the penalty (or penalties) has elapsed, approve a nurse aide training and competency evaluation program or competency evaluation program offered by or in a facility that, within the two-year period beginning October 1, 1988—

(i) Had its participation terminated under title XVIII of the Act or under the State plan under title XIX of the Act;

(ii) Was subject to a denial of payment under title XVIII or title XIX;

(iii) Was assessed a civil money penalty of not less than $5,000 for deficiencies in nursing facility standards;

(iv) Operated under temporary management appointed to oversee the operation of the facility and to ensure the health and safety of its residents; or

(v) Pursuant to State action, was closed or had its residents transferred.

(c) *Time frame for acting on a request for approval.* The State must, within 90 days of the date of a request under paragraph (a)(3) of this section or receipt of additional information from the requester—

(1) Advise the requester whether or not the program has been approved; or

(2) Request additional information form the requesting entity.

(d) *Duration of approval.* The State may not grant approval of a nurse aide training and competency evaluation program for a period longer than 2 years. A program must notify the State and the State must review that program when there are substantive changes made to that program within the 2-year period.

(e) *Withdrawal of approval.* (1) The State must withdraw approval of a nurse aide training and competency evaluation program or nurse aide competency evaluation program offered

by or in a facility described in paragraph (b)(2) of this section.

(2) The State may withdraw approval of a nurse aide training and competency evaluation program or nurse aide competency evaluation program if the State determines that any of the applicable requirements of §§ 483.152 or 483.154 are not met by the program.

(3) The State must withdraw approval of a nurse aide training and competency evaluation program or a nurse aide competency evaluation program if the entity providing the program refuses to permit unannounced visits by the State.

(4) If a State withdraws approval of a nurse aide training and competency evaluation program or competency evaluation program—

(i) The State must notify the program in writing, indicating the reason(s) for withdrawal of approval of the program.

(ii) Students who have started a training and competency evaluation program from which approval has been withdrawn must be allowed to complete the course.

§ 483.152 Requirements for approval of a nurse aide training and competency evaluation program.

(a) For a nurse aide training and competency evaluation program to be approved by the State, it must, at a minimum—

(1) Consist of no less than 75 clock hours of training;

(2) Include at least the subjects specified in paragraph (b) of this section;

(3) Include at least 16 hours of supervised practical training. *Supervised practical training* means training in a laboratory or other setting in which the trainee demonstrates knowledge while performing tasks on an individual under the direct supervision of a registered nurse or a licensed practical nurse;

(4) Ensure that—

(i) Students do not perform any services for which they have not trained and been found proficient by the instructor; and

(ii) Students who are providing services to residents are under the general supervision of a licensed nurse or a registered nurse;

(5) Meet the following requirements for instructors who train nurse aides:

(i) The training of nurse aides must be performed by or under the general supervision of a registered nurse who possesses a minimum of 2 years of nursing experience, at least 1 year of which must be in the provision of long term care facility services;

(ii) Instructors must have completed a course in teaching adults or have experience in teaching adults or supervising nurse aides;

(iii) In a facility-based program, the training of nurse aides may be performed under the general supervision of the director of nursing for the facility who is prohibited from performing the actual training; and

(iv) Other personnel from the health professions may supplement the instructor, including, but not limited to, registered nurses, licensed practical/vocational nurses, pharmacists, dietitians, social workers, sanitarians, fire safety experts, nursing home administrators, gerontologists, psychologists, physical and occupational therapists, activities specialists, speech/language/hearing therapists, and resident rights experts. Supplemental personnel must have at least 1 year of experience in their fields;

(6) Contain competency evaluation procedures specified in § 483.154.

(b) The curriculum of the nurse aide training program must include—

(1) At least a total of 16 hours of training in the following areas prior to any direct contact with a resident:

(i) Communication and interpersonal skills;

(ii) Infection control;

(iii) Safety/emergency procedures, including the Heimlich maneuver;

(iv) Promoting residents' independence; and

(v) Respecting residents' rights.

(2) Basic nursing skills;

(i) Taking and recording vital signs;

(ii) Measuring and recording height and weight;

(iii) Caring for the residents' environment;

(iv) Recognizing abnormal changes in body functioning and the importance of reporting such changes to a supervisor; and

(v) Caring for residents when death is imminent.

(3) Personal care skills, including, but not limited to—

(i) Bathing;

(ii) Grooming, including mouth care;

(iii) Dressing;

(iv) Toileting;

(v) Assisting with eating and hydration;

(vi) Proper feeding techniques;

(vii) Skin care; and

(viii) Transfers, positioning, and turning.

(4) Mental health and social service needs:

(i) Modifying aide's behavior in response to residents' behavior;

(ii) Awareness of developmental tasks associated with the aging process;

(iii) How to respond to resident behavior;

(iv) Allowing the resident to make personal choices, providing and reinforcing other behavior consistent with the resident's dignity; and

(v) Using the resident's family as a source of emotional support.

(5) Care of cognitively impaired residents:

(i) Techniques for addressing the unique needs and behaviors of individual with dementia (Alzheimer's and others);

(ii) Communicating with cognitively impaired residents;

(iii) Understanding the behavior of cognitively impaired residents;

(iv) Appropriate responses to the behavior of cognitively impaired residents; and

(v) Methods of reducing the effects of cognitive impairments.

(6) Basic restorative services:

(i) Training the resident in self care according to the resident's abilities;

(ii) Use of assistive devices in transferring, ambulation, eating, and dressing;

(iii) Maintenance of range of motion;

(iv) Proper turning and positioning in bed and chair;

(v) Bowel and bladder training; and

(vi) Care and use of prosthetic and orthotic devices.

(7) Residents' Rights.

(i) Providing privacy and maintenance of confidentiality;

(ii) Promoting the residents' right to make personal choices to accommodate their needs;

(iii) Giving assistance in resolving grievances and disputes;

(iv) Providing needed assistance in getting to and participating in resident and family groups and other activities;

(v) Maintaining care and security of residents' personal possessions;

(vi) Promoting the resident's right to be free from abuse, mistreatment, and neglect and the need to report any instances of such treatment to appropriate facility staff;

(vii) Avoiding the need for restraints in accordance with current professional standards.

(c) Prohibition of charges. (1) No nurse aide who is employed by, or who has received an offer of employment from, a facility on the date on which the aide begins a nurse aide training and competency evaluation program may be charged for any portion of the program (including any fees for textbooks or other required course materials).

(2) If an individual who is not employed, or does not have an offer to be employed, as a nurse aide becomes employed by, or receives an offer of employment from, a facility not later

than 12 months after completing a nurse aide training and competency evaluation program, the State must provide for the reimbursement of costs incurred in completing the program on a pro rata basis during the period in which the individual is employed as a nurse aide.

§ 483.154 Nurse aide competency evaluation.

(a) *Notification to Individual.* The State must advise in advance any individual who takes the competency evaluation that a record of the successful completion of the evaluation will be included in the State's nurse aid registry.

(b) *Content of the competency evaluation program*—(1) *Written or oral examinations.* The competency evaluation must—

(i) Allow an aide to choose between a written and an oral examination;

(ii) Address each course requirement specified in § 483.152(b);

(iii) Be developed from a pool of test questions, only a portion of which is used in any one examination;

(iv) Use a system that prevents disclosure of both the pool of questions and the individual competency evaluations; and.

(v) If oral, must be read from a prepared text in a neutral manner.

(2) *Demonstration of skills.* The skills demonstration must consist of a demonstration of randomly selected items drawn from a pool consisting of the tasks generally performed by nurse aides. This pool of skills must include all of the personal care skills listed in § 483.152(b)(3).

(c) *Administration of the competency evaluation.* (1) The competency examination must be administered and evaluated only by—

(i) The State directly; or

(ii) A State approved entity which is neither a skilled nursing facility that participates in Medicare nor a nursing facility that participates in Medicaid.

(2) No nurse aide who is employed by, or who has received an offer of employment from, a facility on the date on which the aide begins a nurse aide competency evaluation program may be charged for any portion of the program.

(3) If an individual who is not employed, or does not have an offer to be employed, as a nurse aide becomes employed by or receives an offer of employment from, a facility not later than 12 months after completing a nurse aide competency evaluation program, the State must provide for the reimbursement of costs incurred in completing the program on a pro rata basis during the period in which the individual is employed as a nurse aide.

(4) The skills demonstration part of the evaluation must be—

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

(ii) 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.

(d) *Facility proctoring of the competency evaluation.* (1) The competency evaluation may, at the nurse aide's option, be conducted at the facility in which the nurse aide is or will be employed unless the facility is described in § 483.151(b)(2).

(2) The State may permit the competency evaluation to be proctored by facility personnel if the State finds that the procedure adopted by the facility assures that the competency evaluation program—

(i) Is secure from tampering;

(ii) Is standardized and scored by a testing, educational, or other organization approved by the State; and

(iii) Requires no scoring by facility personnel.

(3) The State must retract the right to proctor nurse aide competency evaluations from facilities in which the State finds any evidence of impropriety, including evidence of tampering by facility staff.

(e) *Successful completion of the competency evaluation program.* (1) The State must establish a standard for satisfactory completion of the competency evaluation. To complete the competency evaluation successfully an individual must pass both the written or oral examination and the skills demonstration.

(2) A record of successful completion of the competency evaluation must be included in the nurse aide registry provided in § 483.156 within 30 days of the date if the individual is found to be competent.

(f) *Unsuccessful completion of the competency evaluation program.* (1) If the individual does not complete the evaluation satisfactorily, the individual must be advised—

(i) Of the areas which he or she; did not pass; and

(ii) That he or she has at least three opportunities to take the evaluation.

(2) The State may impose a maximum upon the number of times an individual upon the number of times an individual may attempt to complete the competency evaluation successfully, but the maximum may be no less than three.

§ 483.154 Registry of nurse aides.

(a) *Establishment of registry.* The State must establish and maintain a registry of nurse aides that meets the requirement of this section. The registry—

(1) Must include as a minimum the information contained in paragraph (c) of this section:

(2) Must be sufficiently accessible to meet the needs of the public and health care providers promptly;

(3) May include home health aides who have successfully completed a home health aide competency evaluation program approved by the State if home health aides are differentiated from nurse aides; and

(4) Must provide that any response to an inquiry that includes a finding of abuse, neglect, or misappropriation of property also include any statement disputing the finding made by the nurse aide, as provided under paragraph (c)(1)(ix) of this section.

(b) *Registry operation.* (1) The State may contract the daily operation and maintenance of the registry to a non-State entity. However, the State must maintain accountability for overall operation of the registry and compliance with these regulations.

(2) Only the State survey and certification agency may place on the registry findings of abuse, neglect, or misappropriation of property.

(3) The State must determine which individuals who (i) have successfully completed a nurse aide training and competency evaluation program or nurse aide competency evaluation program; (ii) have been deemed as meeting these requirements; or (iii) have had these requirements waived by the State do not qualify to remain on the registry because they have performed no nursing or nursing-related services for a period of 24 consecutive months.

(4) The State may not impose any charges related to registration on individuals listed in the registry.

(5) The State must provide information on the registry promptly.

(c) *Registry Content.* (1) The registry must contain at least the following information on each individual who has successfully completed a nurse aide training and competency evaluation program which meets the requirements of § 483.152 or a competency evaluation which meets the requirements of § 483.154 and has been found by the State to be competent to function as a nurse aide or who may function as a nurse aide because of meeting criteria in § 483.150:

(i) The individual's full name.

(ii) Information necessary to identify each individual;

(iii) The date the individual became eligible for placement in the registry through successfully completing a nurse aide training and competency evaluation program or competency evaluation program or by meeting the requirements of § 483.150; and

(iv) The following information on any finding by the State survey agency of abuse, neglect, or misappropriation of property by the individual:

(A) Documentation of the State's investigation, including the nature of the allegation and the evidence that led the State to conclude that the allegation was valid;

(B) The date of the hearing, if the individual chose to have one, and its outcome; and

(C) A statement by the individual disputing the allegation, if he or she chooses to make one; and

(D) This information must be included in the registry within 10 working days of the finding and must remain in the registry permanently, unless the finding was made in error, the individual was found not guilty in a court of law, or the State is notified of the individual's death.

(2) The registry must remove entries for individuals who have performed no nursing or nursing-related services for a period of 24 consecutive months, unless the individual's registry entry includes documented findings of abuse, neglect, or misappropriation of property.

(d) *Disclosure of information.* The State must—

(1) Disclose all of the information in § 483.156(c)(1) (iii) and (iv) to all requesters and may disclose additional information it deems necessary; and

(2) Promptly provide individuals with all information contained in the registry on them when adverse findings are placed on the registry and upon request. Individuals on the registry must have sufficient opportunity to correct any misstatements or inaccuracies contained in the registry.

§ 483.158 FFP for nurse aide training and competency evaluation.

(a) State expenditures for nurse aide training and competency evaluation programs and competency evaluation programs are administrative costs. They are matched as indicated in § 433.15(b)(8) of this chapter.

(b) FFP is available for State expenditures associated with nurse aide training and competency evaluation programs and competency evaluation programs only for—

(1) Nurse aides employed by a facility;

(2) Nurse aides who have an offer of employment from a facility;

(3) Nurse aides who become employed by a facility not later than 12 months after completing a nurse aide training and competency evaluation program or competency evaluation program; or

(4) Nurse aides who receive an offer of employment from a facility not later than 12 months after completing a nurse aide training and competency evaluation program or competency evaluation program.

(Catalog of Federal Domestic Assistance Program No. 93.714, Medical Assistance Program; No. 93.774, Medicare—Supplementary Medical Insurance Program)

Dated: January 7, 1991.

Gail R. Wilensky,

Administrator, Health Care Financing Administration.

Approved: March 20, 1991.

Louis W. Sullivan,

Secretary.

[FR Doc. 91-22275 Filed 9-25-91; 8:45 am]

BILLING CODE 4120-01-M

DEPARTMENT OF LABOR
OFFICE OF THE COMMISSIONER -- MAIL STOP 0700
LEGISLATIVE ROUTE SLIP
BILL NO. HB237

	HOUSE	LOCATION	TITLE	OFC
☐	AUSTERMAN, ALAN	Room 434	Fisheries (4230)	2487
☐	BARNES, RAMONA	Room 403	Leg Coun (4920)	3438
☐	BERKOWITZ, ETHAN	Room 406		4919
☐	BRICE, TOM	Room 426		3466
☐	BUNDE, CON	Room 104	HESS (3759)	4843
☐	COWDERY, JOHN	Room 416	Trade & Tourism	3879
☐	CROFT, ERIC	Room 430		4998
☐	DAVIES, JOHN	Room 422		4457
☐	DAVIS, GARY	Room 513		2693
☐	DYSON, FRED	Room 428		2199
☐	ELTON, KIM	Room 400		4947
☐	FOSTER, RICHARD	Room 410		3789
☐	GREEN, JOE	Room 118	Jud (4990)	4931
☐	GRUSSENDORF, BEN	Room 415		3824
☐	HANLEY, MARK	Room 507	Co-Fin (3757)	4939
☐	HODGINS, MARK	Room 110	Oil & Gas (2283)	3779
☐	HUDSON, BILL	Room 108	Co-Resources (3715)	3744
☐	IVAN, IVAN	Room 418	C&RA (3882)	4942
☐	JAMES, JEANNETTE	Room 102	State Aff (4963)	2381
☐	JOULE, REGGIE	Room 405		4833
☐	KELLY, PETE	Room 411		2327
☐	KEMPLEN, J. ALLEN	Room 112		2345
☐	KOHRING, VIC	Room 421		2186
☐	KOOKESH, AL	Room 114		3473
☐	KOTT, PETE	Room 204	Rules (3764)	3777
☐	KUBINA, GENE	Room 404		4859
☐	MARTIN, TERRY	Room 502		3783
☐	MASEK, BEVERLY	Room 432	M&VA	2679
☐	MOSES, CARL	Room 521		4451
☐	MULDER, ELDON	Room 501		2647
☐	NICHOLIA, IRENE	Room 409		4527
☐	OGAN.SCOTT	Room 128	Co-Resources	3878
☐	PHILLIPS, GAIL	Room 208	Speaker (3720)	2689
☐	PORTER, BRIAN	Room 216	Maj Leader (3718)	4930
☒	ROKEBERG, NORMAN	Room 24	L&C (4954)	4968
☐	RYAN, JOE	Room 420		3875
☐	SANDERS, JERRY	Room 414	Econ Dev	4945
☐	THERRIAULT, GENE	Room 511	Co-Finance (3757)	4797
☐	VEZEY, AL	Room 13		3719
☐	WILLIAMS, BILL	Room 524	Trans (4858)	3424

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☐ OMB/BUDGET REVIEW 5th Fl, Ct Attn: Royce Weller
☐ DOL BUDGET ANALYST
☐ DOL DIVISION COPY Attn:_____
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FROM: Dewitt DATE: 4-11-97

legroute.hou Rev 1/97

APR 14 1997
9 AM

FISCAL NOTE

STATE OF ALASKA
1997 LEGISLATIVE SESSION

BILL NO. HB 237

Revision Date:
Title: **Minimum Wage for Tipped Employees**
Sponsor: **House L&C**
Requestor: **House L&C**

Department Affected: **Labor**
BRU: **Labor Standards & Safety**
Component: **Wage & Hour**

COMPONENT SERIAL NO. 345

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 98	FY 99	FY 00	FY 01	FY 02	FY 03
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**
CAPITAL						
CHANGE IN REVENUE FUND SOURCE #						

FUNDING: (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipt						
1006 GF/MHTIA						
Other						
TOTAL	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

Estimate of current year (FY97) impact: $ **None**

ANALYSIS: (Attach a separate page if necessary)
This bill would set the minimum wage to be paid to tipped employees at $5.25 per hour. The bill would also allow employers to include tips received by an employee to be counted toward compliance with the state minimum wage law as set in AS 23.10.065 (a).

Prepared by: **Alan W. Dwyer, Director** (for)
Division: **Labor Standards & Safety**
Phone : 465-4855
Date : 4/11/97

Approved by Commissioner: **Tom Cashen, Commissioner** (for)
Agency: **Department of Labor**
Date: 4/11/97

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ALASKA STATE LEGISLATURE
House of Representatives

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Representative Norman Rokeberg

JUST THE FAX

Date: 4/14/97 - 6:20 p.m.

TO: Terri Lauterbach, Leg. Legal

FAX: 2029 Telephone

FROM: Representative Norman Rokeberg

FAX: (907) 465-2040 Telephone: (907) 465-4968

Number of Pages: 2 (including this page)

Comments: House Labor & Commerce Committee Substitute, in final, for HB 217. Please work from LS0737 B, 4/9/97 Lauterbach, as this was adopted and then amended as follows: Amendment #1 - follows on attached page (title change and amendment). Amendment #2 was a conceptual amendment to page 4, line 2. Reference should be to mailing via certified mail.
Thanks. Janet

Have A Nice Day

#1 Adopted

AMENDMENT TO HB 217, RELATING TO CERTIFIED NURSE AIDES

Amend title to read:

"An Act relating to certified nurse aides; disclosure of investigative information to appropriate agencies; and providing for an effective date."

Amend Section 16 as follows:

Page 7, line 27; delete language: by a certified nurse aide

Ryan moved no objections

LEGAL SERVICES

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130 Seward Street, Suite 409
Juneau, Alaska 99801-2105

APR 15 1997

MEMORANDUM April 15, 1997

SUBJECT: Certified Nurse Aides (CSHB 217(L&C))

TO: Representative Norman Rokeberg
Attn: Janet Seitz

FROM: Terri Lauterbach
Legislative Counsel

Enclosed is the CS you requested.

The deletion of the phrase "by a certified nurse aide" in sec. 16 raises the issue of whether this CS is still confined to a single subject as required under the state constitution.

TML:glc
97-252.glc

Enclosure

Redrafted new final w/ fn 1
Labeled

CS FOR HOUSE BILL NO. 217(L&C)

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTIETH LEGISLATURE - FIRST SESSION

BY THE HOUSE LABOR AND COMMERCE COMMITTEE

Offered:
Referred:

Sponsor(s): REPRESENTATIVE RYAN

A BILL

FOR AN ACT ENTITLED

"An Act relating to certified nurse aides; relating to disclosure of investigative information to appropriate agencies; and providing for an effective date."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

* **Section 1.** AS 08.01.087 is amended by adding a new subsection to read:

(c) Under procedures and standards of operation established by the department by regulation, and with the agreement of the appropriate agency, the department may designate appropriate state or municipal agencies to investigate reports of abuse, neglect, or misappropriation of property by certified nurse aides.

* **Sec. 2.** AS 08.01.090 is amended to read:

Sec. 08.01.090. Applicability of the Administrative Procedure Act. The Administrative Procedure Act (AS 44.62) applies to regulations adopted and proceedings held under this chapter, except those under AS 08.01.087(b) and AS 08.68.333.

* **Sec. 3.** AS 08.68.100(a) is amended to read:

(a) The board shall

(1) adopt regulations necessary to implement this chapter, including regulations pertaining to practice as an advanced nurse practitioner and a nurse anesthetist, **and regulations necessary to implement AS 08.68.331 - 08.68.336 relating to certified nurse aides in order to protect the health, safety, and welfare of clients served by nurse aides**;

(2) approve curricula and adopt standards for basic education programs that prepare persons for licensing under AS 08.68.190;

(3) provide for surveys of the basic nursing education programs in the state at the times it considers necessary;

(4) approve education programs that meet the requirements of this chapter and of the board, and deny, revoke, or suspend approval of education programs for failure to meet the requirements;

(5) examine, license, and renew the licenses of qualified applicants;

(6) prescribe requirements for competence before a former nurse may resume the practice of nursing under this chapter;

(7) keep a record of its proceedings, and submit annual reports to the governor and legislature;

(8) define by regulation the qualifications and duties of the executive secretary and delegate authority to the executive secretary that is necessary to conduct board business;

(9) develop reasonable and uniform standards for nursing practice;

(10) publish advisory opinions regarding whether nursing practice procedures or policies comply with acceptable standards of nursing practice as defined under this chapter.

* Sec. 4. AS 08.68.140 is amended to read:

Sec. 08.68.140. Applicability of Administrative Procedure Act. Except as specified in AS 08.68.333(f), the [THE] board shall comply with the Administrative Procedure Act (AS 44.62).

* Sec. 5. AS 08.68 is amended by adding new sections to read:

Article 3A. Certified Nurse Aides.

Sec. 08.68.331. Certification of nurse aides. (a) The board or the Department of Commerce and Economic Development, as designated by the board, may issue certification as a nurse aide to qualified applicants. The board, after consultation with affected agencies, may adopt regulations regarding the certification of nurse aides, including

(1) the training, educational, and other qualifications for certification that will ensure that the nurse aides are competent to perform the tasks of their occupation;

(2) application, certification, renewal, and revocation procedures; and

(3) maintenance of a registry of certified nurse aides.

(b) The board may

(1) conduct hearings upon charges of alleged violations of this chapter or regulations adopted under it; and

(2) invoke, or request the department to invoke, disciplinary action under AS 08.01.075 against a certified nurse aide.

Sec. 08.68.332. Use of title. (a) A person may not use the title "certified nurse aide" or the abbreviation "C.N.A." unless the person is certified under this chapter.

(b) A person who knowingly violates this section is guilty of a class B misdemeanor. In this subsection, "knowingly" has the meaning given in AS 11.81.900(a).

Sec. 08.68.333. Registry of certified nurse aides. (a) The board shall maintain a registry of certified nurse aides. At a minimum, this registry must include the information required under federal regulations that are applicable to nurse aides found to have committed abuse, neglect, or misappropriation of property in connection with their employment by a facility participating in the Medicaid or Medicare program.

(b) If the board finds that a certified nurse aide has committed abuse, neglect, or misappropriation of property in connection with employment as a nurse aide, the board shall revoke the nurse aide's certification and enter the finding in the registry.

(c) Upon receiving a notice of a finding under AS 47.05.055 that a certified nurse aide has committed abuse, neglect, or misappropriation of property, the board

shall immediately revoke the nurse aide's certification without a hearing, enter the finding in the registry, and notify the nurse aide of the revocation and entry of the finding. Notice is considered given when delivered personally to the nurse aide or when mailed by certified mail addressed to the nurse aide's last known mailing address on file with the board.

(d) If the certified nurse aide is employed in a skilled nursing facility or a nursing facility, other than an intermediate care facility for the mentally retarded, that is participating in the Medicaid or Medicare program, only the state survey and certification agency may make, and report to the Board of Nursing, a finding that the certified nurse aide has committed abuse, neglect, or misappropriation of property in connection with the nurse aide's employment at the facility.

(e) The board shall establish procedures under which a finding under AS 47.05.055 that a certified nurse aide has committed abuse, neglect, or misappropriation of property and the resulting revocation of certification will be removed from the registry if the certified nurse aide requests a hearing and can establish mistaken identity or the finding has been set aside by the reporting agency or by a court of competent jurisdiction.

(f) AS 44.62.330 - 44.62.630 do not apply to hearings held or the procedures established under this section.

Sec. 08.68.334. Grounds for denial, suspension, or revocation of certificate. The board may deny a certification to, or impose a disciplinary sanction authorized under AS 08.01.075 against, a person who

(1) has obtained or attempted to obtain certification as a nurse aide by fraud, deceit, or intentional misrepresentation;

(2) has been convicted of a crime substantially related to the qualifications, functions, or duties of a certified nurse aide;

(3) has impersonated a registered or practical nurse or other licensed health care provider;

(4) has intentionally or negligently engaged in conduct that has resulted in a significant risk to the health or safety of a client or in injury to a client;

(5) is incapable of working as a certified nurse aide with reasonable

skill, competence, and safety for the public because of

(A) professional incompetence;

(B) addiction or severe dependency on alcohol or a drug that impairs the licensee's ability to practice safely;

(C) physical or mental disability; or

(D) other factors determined by the board;

(6) has knowingly or repeatedly failed to comply with this chapter, a regulation adopted under this chapter, or with an order of the board; or

(7) has misappropriated the property of, abused, or neglected a client.

Sec. 08.68.335. Immunity for certain reports to the board. A person who, in good faith, reports information to the board relating to alleged incidents of incompetent, unprofessional, or unlawful conduct of a certified nurse aide is not liable in a civil action for damages resulting from the reporting of the information.

Sec. 08.68.336. Fees. The Department of Commerce and Economic Development shall set fees under AS 08.01.065 for certified nurse aides for each of the following:

(1) application;

(2) examination;

(3) certification; and

(4) renewal of certification.

*** Sec. 6.** AS 08.68.410 is amended by adding a new paragraph to read:

(9) "certified nurse aide" is a person who is certified as a nurse aide by the board.

*** Sec. 7.** AS 44.62.330(a)(10) is amended to read:

(10) Board of Nursing **<u>functions, except those related to findings of abuse, neglect, or misappropriation of property contained in the registry of certified nurse aides under AS 08.68.333</u>**;

*** Sec. 8.** AS 47.05.010 is amended by adding a new paragraph to read:

(15) investigate reports of abuse, neglect, or misappropriation of property by certified nurse aides in facilities licensed by the department under AS 18.20.

* Sec. 9. AS 47.05.017(b) is amended to read:

(b) The department shall adopt regulations identifying actions that it will take, in addition to those otherwise required under AS 47.17 and AS 47.24, when a report of harm is made under AS 47.17 or AS 47.24 that might relate to harm caused by actions or inactions of a public home care provider. The regulations must

(1) address circumstances under which the department will, or will require a contractor or grantee to, reassign, suspend, or terminate a person alleged to have perpetrated harm; [AND]

(2) include appropriate procedural safeguards to protect the due process rights of public home care providers who may be reassigned, suspended, or terminated under the circumstances described in (1) of this subsection; **and**

(3) if the home care provider is a certified nurse aide, include procedures under which the department shall notify the Board of Nursing if the nurse aide is suspected of abuse, neglect, or misappropriation of property.

* Sec. 10. AS 47.05 is amended by adding a new section to read:

Sec. 47.05.055. Certified nurse aides. (a) If the department has reason to believe that a certified nurse aide employed in a facility licensed by the department under AS 18.20 has committed abuse, neglect, or misappropriation of property in connection with the person's duties as a certified nurse aide at the facility, the department shall investigate the matter. The department shall conduct proceedings to determine if a finding of abuse, neglect, or misappropriation of property should be made. These proceedings shall be conducted under regulations adopted by the department and are exempt from AS 44.62.330 - 44.62.630. A finding under this subsection that a certified nurse aide has committed abuse, neglect, or misappropriation of property shall be reported by the department to the Board of Nursing.

(b) If the certified nurse aide is employed in a skilled nursing facility or nursing facility, other than an intermediate care facility for the mentally retarded, that is participating in the Medicaid or Medicare program, only the state survey and certification agency may make, and report to the Board of Nursing, a finding that a certified nurse aide has committed abuse, neglect, or misappropriation of property in connection with the nurse aide's employment at the facility.

* **Sec. 11.** AS 47.17.030 is amended by adding a new subsection to read:

(f) If an investigation under this section shows reasonable cause to believe that a certified nurse aide has committed abuse, neglect, or misappropriation of property, the department shall report the matter to the Board of Nursing.

* **Sec. 12.** AS 47.17.290(13) is amended to read:

(13) "practitioner of the healing arts" includes chiropractors, mental health counselors, dental hygienists, dentists, health aides, nurses, nurse practitioners, **certified nurse aides,** occupational therapists, occupational therapy assistants, optometrists, osteopaths, naturopaths, physical therapists, physical therapy assistants, physicians, physician's assistants, psychiatrists, psychologists, psychological associates, audiologists licensed under AS 08.11, hearing aid dealers licensed under AS 08.55, marital and family therapists licensed under AS 08.63, religious healing practitioners, acupuncturists, and surgeons;

* **Sec. 13.** AS 47.24.010(a) is amended by adding a new paragraph to read:

(15) a certified nurse aide.

* **Sec. 14.** AS 47.24.013 is amended by adding a new subsection to read:

(f) If an investigation conducted by an agency under this section shows reasonable cause to believe that a certified nurse aide has committed abuse, neglect, or misappropriation of property, the agency shall report the matter to the Board of Nursing.

* **Sec. 15.** AS 47.24.015 is amended by adding a new subsection to read:

(g) If an investigation under this section shows reasonable cause to believe that a certified nurse aide has committed abuse, neglect, or misappropriation of property, the department shall report the matter to the Board of Nursing.

* **Sec. 16.** AS 47.33.500(c) is amended to read:

(c) Unless disclosure is required by court order **or is to an appropriate agency in connection with investigations or administrative or judicial proceedings involving the abandonment, abuse, exploitation, or neglect of a child or vulnerable adult**, the licensing agency may not disclose the identity of a complainant, or of a resident on whose behalf a complaint is filed, without the consent of the complainant or the resident or the resident's representative.

* **Sec. 17.** AS 47.33.520 is amended by adding a new subsection to read:

(f) If the licensing agency's investigation shows reasonable cause to believe that a certified nurse aide has committed abuse, neglect, or misappropriation of property, the licensing agency shall report the matter to the Board of Nursing.

* **Sec. 18.** TRANSITION: REGULATIONS. A state agency affected by this Act may proceed to adopt regulations necessary to implement changes affecting the state agency that are enacted by this Act. The regulations take effect under AS 44.62 (Administrative Procedure Act), but not before the effective date of the changes in law in this Act.

* **Sec. 19.** TRANSITION: CERTIFICATIONS. (a) A person who holds a current, valid certification from the Board of Nursing as a nurse aide on the day before the effective date of this bill section, subject to continued eligibility under AS 08.68 and regulations adopted under that chapter, is entitled to retain a renewable certification as a nurse aide.

(b) A person who, on the day before the effective date of this bill section, holds a certification from the Board of Nursing as a nurse aide that has been expired for less than two years may apply for renewal of that certification under standards to be established by the board. A certification may not be renewed under this subsection unless the person applies for the renewal before September 1, 1998.

* **Sec. 20.** Section 18 of this Act takes effect immediately under AS 01.10.070(c).

Official Business

COMMITTEE:

HOUSE LABOR AND COMMERCE

DATE: April 14, 1997

Subject of meeting:

HB 217 - CERTIFIED NURSE AIDES

SIGN-IN

PLEASE PRINT!

NAME	ADDRESS (MAILING) & (ZIP)	PHONE	REPRESENTING	DO YOU WANT TO TESTIFY?
GAIL McGUILL	237 E 3rd Ave Anch AK 99501	2641710	Alaska Nurses Association	yes
Sue Nikodym	PO Box 2154 Wrangell, AK 99929	874-2081	Alaska Nurses Assoc.	Yes
Barbara Huff Tuckness	4300 Boniface Pkwy ANCH 04	269-4236	Teamsters	yes
Marie Reardon	Dept Commerce + Econ Dev	465-2538	Division of OCC Licensing	yes

HB
218
File 1

STATE OF ALASKA
1997 LEGISLATIVE SESSION

FISCAL NOTE

BILL NO: HB 218

Revision Date:
Dept. Affected: Revenue
Title: Omnibus Insurance Reform
BRU: Revenue Operations
Component: Treasury
Sponsor: (H) L&C
Requester: (H) L&C
COMPONENT SERIAL NO. 121

Expenditures/Revenues: (Thousands of Dollars)

OPERATING EXPENDITURES	FY 97	FY 98	FY 99	FY 00	FY 01	FY 02
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0
CAPITAL EXPENDITURES						
CHANGE IN REVENUES ( )	65.5	485.1	485.1	485.1	485.1	485.1

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY97) cost $ 0.0

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary)

The legislation allows the annual payment date to be changed to a quarterly payment date. The anticipated change in revenue is based upon receiving approximately $28.0 million in tax from 28 to 243 days earlier than at present.

Prepared by: Vern Voss, Cash Manager and Investment Officer
Phone: 465-2360
Division: Treasury
Date: April 4, 1997
Approved by Commissioner: Ross Kinney, Deputy Commissioner
Date: April 4, 1997
Agency: Department of Revenue

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FISCAL NOTE

STATE OF ALASKA **BILL NO.** HB 218

1997 LEGISLATIVE SESSION

Revision Date:

Department: Commerce and Economic Development

Title: An Act relating to regulation and examination of insurers and insurance agents

BRU: Insurance

Component: Insurance

Sponsor: Labor & Commerce

Requestor:

COMPONENT SERIAL NO. 354

Expenditures/Revenues (Thousands of Dollars)

OPERATING EXPENDITURES	FY 98	FY 99	FY 00	FY01	FY 02	FY 03
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0
CAPITAL EXPENDITURES						
CHANGE IN REVENUES						

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 General Fund						
1005 GF/Program Receipts						
1006 GF/MHTIA						
Other						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY 97) cost: $ $0.00

POSITIONS

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary)

There is no fiscal impact

Prepared by: Marianne K. Burke, Director Phone: 465-2515

Division: Insurance Date: 4-1-97

Approved by Commissioner: William L. Hensley Date: 4-1-97

Agency: Commerce and Economic Development

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0-LS0407\B.4
Ford
3/31/97

AMENDMENT

OFFERED IN THE SENATE

TO: SB 104

Page 6, lines 15 - 19:

Delete "**most recently adopted by the National Association of Insurance Commissioners and supplemented with additional information as required** [FOR A LIFE AND HEALTH INSURER OR FOR A PROPERTY AND CASUALTY INSURER ADOPTED BY REGULATION] by the director [UNDER AS 21.14.010]"

Insert "for a life and health insurer or for a property and casualty insurer adopted by **order of** [REGULATION BY] the director **after an open meeting as provided** under **AS 44.62.310** [AS 21.14.010]"

Page 8, line 30:

Following "in":

Insert "(d) or"

Following "reserves":

Insert "for policies issued after July 1, 1997,"

Page 9, line 3:

Delete "individual disability income"

Insert "health insurance"

Page 9, line 6:

Delete "individual disability income"

Insert "health insurance"

Page 9, line 10:

Delete "and"

Insert ";

(B)"

Reletter the following subparagraph accordingly.

Page 24, line 24:

Delete "60"

Insert "<u>150</u> [60]"

HIAA

Health Insurance Association of America

Post-it™ Fax Note 7671 | Date 3/26/97 | # of pages ▶ 2
To K. Campbell | From Bill Weller
Co./Dept. Alaska Ins Div. | Co. HIAA
Phone # 465-4607 | Phone # 202-824-1703
Fax # 907-465-3422 | Fax #

MEMO

DATE: March 26, 1997

TO: Katherine Campbell, Alaska Division of Insurance

FROM: Bill Weller

SUBJECT: Reserve Standards for Health Insurance

Senate Bill No. 104 contains sections 14 and 15 which deal with minimum reserve standards for health insurance. They are patterned after the NAIC model which HIAA supports. I do have several questions with regards to the wording of section 15, particularly amendments to Section 21.18.082 on Policy Reserves.

Since this is a new law for Alaska, we would ask that the minimum standards in the law be limited to prospective application. This means that previously issued contracts would be subject to the requirements of Section 21.18.080 which specifies an adequate reserve based on a gross premium valuation. It would allow for the use of termination rates and interest rates which had been used in prior reserve reporting which do not meet the minimum standards in 21.18.082. We would find acceptable a provision which required reserves for previously issued policies to be based on assumptions approved by the Commissioner, or if Alaska has not required such the Commissioner of the State of domicile, for year end 1996. This would avoid de-strengthening of reserves.

Section 21.18.082(g) should read "Except as provided in (d), or (h) - (k) of this section..." This is needed since (d) provides for the use of termination rates is situations other than LTC.

Section 21.18.082(g)(1) and (2) should change "individual disability income policy" to "health insurance policy" since this law applies to "all individual and group health insurance policies" per (a) of this section.

Section 21.18.082(g)(3) should be changed so that (A) ends after 'without projection:', the next portion of (A) becomes '(B) a lapse assumption for policy durations one through four equal to the lesser of 80 percent of the voluntary lapse rate used in the calculation of gross premiums or eight percent; and' with current (b) changed to (C) with no change in wording. This would make it clear

that the mortality assumption in (A) is in addition to both of the voluntary lapse assumptions in (B) and (C).

Please let me know if you have any questions about these comments. We are willing to assist drafting the necessary amendments to the bill to make these corrections. My number is 202-824-1703. My fax number is 202-824-1668.

c/c: Beth Sweet, HIAA

0-LS0407\F
Ford
4/1/97

CS FOR SENATE BILL NO. 104(L&C)

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTIETH LEGISLATURE - FIRST SESSION

BY THE SENATE LABOR AND COMMERCE COMMITTEE

Offered:
Referred:

Sponsor(s): SENATE RULES COMMITTEE

A BILL

FOR AN ACT ENTITLED

"An Act relating to regulation and examination of insurers and insurance agents; relating to kinds of insurance; relating to payment of insurance taxes and to required insurance reserves; relating to insurance policies; relating to regulation of capital, surplus, and investments by insurers; relating to hospital and medical service corporations; and providing for an effective date."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

*** Section 1.** AS 21.06.030 is amended by adding a new subsection to read:

(h) A volunteer member of an advisory committee who has been appointed by the director under a provision of this title to assist and advise the director on issues or matters concerning a specific area of insurance is not entitled to payment of per diem or travel expenses authorized under AS 39.20.180.

*** Sec. 2.** AS 21.06.110 is amended to read:

Sec. 21.06.110. Director's annual report. As early in each calendar year as

is reasonably possible, the director shall prepare and deliver an annual report to the commissioner, who shall notify the legislature that the report is available, showing, with respect to the preceding calendar year,

(1) a list of the authorized insurers transacting insurance in this state, with a summary of their financial statement as the director considers appropriate;

(2) the name of each insurer whose **certificate of authority was surrendered, suspended, or revoked** [BUSINESS WAS CLOSED] during the year **and** [,] the cause of **surrender, suspension, or revocation** [THE CLOSING, AND THE AMOUNT OF ASCERTAINABLE ASSETS AND LIABILITIES OF EACH CLOSED BUSINESS];

(3) the name of each insurer **authorized to do business in this state** against which delinquency or similar proceedings were instituted [,] and**, if against an insurer domiciled in this state,** a concise statement of the facts with respect to each proceeding and its present status;

(4) a statement in regard to examination of rating organizations, advisory organizations, joint underwriters, and joint reinsurers as required by AS 21.39.120;

(5) the receipt and expenses of the division for the year;

(6) recommendations of the director as to amendments or supplementation of laws affecting insurance [,] or the office of director;

(7) other pertinent information and matters the director considers proper.

*** Sec. 3.** AS 21.06.160(a) is amended to read:

(a) Each person examined, other than [AS TO] examinations under AS 21.06.130, shall pay **a reasonable rate calculated on** [ALL THE COSTS OF, AND EXPENSES INCURRED BY DIVISION STAFF EXAMINERS, INCLUDING] salary, [AND] benefit costs, **and estimated division overhead** for time spent directly or indirectly related to the examination**. Each person examined, other than examinations under AS 21.06.130, shall pay actual out-of-pocket business expenses, including travel expenses, incurred by division staff examiners** [,] and shall pay the compensation of a contract examiner, to be set at a reasonable customary

rate, for conducting the examination [,] upon presentation of a detailed account of the charges and expenses by the director or under an order of the director. The accounting may either be presented periodically during the course of the examination or at the termination of the examination. A person may not pay and an examiner may not accept additional compensation for an examination.

*** Sec. 4.** AS 21.09.210(b) is amended to read:

(b) Each insurer, and each formerly authorized insurer with respect to premiums received while an authorized insurer in this state, shall pay a tax on the total direct premium income received during the year ending on the preceding December 31 and paid for the insurance of property or risks resident or located in the state, other than wet marine and transportation insurance, after deducting from the total direct premium income the applicable cancellations, returned premiums, the unabsorbed portion of any deposit premium, all policy dividends, unabsorbed premiums refunded to policyholders, refunds, savings, savings coupons, and other similar returns paid or credited to policyholders with respect to their policies. No deductions may be made of cash surrender value of policies. Considerations received on annuity contracts are not included in the direct premium income and are not subject to tax. The tax shall be paid to the director **at least** annually **but not more often than once each quarter** on **the dates specified by the director. The method of payment must be by the electronic or other payment method specified by the director. The tax** [OR BEFORE MARCH 1, AND] is computed at the rate of

(1) for domestic and foreign insurers, except hospital and medical service corporations, 2.7 percent;

(2) for hospital and medical service corporations, six percent of their gross premiums less claims paid.

*** Sec. 5.** AS 21.09.210(d) is amended to read:

(d) An authorized insurer shall, with respect to all wet marine and transportation contracts written in this state during the preceding calendar year, [ON OR BEFORE MARCH 1 OF EACH YEAR,] pay to the director a tax of three-quarters of one percent on its gross underwriting profit. **The director shall specify the dates that payment is due and the electronic or other method by which payment is to**

be made. The gross underwriting profit is computed by deducting, from the net premiums on wet marine and transportation insurance contracts, the net losses paid during the calendar year under the contracts. In the case of an insurer issuing participating contracts, the gross underwriting profit may not include, for computation of the tax prescribed by this section, the amounts refunded or paid as participation dividends by the insurers to the holders of the contracts. In this subsection,

(1) "net losses" means gross losses less salvage and recoveries on reinsurance ceded;

(2) "net premiums" means gross premiums less all return premiums and premiums for reinsurance.

*** Sec. 6.** AS 21.09 is amended by adding a new section to read:

Sec. 21.09.245. Required notice. (a) If an insurer intends to change the insurer's name, domicile, or other information provided on the certificate of authority, the insurer shall file a notice of the change with the director within 30 days before or after the intended change takes effect.

(b) If an insurer changes the insurer's articles of incorporation, bylaws, business address, phone number, or other information maintained by the director, the insurer shall file a notice of the change with the director not later than 90 days after the effective date of the change.

(c) Failure by an insurer to provide notification required by this section may result in a civil penalty of up to $1,000 and, additionally, a civil penalty of up to $50 for each day that the information is withheld from the director.

*** Sec. 7.** AS 21.09 is amended by adding a new section to read:

Sec. 21.09.320. Maintenance of records. (a) An insurer domiciled in a jurisdiction other than this state shall keep at its principal place of business a complete record of its assets, transactions, and affairs in accordance with the methods and systems that are customary or suitable to the kind of insurance transacted.

(b) To meet the requirements of (a) of this section, the insurer shall keep the records specified in AS 21.69.390(d) for 10 years from the date the record was created or as required by the record maintenance requirements of the insurer's domicile jurisdiction, whichever is longer.

* **Sec. 8.** AS 21.12.020(a)(4)(A)(iii) is amended to read:

(iii) in the case of a single assuming insurer, the trust shall consist of trust money representing the assuming insurer's liabilities attributable to business written in the United States and, in addition, include a trust surplus of not less than $20,000,000; the single assuming insurer shall make available to the director an annual certification of the insurer's solvency [BY THE INSURER'S DOMICILIARY REGULATOR AND] by an independent certified public accountant or an accountant holding a substantially equivalent designation as determined by the director;

* **Sec. 9.** AS 21.12.050 is amended to read:

Sec. 21.12.050. Health insurance defined. Health insurance is insurance of human beings (1) against bodily injury, disablement, or death by accident or accidental means; (2) against the resulting expenses of the injury, disablement, or death; (3) against disablement or expense resulting from sickness or childbirth; (4) against expense incurred in prevention of sickness; (5) for dental care; and (6) **including every insurance** that applies to injury, disablement, or death. Transaction of health insurance includes disability insurance **and stop-loss insurance** but does not include workers' compensation insurance.

* **Sec. 10.** AS 21.12.050 is amended by adding a new subsection to read:

(b) In this section, "stop-loss insurance" means insurance purchased by a self-insured employer to cover benefits the employer incurs in excess of a preset limit.

* **Sec. 11.** AS 21.14.010(a) is amended to read:

(a) A life and health domestic insurer, property and casualty domestic insurer, or other insurer required by the director shall, on or before March 1, submit to the director a report of its risk based capital covering the previous calendar year [, IF REQUIRED BY THE DIRECTOR]. The report must be in a form and contain the information required by risk based capital instructions. A domestic insurer required to submit a report under this subsection shall file the report with

(1) the National Association of Insurance Commissioners; and

(2) the insurance regulatory agency in each state in which the insurer

is authorized to transact business [,] if the insurance regulatory agency has requested the report in writing from the insurer; a report requested under this paragraph shall be delivered

(A) not later than 15 days from the receipt of a request if the report has already been filed with the director; or

(B) at the time the report is filed with the director, if the report has not yet been filed with the director.

*** Sec. 12.** AS 21.14.200(18) is amended to read:

(18) "risk based capital instructions" means risk based capital instructions for a life and health insurer or for a property and casualty insurer adopted by order of [REGULATION BY] the director after an open meeting as provided under AS 44.62.310 [AS 21.14.010];

*** Sec. 13.** AS 21.18.050 is amended to read:

Sec. 21.18.050. Reserves and liabilities, in general. In a determination of the financial condition of an insurer, capital stock and liabilities to be charged against its assets shall include

(1) the amount of its capital stock outstanding, if any;

(2) the amount, estimated consistent with the provisions of this title, necessary to pay all of its unpaid losses and claims incurred on or before the date of statement, whether reported or unreported, together with the expenses of adjustment or settlement;

(3) with reference to life and health insurance and annuity contracts,

(A) the amount of reserves on life insurance policies and annuity contracts in force, valued according to the tables of mortality, rates of interest, and methods adopted under this title that are applicable;

(B) reserves for disability benefits, for both active and disabled lives;

(C) reserves for accidental death benefits;

(D) additional reserves that may be required by the director, consistent with practice formulated or approved by the National Association of Insurance Commissioners, on account of the insurance;

(4) with reference to health insurance, the amount of reserves required under AS 21.18.080 - 21.18.086 [AS 21.18.080];

(5) with reference to insurance other than specified in (3) and (4) of this section, and other than title insurance, the amount of reserves equal to the unearned portions of the gross premiums charged on policies in force, computed in accordance with this chapter;

(6) taxes, expenses, and other obligations due or accrued at the date of the statement.

* **Sec. 14.** AS 21.18.080 is repealed and reenacted to read:

Sec. 21.18.080. Reserve standards for health insurance. (a) The adequacy of health insurance reserves must be determined based on the sum of policy reserves determined under AS 21.18.082, claim reserves determined under AS 21.18.084, and premium reserves determined under AS 21.18.086.

(b) Reserve adequacy must be determined by a prospective gross premium valuation. For policies in force, in a claims status, or in a continuation of benefits status on the valuation date, the gross premium valuation must take into account the present value of all expected benefits unpaid, all expected expenses unpaid, and all unearned or expected premiums, including expected future premium increases.

(c) A gross premium valuation must be performed whenever there is an indication that reserves and future premiums may be insufficient to cover future claims for a particular block of policies or for the entire health insurance block. If a reserve inadequacy is determined to exist, the loss must be immediately recognized and reserves increased to account for the inadequacy. The increased reserves will be considered minimum reserves.

* **Sec. 15.** AS 21.18 is amended by adding new sections to read:

Sec. 21.18.082. Policy reserves for health insurance. (a) Except as provided in (b) of this section, policy reserves are required for all individual and group health insurance policies or groups of policies

(1) with level premiums or with a gross premium pricing structure at time of issue that results in future benefits exceeding the corresponding future valuation net premiums at any time; or

(2) for which gross premiums are restricted by contract, regulation, or another reason that results in future gross premiums, reduced by expenses for administration, commissions, and taxes, being insufficient to cover future claims.

(b) Policy reserves are not required for health insurance policies that cannot be continued after one year from the date of issue.

(c) The structure of valuation net premiums used under a health insurance policy must be consistent with the structure of gross premiums on the date the policy is issued.

(d) For return of premium benefits, deferred cash benefits, policies with premium rates that are not guaranteed, and where the effects of insurer underwriting by policy duration are specifically used in the valuation morbidity standard, termination rates that exceed the mortality rates in the tables required in (g)(2) of this section may be used but may not exceed the lesser of

(1) 80 percent of the total termination rate used in the calculation of gross premiums; or

(2) eight percent.

(e) The methods and procedures used to determine health insurance policy reserves must be consistent with the methods and procedures used to determine claim reserves for a health insurance policy.

(f) Negative reserves on a benefit may be offset against positive reserves for other benefits in the same policy, but the total policy reserve with respect to all benefits combined may not be less than zero.

(g) Except as provided in (d) and (h) - (k) of this section, policy reserves for policies issued after July 1, 1997, must be determined based on

(1) a maximum interest rate equal to the maximum interest rate allowed under AS 21.18.110 for the valuation of whole life insurance issued on the same date as the health insurance policy;

(2) a termination assumption equal to the mortality table allowed under AS 21.18.110 for the valuation of whole life insurance issued on the same date as the health insurance policy or equal to a mortality table approved by the director for use in determining the policy reserves;

(3) for long-term care policies issued after July 1, 1997,

(A) a mortality assumption equal to the 1983 Group Annuity Mortality Table without projection;

(B) a lapse assumption for policy durations one through four equal to the lesser of 80 percent of the voluntary lapse rate used in the calculation of gross premiums or eight percent; and

(C) a lapse assumption for policy durations five and later of 100 percent of the voluntary lapse rate used in the calculation of the gross premiums or four percent;

(4) a two-year full preliminary term method under which the terminal reserve is zero on the first and second policy anniversary dates;

(5) a morbidity assumption for

(A) individual disability income insurance issued (i) after December 31, 1997, equal to Tables A or B of the 1985 Commissioners' Individual Disability Tables for policies; and (ii) before January 1, 1998, equal to the 1964 or 1985 Commissioners' Individual Disability Tables; the insurer shall indicate which morbidity table the insurer will use for all individual disability income policies issued in a calendar year;

(B) group disability income insurance issued

(i) after December 31, 1997, equal to the 1987 Commissioners' Group Disability Table; and

(ii) before January 1, 1998, equal to the morbidity assumption in use by the insurer before January 1, 1998;

(C) scheduled or fixed time period hospital, surgical, or maternity benefit policies issued

(i) after December 31, 1997, equal to the 1974 Medical Expense Table A from the Transactions of the Society of Actuaries, Volume XXX; and

(ii) before January 1, 1998, equal to the morbidity assumption in use by the insurer before January 1, 1998;

(D) cancer expense benefits for policies issued

(i) after December 31, 1997, equal to the 1985 National Association of Insurance Commissioners Cancer Claim Cost Tables; and

(ii) before January 1, 1998, equal to the morbidity assumption in use by the insurer before January 1, 1998;

(E) accidental death benefits for policies issued

(i) after December 31, 1997, equal to the 1959 accidental death benefit table; and

(ii) before January 1, 1998, equal to the morbidity assumption in use by the insurer before January 1, 1998; or

(F) all other individual or group policy benefits equal to a morbidity table established for reserve determination by an actuary qualified to determine the morbidity table and approved by the director; the morbidity table must contain a pattern of incurred claims cost that reflects the underlying morbidity and may not be constructed for the primary purpose of minimizing reserves.

(h) The reserve method for return of premium or other deferred cash benefits must be a preliminary term method that is applied only in relation to the issue date of the policy and is a

(1) one-year preliminary term method if benefits are provided before the 20th policy anniversary; or

(2) two-year preliminary term method if the benefits are provided only on or after the 20th policy anniversary.

(i) The reserve method for long-term care insurance must be calculated on a

(1) two-year full preliminary term method for a policy or certificate issued on or before July 1, 1997; and

(2) one-year full preliminary term method for a policy or certificate issued after July 1, 1997.

(j) Reserve adjustments due to rate changes, revised assumptions, or other reasons for return of premium or other deferred cash benefits must be applied on the effective date of the adoption of the reserve adjustment.

(k) An alternative method or basis of determining policy reserves may be used

if the aggregate policy reserve is not less than the aggregate policy reserves determined under (c) - (j) of this section.

(l) An insurer shall annually review prospective policy liabilities on policies valued by tabular reserves to determine the continuing adequacy and reasonableness of the tabular reserves given future gross premiums. The insurer shall make adjustments to the tabular reserves if the tests indicate that the basis of the reserves is no longer adequate.

(m) Policy reserves that are valued based on the 1964 or 1985 Commissioners Individual Disability Tables must include a provision for a waiver of premium benefit with the minimum reserve for the benefit equal to the valuation net premium to be waived.

(n) Policy reserves for long-term care insurance may not be less than the net single premium for any nonforfeiture benefits provided by the policy or certificate.

Sec. 21.18.084. Claim reserves for health insurance. (a) Claim reserves are required for all incurred and unpaid claims on all health insurance policies.

(b) Claim expense reserves are required for the estimated expense of settlement of all incurred and unpaid claims.

(c) Claim reserves for prior valuation years must be tested for adequacy and reasonableness using claim runoff schedules in accordance with the statutory annual statement, including consideration of any residual unpaid liability. Claim reserve adequacy must be determined in the aggregate.

(d) Claim reserves must be determined as follows:

(1) for policies that require policy reserves under AS 21.18.082(a), based on a maximum interest rate equal to the maximum interest rate allowed under AS 21.18.110 for the valuation of whole life insurance issued on the same date as the date the claim was incurred;

(2) for policies that do not require policy reserves under AS 21.18.082(b), based on a maximum interest rate equal to the maximum interest rate allowed under AS 21.18.110 for the valuation of single premium immediate annuities issued on the same date as the date the claim was incurred less 100 basis points;

(3) except as provided in (4) and (5) of this subsection, a morbidity

assumption for

(A) individual disability income insurance must be equal to the morbidity assumption used in determining policy reserves under AS 21.18.082(g)(5);

(B) group disability income insurance for policies issued

(i) after December 31, 1997, must be equal to the 1987 Commissioners Group Disability Table; and

(ii) before January 1, 1998, must be equal to the morbidity assumption in use by the insurer before January 1, 1998;

(C) accidental death benefits must be equal to the actual amount of claims incurred; and

(D) all other individual or group policy benefits must be equal to a morbidity table approved by the director and established for reserve determination by an actuary qualified to determine the morbidity table;

(4) for individual or group disability claims with a duration from disablement of less than two years, mortality assumptions may be based on the insurer's experience if determined credible by the insurer or upon another basis designed to place a sound value on the liabilities as determined by the insurer;

(5) if approved by the director, reserves for group disability income claims with a duration from disablement of more than two years but less than five years may be based on the insurer's experience for which the insurer maintains control of underwriting and claim administration; request for approval to use this modified reserve basis must include

(A) an analysis of the credibility of the experience;

(B) a description of how all the insurer's experience is proposed to be used in setting the reserves;

(C) a description and quantification of the margins to be included;

(D) a summary of the financial impact that the proposed plan of modification would have on the insurer's last filed annual statement;

(E) a copy of the approval from the state of domicile; and

(F) all other information requested by the director;

(6) any generally accepted actuarial reserving method or other reasonable method approved by the director may be used; the method used to estimate liabilities may be an aggregate method; approximations based on groupings and averages may also be used.

(e) Claim reserves that are valued based on the 1964 or 1985 Commissioners' Individual Disability Tables must include a provision for a waiver of premium benefit with the minimum reserve for the benefit equal to the valuation net premium to be waived.

Sec. 21.18.086. Premium reserves for health insurance. (a) Unearned premium reserves must be established for the period of coverage for which premiums, other than premiums paid in advance, have been paid beyond the date of valuation.

(b) Due and unpaid premiums that are carried as an asset in the annual statement must be treated as premiums in force and are subject to the unearned premium reserve requirements of this section. Unpaid commissions, premium taxes, and costs of collection associated with due and unpaid premiums must be carried in the annual statement as an offsetting liability.

(c) Gross premiums paid in advance for a period of coverage starting after the next premium due date following the valuation date may be discounted to the valuation date and must be held as a separate liability in the annual statement or as an addition to the unearned premium reserve established in this section.

(d) The minimum unearned premium reserve for a policy is the pro rata unearned modal premium that applies to the valuation period beyond the date of valuation. If a policy reserve is required for a policy, the unearned modal premium is the valuation net modal premium on the policy reserve. If no policy reserve is required for a policy, the unearned modal premium is the gross modal premium for the policy.

(e) The sum of the unearned premium and policy reserves for all policies may not be less than the gross modal unearned premium reserve on all policies as of the date of valuation. The total unearned premium and policy reserves may not be less than the expected claims for the period after the valuation date represented by the

unearned premium reserve.

(f) An insurer may use approximations and estimates in determining premium reserves, including groupings, averages, and aggregate estimates. The approximations or estimates must be tested periodically and not less frequently than triennially to determine adequacy.

(g) Premium reserves based on the 1964 or 1985 Commissioners' Individual Disability Tables must include policies on premium waiver as in-force contracts and establish a minimum reserve for a waiver of premium benefit equal to the unearned modal valuation net premium being waived.

* **Sec. 16.** AS 21.21 is amended by adding a new section to read:

Sec. 21.21.410. Custodians. (a) A custodial agreement between an insurer and an institution holding the assets, securities, or investments of the insurer must provide that the custodian is obligated to indemnify the insurer for losses involving an insurance company asset or security in the custodian's custody resulting from the negligence or dishonesty of the custodian's officers, employees, or agents, or caused by burglary, robbery, holdup, theft, or mysterious disappearance, including loss by damage or destruction. The agreement must also provide that, in the event of a loss, an asset or security will be promptly replaced or the value of the asset or security and the value of a loss of rights or privileges resulting from the loss will be promptly replaced.

(b) The custodian for assets, securities, or investments of the insurer may only be a bank, trust company, or securities firm that is properly authorized by the insurer and approved by the director.

* **Sec. 17.** AS 21.27.010(f) is amended to read:

(f) A person who performs management services under a written contract for an admitted insurer is not required to be licensed as a managing general agent [,] if

(1) either

(A) the person is a United States manager of the United States branch of an alien admitted insurer; or

(B) the person's compensation is not based on the volume of premium written; and

(2) the person

(A) is a wholly-owned subsidiary of the admitted insurer;

(B) wholly owns the admitted insurer; or

(C) is a wholly-owned subsidiary of the insurance holding company subject to AS 21.22 that owns or controls the admitted insurer.

* **Sec. 18.** AS 21.27.010(i) is amended to read:

(i) A person licensed under AS 21.75 as an attorney-in-fact, or a person who meets the requirements for exemption from licensure under AS 21.75. is not required to be additionally licensed under this chapter while acting on behalf of subscribers and within the scope and authority of a subscribers agreement of a reciprocal insurer or exchange licensed under AS 21.75.

* **Sec. 19.** AS 21.27.040(a) is amended to read:

(a) Application for a license shall be made to the director upon forms prescribed by the director. As a part of or in connection with [,] the application, the applicant shall furnish information concerning the applicant's identity, personal history, experience, business record, purposes, [OF THE APPLICANT] and other pertinent facts [CONCERNING THE APPLICANT] that the director may reasonably require. The applicant shall declare under oath and subject to penalty of denial, nonrenewal, suspension, or revocation of a license issued by the director that the statements made in or in connection with the application are true, correct, and complete to the best of the applicant's knowledge and belief. Payment of an application fee established under AS 21.06.250 must be submitted with the application.

* **Sec. 20.** AS 21.27.370(b) is amended to read:

(b) A person [LICENSEE] may not be promised or paid, directly or indirectly, compensation for procuring an application or for placing a kind or class of insurance for which the person [LICENSEE] is not then licensed to procure or place or for insurance that the person [LICENSEE] is prohibited by this title from procuring or placing.

* **Sec. 21.** AS 21.27.390(b) is amended to read:

(b) Except as otherwise provided by law, a [A] temporary license may not be in effect for more than 90 consecutive days [,] and may not be renewed or reissued

for more than one additional 90-day period.

* **Sec. 22.** AS 21.27.405(b) is amended to read:

(b) If the director determines that a person has violated this chapter, the director shall serve an order upon the person charged requiring that person to cease and desist from engaging in the act or practice. [SERVICE REQUIRED UNDER THIS SUBSECTION SHALL BE BY MAIL WITH A CERTIFICATE OF MAILING FROM THE UNITED STATES POSTAL SERVICE.] A person aggrieved by the cease and desist order may demand a hearing under AS 21.06.170 - 21.06.240.

* **Sec. 23.** AS 21.27.440(a) is amended to read:

(a) In addition to any other penalty provided by law, a person that the director determines under AS 21.06.170 - 21.06.240 has violated the provisions of this chapter is subject to

(1) a civil penalty equal to the compensation promised, paid, or to be paid, directly or indirectly, to a **person** [LICENSEE] in regard to each violation;

(2) either a civil penalty of not more than $10,000 for each violation or a civil penalty of not more than $25,000 for each violation if the director determines that the person wilfully violated the provisions of this chapter; and

(3) denial, nonrenewal, suspension, or revocation of a license.

* **Sec. 24.** AS 21.27.640(b)(5) is amended to read:

(5) provide in or with its application

(A) all basic organizational documents of the third-party administrator, including articles of incorporation, articles of association, partnership agreement, trade name certificate, trust agreement, shareholder agreement, and other applicable documents and all endorsements to the required documents;

(B) the bylaws, rules, regulations, or similar documents regulating the internal affairs of the administrator;

(C) the names, mailing addresses, physical addresses, official positions, and professional qualifications of persons who are responsible for the conduct of affairs of the third-party administrator; including the members of the board of directors, board of trustees, executive committee, or other governing

board or committee; the principal officers in the case of a corporation or the partners or members in the case of partnership or association; shareholders holding directly or indirectly 10 percent or more of the voting securities of the third-party administrator; and any other person who exercises control or influence over the affairs of the third-party administrator;

(D) certified financial statements for the prior two years, **or for each year and partial year that the applicant has been in business if less than two years,** prepared by an independent certified public accountant **establishing** [THAT ESTABLISH] that the applicant is solvent, that the applicant's system of accounting, internal control, and procedure is operating effectively to provide reasonable assurance that money is promptly accounted for and paid to the person entitled to the money, and any other information that the director may require to review the current financial condition of the applicant; and

(E) a statement describing the business plan, including information on staffing levels and activities proposed in this state and in other jurisdictions and providing details establishing the third-party administrator's capability for providing a sufficient number of experienced and qualified personnel in the areas of claims handling, underwriting, and record keeping;

* **Sec. 25.** AS 21.34.040(c)(4) is amended to read:

(4) a Lloyd's **syndicate** or **an insurer belonging to a** [OTHER] similar group, including incorporated and individual unincorporated **insurers** [UNDERWRITERS], may qualify if it maintains a trust fund **jointly and severally with the other members of the group** in an amount not less than $50,000,000, as security to the full amount, for the protection of all **policyholders** [ITS POLICY HOLDERS] and creditors of each member of the group in the United States; the incorporated members may not be engaged in any business other than underwriting as a member of the group and shall be subject to the same level of solvency regulation and control by the group's domiciliary regulator as are the unincorporated members; the trust fund must consist of instruments of substantially the same character and quality as those that are eligible investments for the capital and statutory reserves of

admitted insurers authorized to write like kinds of insurance in this state or of irrevocable, clean, and unconditional letters of credit; the trust fund must have an expiration date that at no time is less than five years;

*** Sec. 26.** AS 21.34.040(c)(5) is amended to read:

(5) **each syndicate or insurer belonging to** an insurance exchange created by the laws of individual states may qualify if **the insurance exchange** [IT] maintains capital and surplus, or the substantial equivalent, of not less than $50,000,000 in the aggregate; for insurance exchanges that maintain funds for the protection of all insurance exchange policyholders, each individual syndicate shall maintain minimum capital and surplus, or the substantial equivalent, of not less than $3,000,000; in the event the insurance exchange does not maintain funds for the protection of all its policyholders, each individual syndicate shall meet the minimum requirements of (1) or (2) of this subsection;

*** Sec. 27.** AS 21.34.180(b) is amended to read:

(b) The surplus lines tax is due on the **date specified by the director and may** [SECOND DAY OF MARCH FOLLOWING THE CALENDAR YEAR IN WHICH THE PREMIUM IS WRITTEN. THE TAX SHALL] be paid **by electronic or other means as specified by the director. The tax shall be** [TO AND] reported on forms prescribed by the director [,] or, upon the director's order, paid to and reported on forms prescribed by the surplus lines association.

*** Sec. 28.** AS 21.34.190(a) is amended to read:

(a) The fee for filing the statement under AS 21.34.180(b) is an amount equal to one percent on gross premium charged less any return premiums **as reported on the statement** [DURING THE PRECEDING CALENDAR YEAR]. The surplus lines broker shall pay the fee at the time of filing of the statement.

*** Sec. 29.** AS 21.36.095(e) is amended to read:

(e) In this section, "insurer" includes

(1) an insurer, as defined in AS 21.90.900;

(2) a group health plan, as defined in 29 U.S.C. 1167(l) (Employee Retirement Income Security Act of 1974);

(3) a health maintenance organization, as defined in AS 21.86.900;

(4) a hospital service corporation or medical service corporation, as defined in AS 21.87.330;

(5) **Comprehensive Health Insurance Association, established in AS 21.55.010** [A WRITING CARRIER, AS DEFINED IN AS 21.55.500]; and

(6) an entity offering a service benefit plan, as referred to in 42 U.S.C. 1396g-1.

* **Sec. 30.** AS 21.36 is amended by adding a new section to read:

Sec. 21.36.185. Maintenance of complaint handling records. An insurer shall maintain a complete record of all the complaints received by the insurer since the date of the insurer's last market conduct examination under AS 21.06.120 or for four years, whichever occurs first. This record must indicate the total number of complaints, the classification of each complaint by line of insurance, the nature of each complaint, the disposition of each complaint, and the time it took to process each complaint. For purposes of this section, "complaint" means any written communication primarily expressing a grievance.

* **Sec. 31.** AS 21.36.240 is amended to read:

Sec. 21.36.240. Failure to renew. An insurer may **only** [NOT] fail to renew a personal insurance policy **on the policy's annual anniversary** [IN FORCE FOR LESS THAN 12 MONTHS]. An insurer may not fail to renew a policy unless a written notice of nonrenewal is mailed to the named insured as required by AS 21.36.260 at least 20 days for a personal insurance policy, and at least 45 days for a business or commercial insurance policy, before the expiration date of the policy or of the anniversary date of a policy written for a term longer than one year or with no fixed expiration date. If notice of nonrenewal is not given as required by this section, the existing policy shall continue until the insurer provides notice for the time period required by this section for that policy. This section does not apply

(1) if the insurer has in good faith manifested its willingness to renew;

(2) in case of nonpayment of premium for the expiring policy; or

(3) if the insured fails to pay the premium as required by the insurer for renewal.

* **Sec. 32.** AS 21.36.290 is amended to read:

Sec. 21.36.290. Policy period. (a) A [EXCEPT AS DESCRIBED IN (b) OF THIS SECTION, A] policy with a policy period or term [OF LESS THAN 12 MONTHS SHALL, FOR THE PURPOSES OF AS 21.36.210 - 21.36.310, BE CONSIDERED TO BE WRITTEN FOR A POLICY PERIOD OR TERM OF 12 MONTHS EXCEPT IN CASE OF CANCELLATION UNDER ANY OF THE CIRCUMSTANCES SPECIFIED IN AS 21.36.210, AND A POLICY WRITTEN FOR A TERM] longer than one year or a policy with no fixed expiration date shall be considered to be written for successive policy periods or terms of one year, and termination by an insurer effective on an anniversary date of the policy shall be considered a failure to renew.

(b) The rate for [FOR DETERMINING THE APPROPRIATE RATE OR PREMIUM,] a personal automobile insurance policy may not be changed more frequently than once every [WITH A POLICY PERIOD OR TERM OF LESS THAN SIX MONTHS SHALL, FOR THE PURPOSES OF AS 21.36.210 - 21.36.310, BE CONSIDERED TO BE WRITTEN FOR A POLICY PERIOD OR TERM OF] six months.

* **Sec. 33.** AS 21.36.390 is repealed and reenacted to read:

Sec. 21.36.390. Notice to director. (a) An insurer or licensee that has reason to believe that a fraudulent claim has been made against it shall send the director a report disclosing information that the director may require.

(b) An insurer or licensee that has reason to believe that an insurance producer with which it is doing business is involved in a defalcation, embezzlement, or violation of the provisions of AS 21.36.360 shall immediately send the director a report disclosing the basis for that belief and any other information that the director may require.

(c) An insurer or licensee, its employee or agent, or another person acting in good faith is not civilly liable for damages resulting from the filing of the report or the furnishing of information required by this section or by the director.

(d) The director shall investigate facts reported under this section and shall refer facts indicating a violation of law to the appropriate prosecutor or agency.

* **Sec. 34.** AS 21.39.045(b) is amended to read:

(b) The director shall accept a rate filing for workers' compensation insurance if the filing includes a reasonable method of recognizing differences in rates of pay **for the construction industry,** and the method uses a credit scale that begins at an amount equal to the average weekly wage in this state **for the construction industry** as determined by the Department of Labor.

*** Sec. 35.** AS 21.42.130 is amended to read:

Sec. 21.42.130. Grounds for disapproval. The director shall disapprove a form filed under AS 21.42.120 or withdraw a previous approval of the form [,] only if the form

(1) is in any respect in violation of or does not comply with this title;

(2) contains or incorporates by reference, where incorporation is permissible, an inconsistent, ambiguous, or misleading clause, or exception and condition that deceptively affects the risk purported to be assumed in the general coverage of the contract;

(3) has a title, heading, or other indication of its provisions that is misleading;

(4) is printed or otherwise reproduced in a manner that renders a provision of the form substantially illegible;

(5) provides benefits for Medicare **supplement** [SUPPLEMENTAL AND INDIVIDUAL HEALTH] insurance that are unreasonable in relation to the premium charged.

*** Sec. 36.** AS 21.42 is amended by adding a new section to read:

Sec. 21.42.205. Coordination of benefits. (a) Unless prohibited by federal law, an insurer authorized under AS 21.09 to offer, issue for delivery, deliver, or renew an individual or group health insurance policy for major medical coverage on an expense incurred basis; a health maintenance organization authorized under AS 21.86 to offer a contract to provide major medical health care services on a prepaid basis; or a service corporation authorized under AS 21.87 to offer or renew an individual or group subscriber's contract for major medical coverage shall include a coordination of benefits provision in a major medical policy or contract.

(b) The director may adopt regulations to implement this section.

* **Sec. 37.** AS 21.42 is amended by adding a new section to read:

Sec. 21.42.265. Effective date of coverage. Unless otherwise provided by law, the effective date of a change relating to coverage under an insurance contract as a result of a change to this title is the issue date for a new policy or the renewal date for a renewal policy.

* **Sec. 38.** AS 21.54 is amended by adding a new section to read:

Sec. 21.54.015. Rate requirements. Rates charged for a group health insurance policy may not be excessive, inadequate, or unfairly discriminatory.

* **Sec. 39.** AS 21.66.110(a) is amended to read:

(a) Each [ANNUALLY EACH] title insurance company shall pay [ON OR BEFORE MARCH 1,] a tax of one percent of the amount of gross title insurance premiums received by it, including as premium income received from guaranteed certificates of title and other guarantees of title [DURING THE PRECEDING CALENDAR YEAR] covering property in this state, as shown by its annual statement to the director. The director shall specify the due dates and the method of payment.

* **Sec. 40.** AS 21.66.390(a) is amended to read:

(a) A title insurance company shall make rates that are not excessive or inadequate, [AND] that do not unfairly discriminate between risks in this state that involve essentially the same exposure to loss and expense elements, and that give due consideration to

(1) the desirability for stability of rate structures;

(2) the necessity of assuring the financial solvency of title insurance companies in periods of economic depression by encouraging growth in assets of title insurance companies in periods of high business activity; [AND]

(3) the necessity for assuring a reasonable margin of underwriting and operating profit; and

(4) investment income.

* **Sec. 41.** AS 21.69.310(a) is amended to read:

(a) Meetings of stockholders or members of a domestic insurer shall be held in the city or town of its principal office or place of business in this state. The

meetings may be held, for good cause, in another location within the state upon approval of the director.

*** Sec. 42.** AS 21.69.520(a) is amended to read:

(a) **Subject to the director's prior written approval, a** [A] domestic stock or mutual insurer may borrow money to defray the expenses of its organization **or** [,] provide it with surplus funds [, OR FOR ANY PURPOSE OF ITS BUSINESS,] upon a written agreement that the money is required to be repaid only out of the insurer's surplus in excess of that stipulated in the agreement. The agreement may provide for interest not exceeding six per cent a year, which interest may or may not constitute a liability of the insurer as to its funds other than the excess of surplus, as stipulated in the agreement. A commission or promotion expense may not be paid in connection with the loan.

*** Sec. 43.** AS 21.75.045(a) is amended to read:

(a) A person may not act in the capacity of attorney-in-fact for a subscriber regarding a subject that is resident, located, or to be performed in this state or for a reciprocal insurer licensed to do business in this state unless the person is licensed under this chapter. The director may adopt regulations that establish qualifications for being licensed as an attorney-in-fact. The attorney-in-fact for a [DOMESTIC] reciprocal insurer [TRANSACTING ALL OF ITS INSURANCE ACTIVITIES ON A SUBJECT RESIDENT, LOCATED, AND TO BE PERFORMED IN THIS STATE] is exempt from licensing under this title if the attorney-in-fact

(1) is a wholly-owned subsidiary of the reciprocal; and

(2) does not act as attorney-in-fact for another unaffiliated reciprocal insurer.

*** Sec. 44.** AS 21.76.020(b) is amended to read:

(b) By October 1 of each year, the administrator of a joint insurance arrangement shall prepare and deliver to the Legislative Budget and Audit Committee **and the director** a report showing the true and correct financial condition of the joint insurance arrangement. The report must

(1) be attested to by the administrator and the board of directors;

(2) include an analysis, certified by a member of the American

Academy of Actuaries, of the sufficiency of the loss reserves; and

(3) be certified by a certified public accountant.

*** Sec. 45.** AS 21.76.080(e) is amended to read:

(e) .080(e) i 150 [60] days of the end of the fiscal year, the administrator shall in 150 [report of the operation and condition of the fund to the board of directors and the director of **the division of** insurance. [THE REPORT FURNISHED TO THE DIRECTOR OF INSURANCE SHALL BE

(1) FILED IN THE GENERAL FORM AND CONTEXT ACCEPTABLE TO THE DIRECTOR;

(2) IN ACCORDANCE WITH ACCOUNTING PRINCIPLES ESTABLISHED UNDER THIS TITLE; AND

(3) AVAILABLE FOR PUBLIC INSPECTION.]

*** Sec. 46.** AS 21.78.293(b) is amended to read:

(b) The court **shall review and adopt** [MAY APPROVE, DISAPPROVE, OR MODIFY] the receiver's report on claims **by approving those claims that are supported by substantial evidence and disapproving allowed claims that are not supported by substantial evidence**. Claims in a report that are not **disapproved** [MODIFIED] by the court within a period of **120** [60] days following submission by the receiver shall be treated by the receiver as allowed claims.

*** Sec. 47.** AS 21.87.140(c) is amended to read:

(c) Each service agreement shall further effectively provide in substance that

(1) the participant provider shall be compensated for services rendered to a subscriber in accordance with **terms** [A SCHEDULE OF FEES] contained in the agreement or attached to and made a part of the agreement [,] and that the participant provider may not request or receive from the service corporation compensation for the services **that** [WHICH] is not in accord with the **terms** [SCHEDULE];

(2) compensation for services may be prorated and settled under the circumstances and in the manner referred to in AS 21.87.300;

(3) if the participant provider withdraws from the agreement, the withdrawal may not be effective as to a subscriber's contract in force on the date of the withdrawal until the termination of the subscriber's contract or the next anniversary

of the subscriber's contract, whichever date is the earlier.

*** Sec. 48.** AS 21.87.150(c) is amended to read:

(c) Each service agreement must further effectively in substance provide that

(1) the participant hospitals shall be compensated for services rendered to a subscriber in accordance with **terms** [A SCHEDULE OF CHARGES] contained in the agreement or attached to and made a part of the agreement [,] and that the hospital may not request or receive from the service corporation compensation for the services that is not in accord with the **terms** [SCHEDULE];

(2) compensation for services may be prorated and settled under the circumstances and in the manner referred to in AS 21.87.300;

(3) if the participant hospital withdraws from the agreement, the withdrawal may not be effective as to a subscriber's contract in force on the date of the withdrawal until the termination of the subscriber's contract or the next anniversary of the subscriber's contract, whichever date is the earlier.

*** Sec. 49.** AS 21.87.180(a) is amended to read:

(a) A service corporation may not issue or use a basic form of service agreement or subscriber's contract, or application, identification, supplement, or endorsement to be connected with the agreement or contract, until the form has been filed with and approved by the director. This provision does not apply to **riders** [AGREEMENTS, CONTRACTS, APPLICATIONS, IDENTIFICATION SUPPLEMENTS], endorsements, or other forms of unique character designed for and used with relation to a particular **subject** [SET OF CIRCUMSTANCES].

*** Sec. 50.** AS 21.87.190(b) is amended to read:

(b) The service corporation shall, before use, file with the director **(1)** a schedule of subscription rates, fees, or payments of any kind to be charged subscribers**; (2) every rating manual, schedule, plan, rule, or formula;** and **(3)** [SHALL FILE] before use**, any modification to the rating manual, schedule, plan, rule, or formula. Each filing must state the effective date and must provide a comprehensive description of the coverage. The director may withhold the rating formula from public inspection for as long as the director determines that withholding the rating formula is necessary to protect the service corporation against unwarranted**

injury or is in the public interest [EVERY PROPOSED CHANGE OR MODIFICATION IN THE RATES, FEES, OR PAYMENTS].

* **Sec. 51.** AS 21.87.200 is repealed and reenacted to read:

Sec. 21.87.200. Reserves. In addition to the surplus fund provided for in AS 21.87.210, each service corporation shall establish and maintain unimpaired reserves and liabilities required under AS 21.18.050.

* **Sec. 52.** AS 21.89.020(g) is amended to read:

(g) An insurance company offering automobile liability insurance in this state shall offer a short term policy valid for no more than seven days. The coverage available for the short term policy must be comparable to coverage available for longer term policies. **The provisions of AS 21.36.210 - 21.36.310 do not apply to short term policies issued under this subsection.**

* **Sec. 53.** AS 21.90.900(29) is amended to read:

(29) "policy" means the written contract of or written agreement for or effecting insurance, by whatever name called, and includes all clauses, riders, endorsements, and papers attached to it and a part of it; **for a group, trust, association, or similar entity, it also means a certificate or other evidence of insurance that establishes the written contract of or written agreement for or effecting insurance for an insured or other beneficiary of the entity;**

* **Sec. 54.** AS 21.90.900 is amended by adding a new paragraph to read:

(41) "certified financial statement" means a financial statement upon which an independent certified public accountant, or an accountant holding a substantially equivalent designation as determined by the director, renders or disclaims an opinion after performance of an audit.

* **Sec. 55.** AS 21.81 is repealed.

* **Sec. 56.** Sections 4, 5, 25 - 28, and 39 of this Act take effect January 1, 1998.

* **Sec. 57.** Except as provided in sec. 56 of this Act, this Act takes effect on July 1, 1997.

FEB 13 1997

TONY KNOWLES, GOVERNOR

DEPARTMENT OF COMMERCE AND ECONOMIC DEVELOPMENT

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February 13, 1997

The Honorable Norman Rokeberg
House of Representatives
State Capitol, Room 24
Juneau, AK 99801-1182

Dear Representative Rokeberg:

As you requested, I am enclosing a copy of the Health Insurance Portability and Accountability Act of 1996 (the Kassenbaum/Kennedy federal law), a preliminary draft of the proposed Alaska legislation implementing the federal law, and an overview of the federal law which you may find informative. The proposed Alaska legislation is currently being reviewed by Law and, accordingly, we have marked the document as a draft. We do not anticipate any significant changes between the draft and the final document.

I look forward to the work session scheduled on Wednesday, February 19 and appreciate the opportunity to work with the labor and commerce committee regarding this proposed legislation.

Very truly yours,

Marianne K. Burke
Director

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Enclosures

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