

**DEPARTMENT OF HEALTH AND SOCIAL SERVICES  
DIVISION OF LONG TERM CARE RESIDENTS PROTECTION  
Statutory Authority: 16 Delaware Code, Section 3006A (16 Del.C. §3006A)**

**PUBLIC NOTICE**

**PROPOSED**

**Regulations for Training and Qualifications for Nursing Assistants and Certified Nursing Assistants**

The Department of Health and Social Services, Division of Long Term Care Residents Protection, has drafted proposed regulations pertaining to training and qualifications of nursing assistants and certified nursing assistants. These proposed regulations clarify and amend certain eligibility criteria for certification as a certified nursing assistant.

These proposed regulations also clarify the responsibility of federally certified nursing facilities to pay the costs of training nursing assistants in accordance with federal regulations at 42 CFR §483.152. The proposed regulations pertaining to payment of the costs of training nursing assistants have been the subject of previous public hearings and have been revised in response to comments received at the public hearings. A discussion of the comments received at those public hearings which were not incorporated into the proposed regulations will appear with the final order when the proposed regulations are published as final regulations.

**Invitation For Public Comment**

Public hearings will be held as follows:

Tuesday, November 30, 2004, 9:00 AM  
Room 301, Main Building, Herman Holloway Campus  
1901 North DuPont Highway, New Castle

Thursday, December 2, 2004, 10:00 AM  
Department of Natural Resources & Environmental Control Auditorium  
89 Kings Highway, Dover

For clarification or directions, please call Gina Loughery at 302-577-6661.  
Written comments are invited on these proposed regulations and should be sent to:

Elise MacEwen, RN  
Division of Long Term Care Residents Protection  
Mill Road, Suite 308  
Wilmington, DE 19806

Written comments will be accepted until the conclusion of the December 2 public hearing.

**69 Regulations for Training and Qualifications for Nursing Assistants and Certified Nursing Assistants**

**Section 69.200 – General Training Requirements And Competency Test**

Each Nursing Assistant/Certified Nursing Assistant employed by any nursing facility either as contract/agency or facility staff shall be required to meet the following:

69.201 An individual shall complete a nursing assistant training course approved by the Department on the recommendation of the CNA Training Curriculum Committee. The Committee shall consist of individuals with experience in the knowledge and skills required of CNAs.

69.202 Nursing Assistants are required to pass a competency test provided by the Department or by a contractor approved by the Department.

69.203 Nursing Assistants shall take the competency test within 30 days of completion of an approved program

or when the nearest testing location is available to the nursing assistant, whichever is later. Nursing assistants who fail to obtain a passing score may repeat the test two additional times, but must obtain certification within 90 days of program completion. Nursing assistants who fail to obtain a passing score after testing three times must repeat the CNA training program before retaking the test, or they cannot continue to work as a nursing assistant.

69.204 ~~A Certified Nursing Assistant must perform at least 64 hours of nursing related services in a health care setting for pay under the supervision of a licensed nurse or physician during each 24-month certification period in order to qualify for recertification. A certified nursing assistant who does not perform at least 64 hours of nursing related services in a certification period must complete and pass a new training course and competency test, or competency test.~~

69.205 A Certified Nursing Assistant trained and certified outside the State of Delaware in a program that equals or exceeds the federal nurse aide training program requirements in the Code of Federal Regulations § 483.152 cannot work in Delaware without a Delaware certificate. Delaware certification is required prior to being employed as a CNA. The Department will grant reciprocity if the following conditions are met:

A. The CNA must have a current certificate from the jurisdiction where he or she currently practices, except that candidates from the State of Maryland must hold a current Geriatric Nursing Assistant certificate.

B. The CNA must have 3 months of full-time experience as a CNA performing nursing related services for pay under the supervision of a licensed nurse or physician, or have completed a training and competency evaluation program with the number of hours at least equal to that required by the State of Delaware.

C. The CNA must be in good standing in the jurisdiction where he/she is currently certified.

69.206 Employees hired as Nursing Assistants/Certified Nursing Assistants who are currently enrolled in an RN or LPN nursing program and have satisfactorily completed a Fundamentals/Basic Nursing course with a clinical component will be deemed to meet the training requirements. These individuals will be approved to take the competency test upon submission of a letter from their school of nursing attesting to current enrollment status and satisfactory course completion as described.

69.207 Individuals who have graduated from an RN or LPN program within 24 months prior to application for certification are deemed qualified to meet the Department's nurse aide training and competency evaluation program requirements and are eligible for certification upon submission of a sealed copy of their diploma. Individuals who have graduated from an RN or LPN program more than 24 months prior to application for certification are deemed qualified to meet the Department's nurse aide training program requirements and are eligible to take the competency test upon submission of a sealed copy of their diploma.

69.208 An individual who has satisfactorily completed a military nursing assistant training course or hospital-based nursing assistant training course of at least 150 hours with a curriculum comparable to the curriculum content of Section 69.303 of these regulations and who has performed nursing related services within 24 months prior to application for certification is deemed qualified to meet the Department's nurse aide training program requirements and is eligible to take the competency test upon submission of documentation of course completion.

~~69.208~~ For the purpose of calculating minimum staffing levels, any individual who has completed all of the classroom training and half of the clinical training in a facility sponsored training program may be considered as a member of such facility's staff while undergoing the last 37.5 hours of clinical training at such facility.

~~69.209 A nursing assistant 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 not be charged for any portion of the program including tuition, initial and any subsequent testing and fees for textbooks or other required course materials.~~

~~69.210 If a certified nursing assistant 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 facility shall reimburse all personally incurred costs in completing the program. Such costs include tuition, initial and any subsequent testing and fees for textbooks or other required course materials. Such costs are payable upon completion by the CNA of a six month period of employment including the orientation period.~~

~~69.211 The facility shall be required to notify the Department upon reimbursement to a CNA of personally incurred costs of the nurse aide training and competency evaluation program for the purpose of inclusion in the CNA registry database. Facilities may contact the Department to verify the reimbursement status of any CNA seeking such reimbursement.~~

69.210 A nursing assistant who is employed by, or who has received an offer of employment from, a federally certified nursing facility on the date on which the aide begins a nurse aide training and competency evaluation

program may not be charged for any portion of the program including tuition, any tests taken and fees for textbooks or other required course materials.

69.211 If a Certified Nursing Assistant 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 federally certified nursing facility not later than 12 months after completing a nurse aide training and competency evaluation program, the federally certified nursing facility shall reimburse all documented personally incurred costs in completing the program. Facilities shall accept as documentation canceled checks, paid receipts, written verification from a training program or other written evidence which reasonably establishes the CNA's personally incurred costs. Such costs include tuition, tests taken and fees for textbooks or other required course materials. Such costs shall be reimbursed in equal quarterly payments with full reimbursement to coincide with the CNA's completion of one year of employment including the orientation period.

69.212 Any nursing facility which reimburses a Certified Nursing Assistant for documented personally incurred costs of a nurse aide training and competency evaluation program shall notify the Division of Long Term Care Residents Protection of such reimbursement. Notice of such reimbursement shall be entered in the CNA Registry database and information regarding such reimbursement shall be available to facilities upon request.

**8 DE Reg. 662 911/01/04)**