

DEPARTMENT OF HEALTH AND SOCIAL SERVICES

DIVISION OF LONG TERM CARE RESIDENTS PROTECTION

Statutory Authority: 29 Delaware Code, Section 7903(10) (29 **Del.C.** §7903(10))
16 **DE Admin. Code** 3220

FINAL

ORDER

3220 Training and Qualifications for Nursing Assistants and Certified Nursing Assistants

NATURE OF THE PROCEEDINGS:

The Department of Health and Social Services (“Department”) / Division of Long Term Care Residents Protection (DLTCRP) initiated proceedings to amend Regulation 3220 Training and Qualifications for Nursing Assistants and Certified Nursing Assistants. The Department’s proceedings to amend its regulations were initiated pursuant to 29 **Delaware Code**, Section 10114 and its authority as prescribed by 29 **Delaware Code**, Section 7903, (10) and Section 7971(15)(e).

The Department published its notice of proposed regulation changes pursuant to 29 **Delaware Code** Section 10115 in the September 2011 Delaware *Register of Regulations*, requiring written materials and suggestions from the public concerning the proposed regulations to be produced by October 3, 2011 at which time the Department would receive information, factual evidence and public comment to the said proposed changes to the regulations.

SUMMARY OF PROPOSED AMENDMENT

The proposal amends the existing Regulation 3220 Training and Qualifications for Nursing Assistants and Certified Nursing Assistants. The proposed change will amend the regulation to incorporate updates deemed necessary by DLTCRP.

Statutory Authority

29 **Del.C.** Ch. 79, § 7903(10) and 29 **Del.C.** Ch. 79, §7971(15)(e), “Department of Health and Social Services.”

Background

DLTCRP identified the need to update the Training and Qualifications for Nursing Assistants and Certified Nursing Assistants regulation in order to incorporate federal and state requirements for continuing education of Nursing Assistants and Certified Nursing Assistants.

Summary of Proposed Amendment

This regulatory change updates the regulation in the following areas:

The proposal amends policies regarding Long Term Care Residents Protection to require certain persons to receive dementia specific training as required by the amendment to 29 **Del.C.** §7903 which added a paragraph (10) directing the DHSS Secretary to adopt regulations which require dementia specific training each year for persons who are certified, licensed, or registered by the State, and/or who are partially or fully funded by the State, to provide direct healthcare services to persons diagnosed as having Alzheimer’s disease or other forms of dementia. The revision also requires prevention if patient abuse training.

The proposed changes affect the following policy sections:

3220 Training and Qualifications for Nursing Assistants and Certified Nursing Assistants

SUMMARY OF COMMENTS RECEIVED WITH AGENCY RESPONSE AND EXPLANATION OF CHANGES

The Governor’s Advisory Council for Exceptional Citizens (“GACEC”) and the State Council for Persons with Disabilities (SCPD) endorsed the proposed regulations and offered comments. Two private individual also offered comments on the number of hours and one individual offered suggestions on the content of the training. DLTCRP has not included comments that merely endorsed the proposed changes. DLTCRP has considered each comment and responds as follows:

Comments: Both individuals suggested increasing the number of hours of dementia training from the 6 hours in each twenty-four month certification period that is proposed. One suggested doubling it to 6 hours every twelve months.

Agency Response: The Division acknowledges that increased training is desirable, but recognizes that facilities must routinely train staff on many topics in the remaining 18 hours every 24 months. Additionally, they must have the flexibility to present ad hoc training as situations demand. Lastly, the required 6 hours is a minimum, facilities

can add additional hours if they so choose.

Revised language: N/A

Comment: One individual suggested all caregivers across the professional spectrum staff receive this mandatory training.

Agency Response: While 29 Del.C. Ch. 79, §7903(10) does require dementia training for all person certified, licensed or registered by the State however these regulations apply only to Nursing Assistants and Certified Nursing Assistants therefore they do not include other licensed or certified professions.

Revised language: N/A

FINDINGS OF FACT:

The Department finds that the proposed changes as set forth in the September 2011 *Register of Regulations* should be adopted.

THEREFORE, IT IS ORDERED, that the proposed changes to Regulation 3220 -Training and Qualification for Nursing Assistants and Certified Nursing Assistants, with the modification indicated herein, is adopted and shall be final effective January 1, 2012.

Date of Signature

Rita M. Landgraf, Secretary, DHSS

3220 Training and Qualifications for Nursing Assistants and Certified Nursing Assistants

(Break in Continuity of Sections)

2.0 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:

- 2.1 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.
- 2.2 Nursing Assistants are required to pass a competency test provided by the Department or by a contractor approved by the Department.
- 2.3 Nursing Assistants shall take the competency test within 30 days of completion of an approved program. Nursing assistants who fail to obtain a passing score may repeat the test two additional times. Nursing assistants who fail to obtain a passing score after testing three times must repeat the CNA training program before retaking the test. The certificate of completion of an approved program, a prerequisite to testing, must be dated within 24 months of the available testing date. Nursing assistants who are trained in a facility and are counted for staffing purposes pursuant to 16 Del.C. §1162(f) must pass the test within 90 days of completion of the facility program to continue to be counted in staffing calculations.
- 2.4 In order to qualify for recertification, a CNA must, during each 24 month certification period: (1) complete 24 hours of approved continuing education education including 6 hours of dementia training and 2 hours of patient abuse prevention training and (2) perform at least 64 hours of nursing related services for pay under the supervision of a licensed nurse or physician. A CNA who does not perform at least 64 hours of nursing related services in a certification period or fails to complete the required continuing education must pass the competency test again. Nursing assistants who fail to obtain a passing score after testing three times must repeat the CNA training program before additional testing will be permitted.

- 2.4.1 ~~A CNA who provides direct healthcare services to persons diagnosed as having Alzheimer's disease or other forms of dementia shall annually receive dementia specific training that must include: communicating with persons diagnosed as having Alzheimer's disease or other forms of dementia; the psychological, social, and physical needs of those persons; and safety measures which need to be taken with those persons. All CNAs shall receive dementia specific training that shall include: communicating with persons diagnosed as having Alzheimer's disease or other forms of dementia; the psychological, social, and physical needs of those persons; and safety measures which need to be taken with those persons. All CNAs shall also receive training in the prevention of patient abuse that shall include:~~

definitions and signs and symptoms of abuse and neglect, reporting requirements and prevention strategies.

- 2.5 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:
- 2.5.1 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.
 - 2.5.2 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.
 - 2.5.3 The CNA must be in good standing in the jurisdiction where he/she is currently certified.
 - 2.5.4 The CNA submits \$30 to the Department to cover the costs associated with granting the reciprocity.
- 2.6 Nursing students who are currently enrolled in a nursing program and have satisfactorily completed a Fundamentals/Basic Nursing course with a 75 hour clinical component in a long term care setting 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.
- 2.7 Nursing students 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.
- 2.8 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.
- 2.9 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.
- 2.10 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.
- 2.11 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.

6 DE Reg. 1505 (5/1/03)

8 DE Reg. 1014 (1/1/05)

14 DE Reg. 169 (09/01/10)

15 DE Reg. 192 (08/01/11)

15 DE Reg. 1010 (01/01/12) (Final)