

**Policy Waiver of Prohibition of Offering NATCEP or CEP**

*HLS Procedure Number 023*

**Purpose:** The purpose of a waiver is to allow certified/licensed nursing homes to have a way to ensure the availability of training and certification programs for newly trained and tested nurse aides in their community or in a nearby community when the Centers for Medicare & Medicaid Services (CMS) has determined the facility cannot provide such services. There is a continual need, due to turnover in nurse aide staff, for nursing homes to have qualified individuals to provide direct care for residents.

**Policy:**

In accordance with 42 CFR 483.151(b) (2), the Wyoming State Survey Agency (SSA) must not approve Nurse Aide Training and Competency Evaluation Program (NATCEP) or a nurse aide Competency Evaluation Program (CEP) offered by or in a nursing home if, in the two (2) years prior to the SSA review of the facility:

- The skilled nursing facility has operated under a waiver under 1819(b)(4)(C)(ii)(II) of the Act;
- The nursing facility has operated under a waiver under 1819(b)(4)(C)(ii) of the Act that was granted on the basis of a demonstration that the nursing facility is unable to provide nursing care required under 1919(b)(4)(C)(i) of the Act for a period in excess of forty-eight (48) hours a week;
- Has been subject to an extended (or partial extended) survey under 1819(g)(2)(B)(i) or 1919(g)(2)(B)(i) of the Act (finding of substandard quality of care);
- Has been assessed a civil money penalty described in 1819(h)(2)(B)(ii) or 1919 (h)(2)(A)(ii) of the Act of not less than \$5,000. This requirement applies to civil money penalties for federal citation only after the facility has had an opportunity to a hearing as specified in 1128A of the Act and the penalty is determined due and payable;
- Has been subject to a remedy described in 1819(h)(2)(B)(i) or (iii), 1819(h)(4), 1919(h)(1)(B)(i), or 1919(h)(2)(A)(i), or (iii) or (iv) of the Act; or
- If the entity offering the program refuses to permit unannounced visits by the SSA.

The SSA may withdraw approval of a NATCEP or CEP if the State determines that any of the requirements described in §§4132.2 and 4132.3 are not met by the program. The SSA may also withdraw approval from any program that does not meet any requirements the State may have in excess of the minimum Federal requirements, or that otherwise fails to meet State standards.

When withdrawing approval from a NATCEP or a CEP, the State should:

- Notify the program, in writing, indicating the reason(s) for withdrawal of approval; and
- In the case of a NATCEP, permit students who have already started the program to finish it. The SSA may waive the prohibition of programs offered in (but not by) certain nursing homes. The waiver will allow the nursing facility to offer the nurse aide training program in the facility only. The following criteria will be used to determine approval of a two-year waiver:
  - The SSA, in conjunction with the facility, will determine there are no approved nurse aide training programs that are willing to provide the training within thirty (30) highway miles. An approved NATCEP or CEP that offers the program solely to high school students will not be considered a program within the thirty (30) highway miles.
  - The facility is in substantial compliance with federal regulation(s) and state licensing requirements.
  - The SSA will assure the facility has no deterioration in care that results in substandard quality of care during the two-year waiver period, and that the facility otherwise meets the waiver criteria during the waiver period. This will be accomplished through surveys conducted according to the federal mandate.
  - When a waiver of prohibition has been granted to a nursing facility, the SSA will notify the long term care ombudsman.
  - A waiver will not exceed two years. In the event the facility is subsequently found to no longer meet the waiver criteria, the waiver will be withdrawn.
  - The SSA must approve the nursing facility with the waiver of program prohibition before the nurse aide training program can begin a class.
  - No owners, employees, consultants, contractors, or corporate affiliates of the nursing facility that receives a waiver will be permitted to function as the program coordinator or an instructor. The facility may have an agreement or contract with the program, program coordinator, or instructor as long as the agreement or contract is solely for the independent provision of the nurse aide training program.
  - The training program instructor must assure students do not perform tasks for which they have not been trained and found proficient by the instructor. Staff employed by or through an agreement with the nursing facility may not determine the student's proficiency to perform tasks.

*Adopted March 11, 2011*