

Clearinghouse Rule 08-042

**PROPOSED ORDER OF
DEPARTMENT OF HEALTH AND FAMILY SERVICES
TO ADOPT RULES**

The Wisconsin Department of Health and Family Services proposes to repeal and recreate ch. HFS 129, relating to certification of programs for training and testing nurse assistants, home health aides, and hospice aides.

SUMMARY OF PROPOSED RULE

Statute interpreted
Section 146.40, Stats.

Statutory authority:
Sections 146.40 (5) and 227.11 (2) (a), Stats.

Explanation of agency authority:
Sections 146.40 (3), (4d), and (5) give the Department authority to promulgate rules specifying standards for certification of instructional and competency evaluation programs for nurse aides.

Related statute or rule:
Sections 146.40, 50.03, 50.49 and 50.91. Stats., and chs. HFS 131, HFS 132 and HFS 133 Wis. Admin. Code.

Plain language analysis:
Chapter HFS 129 establishes conditions for certification of instructional programs, including standards for instructors, curriculum, and criteria for the competency evaluation programs for persons who work as nurse aides in hospitals, nursing homes, facilities for the developmentally disabled, home health agencies or hospices. HFS 129 also establishes standards for the development of a registry of persons who have satisfactorily completed the training and competency program or who otherwise are eligible for listing in the registry. Through this rulemaking order, the Department proposes to repeal and re-create ch. HFS 129, relating to the certification of programs and requirements for training and testing of nurse aides for the following reasons:

1. To reflect the Department's decision to standardize the administration and operation of nurse aide training and competency evaluation statewide by contracting for this service. Federal regulations set forth under CFR 483.152 and 483.154 authorize states to choose to offer a nurse aide training and competency evaluation program. The Department has been reviewing, and approving or disapproving nurse aide training and competency evaluation programs based on standards in s. HFS 129.08.

However, the Department believes that specifying standards for competency evaluation programs cannot assure the maintenance of neutral and objective facility-sponsored instructional and competency evaluation tests that are free from possible inherent conflicts of interest posed by the need to meet facility staffing requirements. The Department proposes to modify ch. HFS 129 to reflect the Department's contracting for such competency testing.

2. To improve the accuracy of the nurse aide registry. Under s. 146.40 (4g), Stats., and s. HFS 129.10, the Department is required to maintain a list, known as a "registry," of all persons deemed qualified to work in Wisconsin as a nurse aide. Aside from committing an offense that would bar a person from remaining on the list in good standing, there are currently no Wisconsin statutory provisions for removing a person's name from the list, even though the person may no longer be available or be interested in serving as a nurse aide. The Department believes that the list of qualified nurse aides, currently numbering over 196,000, contains many persons who no longer are available or interested in working as a nurse aide. Therefore, the Department proposes to modify s. HFS 129.10 to require nurse aides to periodically update their registration information and, in the process, allow the Department to maintain a more accurate list of active nurse aides. Periodic updating will also provide the Department the opportunity to check the accuracy of the information provided by nurse aides.

3. To clarify who may be included on the registry and who is eligible to work as a nurse aide and specifically as a medication aide. The Department will also clarify the circumstances under which a person not currently included on the registry may work in a health care facility as an RN, LPN, etc.

4. To make ch. HFS 129 more consistent with current federal regulations governing nurse aides. The Department proposed to update aspects of ch. HFS 129 to reflect federal requirements established since ch. HFS 129 that was originally promulgated April 1992. Specifically, the Department will propose to incorporate federal requirements relating to:

- Withdrawal of Department 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 Department.
- Nurse aide training needing to be performed by or under the general supervision of a RN 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.
- The inability of a facility to charge fees for training and competency testing to a person who is employed by or has received an offer of employment from a health care facility. In addition, in the case of a person becoming employed by a federally certified nursing home within 12 months after completing training and testing program, the requirement for the Department to reimburse the person for the costs of such training and testing.
- Requiring that the skills demonstration part of the evaluation be performed in a facility or laboratory setting comparable to the setting in which the person will function as a nurse aide and be administered and evaluated by a RN with at least 1 year's experience in providing care for the elderly or the chronically ill of any age.
- Requiring a competency testing program to use systems that prevent disclosure of both the pool of questions and the individual competency evaluations.
- Requiring that the skills demonstrated must consist of a demonstration of randomly selected items drawn from a pool consisting of the tasks generally performed by nurse aides.
- Establishing what happens if a person does not complete the evaluation satisfactorily.

5. To expand the mechanisms available to the Department for enforcing compliance of testing and evaluation programs. Existing enforcement options in s. HFS 129.05 (2) (c) are limited to suspension or revocation of certification or imposing a plan of correction. Although these are valuable enforcement tools, they do not give the Department the flexibility it needs to tailor its response to the severity of non-compliance with this chapter. The Department proposes to revise ch. HFS 129 to include additional enforcement options such as requiring a training or competency program whose approval has been revoked to remain ineligible to submit a new nurse aide training or testing program application for a period of up to one year, issuing a statement of deficiency and placing conditions on certification. The

Department will also propose additional enforcement penalties for instructors and examiners who fail to follow program requirements.

6. To include the feeding assistant training and testing program requirements. The Department proposes updating ch. HFS 129 to include reference to federal regulations set forth under 42 CFR 483.35 and 42 CFR 483.160 which authorize states to choose to offer a paid feeding assistant training and competency evaluation program or to review and approve or disapprove program application upon request. This training and testing is conducted in nursing homes or intermediate care facilities for persons with mental retardation to assist residents who have no feeding complication with eating and drinking.

7. To include the medication aide training and testing program requirements. Federal regulations set forth under 42 CFR 483.60 permit the use of unlicensed personnel, if State law permits, to administer drugs under the general supervision of a licensed nurse. This training and testing is conducted in nursing homes, technical colleges and private enterprises. The Department proposes to update ch. HFS 129 to include these medication aide requirements.

8. To increase the minimum number of hours required for nurse aide training programs from 75 to 120 hours due to the increase in the acuity level of persons receiving care by certified nurse aides. Studies completed by the federal government and other interested parties found that nurse aides need more than 75 hours of training to adequately care for today's elderly. Thirty one other States have already increased the required minimum number of hours for nurse aide training programs.

9. To include the process for requesting, reviewing and approving or disapproving waivers of Federal sanctions to training programs. The Department proposes to include reference to Public Law 105-15 (H. R. 968), revising specific provisions of the Social Security Act, which permits a State to waive the two-year prohibition of Nurse Aide training offered in, but not by certain nursing homes if the State determines there is no other such program offered within a reasonable distance of the facility, assures through an oversight effort that an adequate environment exists for operation of the program in the facility, and provides notice of such determination and assurances to the State long term care ombudsman.

Summary of, and comparison with, existing or proposed federal regulations:

Federal conditions of participation for the registry of nurse aides, nurse aide training and testing programs, and training of paid feeding assistants are in the Code of Federal Regulation, 42 CFR 483.150 through 483.160. These regulations establish conditions and standards for the approval of nurse aide training and competency evaluation programs, for the maintenance and operation of a nurse aide registry, and for conducting training and testing programs for nurse aides and paid feeding assistants. State and federal regulations for registry services and training and testing of nurse aide and paid feeding assistants are comparable to one another, however the state requirements augment more general federal regulations providing specificity in certain areas. The intent of these regulations is to foster safe and adequate care and treatment of clients by these caregivers.

There are no proposed federal regulations that address the activities to be regulated by the proposed rule.

Comparison with rules in adjacent states:

Illinois:

Illinois adopted significant portions of the federal regulation including the standards for the denial, suspension and revocation of program approval. The opportunity to appeal any adverse action taken by the State is afforded through the Illinois Departments Rules of Practice and Procedure in Administrative Hearings. In addition, the code specifies a comprehensive list of topics that must be addressed in any approved program including patient rights, communication, psychological needs of patient and family, hand washing, body mechanics, basic anatomy, nutrition, etc. Each set of topics includes course objectives and proficiency measures. Illinois code exceeds the federal minimum number of training hours and requires a minimum of 120 hours of instruction, excluding breaks, lunch and any orientation to specific policies of the employing facility. The code also establishes a minimum of 12 hours for instruction related to Alzheimer's disease and related dementias. Federal regulation requires a minimum of 75 hours for nurse aide training.

The Illinois code is 77 Admin Code 395 Long-Term Care Assistants and Aides Training Programs code.

Iowa:

Iowa code closely mirrors the federal requirements by including standards for denial, suspension and revocation of program approval. The rule requires the same federal minimum number of hours for the training course at 75 hours. Like Illinois, Iowa code contains an extensive list of topics that must be included in any approved training program including bathing, dressing, toileting, assistance with eating, skin care, transfers, responding to behaviors, restorative care and avoiding the need for restraints. The code also includes provisions for Iowa to remove the names of certified nurse aides from the registry who have performed no nursing or nursing related services for monetary compensation for a period of 24 consecutive months unless the person's registry entry includes documented findings of conviction by a court of law of abuse, neglect, mistreatment or misappropriation of property.

The Iowa code is Iowa Code Chapter 81 – 16 Nurse Aide Requirements and Training and Testing Program.

Michigan:

Michigan has no state rule regarding certified nurse aide training programs or maintenance of a registry and relies solely on federal regulation.

Minnesota:

Minnesota has no state rule regarding certified nurse aide training programs or maintenance of a registry and relies solely on federal regulation.

Summary of factual data and analytical methodologies:

The Department relied on all of the following sources to draft the proposed rule and to determine the impact on small businesses.

- The Department formed an advisory committee consisting of Department staff, and staff from the Department of Workforce Development, the Department of Public Education, the Wisconsin Association of Homes and Services for the Aging, the Wisconsin Health and Hospital Association, the Wisconsin Health Care Association, the Wisconsin Technical College System, the Wisconsin Long Term Care Workforce Alliance and private industry. The advisory committee reviewed the initial draft of the rule and provided comments. The rule was revised based upon the comments made by the advisory committee.

- The 2002 Economic Census – Wisconsin Geographic Series, compiled by the U.S. Census Bureau every 5 years for each year ending in “2” or “7” contains the latest available economic data compiled from businesses located in Wisconsin. The 2007 data is not yet available.
- Criteria adopted by the Department and approved by the Wisconsin Small Business Regulatory Review Board to determine whether the Department’s proposed rules have a significant economic impact on a substantial number of small businesses. Pursuant to the Department’s criteria, a proposed rule will have a significant economic impact on a substantial number of small businesses if at least 10% of the businesses affected by the proposed rules are small businesses and if operating expenditures, including annualized capital expenditures, increase by more than the prior year’s consumer price index, or revenues are reduced by more than the prior year’s consumer price index. For the purposes of this rulemaking, 2007 is the index year. The consumer price index is compiled by the U.S. Department of Labor, Bureau of Labor Statistics and for 2007 is 4.2 percent.
- Section 227.114 (1) (a), Stats., defines “small business” as a business entity, including its affiliates, which is independently owned and operated and not dominant in its field, and which employees 25 or fewer full-time employees or which has gross annual sales of less than \$5,000,000.
- DHFS databases that contain demographic, licensing, program, and compliance history of nurse aide training programs and certified nurse aides in Wisconsin.

Analysis and supporting documents used to determine effect on small business:

Nurse Aide Training and Testing programs both publicly operated and privately owned are regulated by the Department under ch. HFS 129 and ch. 146, Stats. Nurse aide training programs are not clearly defined in the North American Industry Classification System (NAICS) data, as most of these programs are a small program within the Wisconsin technical school system or housed within a nursing facility or other major health care provider. These programs are included in NAICS sector 61 Educational Services and further defined in sub-sectors; 6111 Elementary and Secondary schools, 6115 technical & trade schools, and 611699 other miscellaneous schools and instructions. Additional programs are included in sector 62, Health Care and Social Assistance and further defined in sub-sector 6231 Nursing Care Facilities. Revenue, expense, and staffing data are not available from this source as nurse aide training programs are a mere fraction of these many business sectors.

Data from DHFS data sets obtained on July 1, 2007 lists 89 nurse aide training programs. The data from July 1, 2007 is the latest complete data set available for nurse aide training programs. The type of entity and number of programs is provided in the table below.

ENTITY NUMBER

| | |
|------------------------------|----|
| Nursing homes | 33 |
| Wisconsin Technical Colleges | 16 |
| High schools | 15 |
| Other* | 13 |
| Hospitals | 7 |

| | |
|---|----|
| Facilities for the developmentally disabled | 3 |
| Universities | 2 |
| Total | 89 |

* Other entities include 3 non profit entities; one nurse aide training program operated by a charitable organization, one program operated by a religious organization and one program operated by the federal government. The remaining 10 entities are for profit agencies.

Based on a review of DHFS licensing data, including, financial reports submitted by the entity, Medicaid reimbursement data, number of beds and whether the entity is a part of a larger health care organization, DHFS has determined that the affected nursing homes, hospitals and facilities for the developmentally disabled are not small businesses as defined by Section 227.114 (1) (a), Stats. The technical colleges, high schools, universities and the 3 non profit entities in the Other category, that provide nurse aide training do not meet the definition of a small business either. The remaining ten nurse aide training programs in the Other category, are for profit entities. The Department is unable to obtain detailed financial data on these entities and assumes for the purpose of this analysis that they are small businesses.

Effect on small business:

Due to increase in the acuity level of person receiving care by nurse aides, the proposed rule increases the minimum number of hours required for nurse aide training programs from 75 to 120. The fiscal impact of the proposed rule includes the costs associated with providing the additional 45 hours of nurse aide training. Thirty-five of the 89 nurse aide training programs already meet or exceed this requirement. Two of the 35 training programs that meet or exceed the proposed 120 training hours are small businesses. The rule requirement will increase costs for the remaining 54 training programs. Eight of the 54 training programs are identified as small business and will need to increase training time by 24 to 40 hours to meet this standard.

It is estimated that a registered nurse certified to train nurse aides will cost between \$45 and \$100 per hour. Costs for each course will increase between \$2,025 and \$4,500 for the 45 additional hours of training required by the proposed rule. All programs currently not meeting the 120 hours standard will experience these increased costs. (It should be noted that nursing homes receive up to \$225 from the Medicaid program for each student trained by the facility.) Thirteen of the 54 programs that will need to increase the number of training hours already provide between 100 and 119 hours of trainings. Increased costs for these programs will range between \$900 and \$2,000 for each course.

The increased cost to provide training may be passed on to students by the training entity in the form of higher tuition. The increased costs to a student enrolled in a program with an average of 100 students ranges from \$9 to \$45 per student ($\$900 \div 100 \text{ students} = \9 ; $\$4,500 \div 100 \text{ students} = \45). Students who become employed by a nursing home within 12 month of completing nurse aide training are eligible for tuition reimbursement up to \$225 indirectly from the Medicaid program.

Based on available data it appears 8 of the 10 nurse aide training programs categorized as Other meet the definition of a small business and will be affected by this rule change. (As noted above, 2 training programs meeting the definition of a small business already provide 120 or more training hours.) This represents 9% of all nurse aide training programs in Wisconsin. It is anticipated that increased costs will be passed on to students in the form of higher tuition, with no significant impact on the affected

entities. New training programs will be able to build the 120 hour training requirement into the business plan.

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Place where comments are to be submitted and deadline for submission:
Comments may be submitted to the agency contact person that is listed above until the deadline given in the upcoming notice of public hearing. The deadline for submitting comments and the notice of public hearing will be posted on the Wisconsin Administrative Rules Website at <http://adminrules.wisconsin.gov> after the hearing is scheduled.

CHAPTER HFS 129
CERTIFICATION OF PROGRAMS FOR TRAINING AND TESTING NURSE AIDES
AND FEEDING ASSISTANTS

- HFS 129.01 Authority and purpose.
- HFS 129.02 Applicability
- HFS 129.03 Definitions.
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- HFS 129.05 Nurse aide training program approval process.
- HFS 129.06 Standards for instructors of nurse aide training programs.
- HFS 129.07 Standards for nurse aide training programs.
- HFS 129.08 Standards for nurse aide competency evaluation programs.
- HFS 129.09 Nurse aide registry.
- HFS 129.10 Nurse aide program appeals
- HFS 129.11 Feeding assistant program requirements
- HFA 129.12 Feeding assistant training program curriculum
- HFS 129.13 Feeding assistant training program completion
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- HFS 129.15 Feeding assistant training program approval process
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- HFS 129.17 Feeding assistant training program operation
- HFS 129.18 Feeding assistant training program record retention requirements
- HFS 129.19 Feeding assistant program NATCEP prohibition
- HFS 129.20 Feeding assistant program appeals
- HFS 129.21 Skilled nursing facility medication aide training program approval process
- HFS 129.22 Standards for instructors of skilled nursing medication aide training programs
- HFS 129.23 Skilled nursing medication aide student qualifications
- HFS 129.24 Standards for skilled nursing medication aide training programs
- HFS 129.25 Skilled nursing medication aide training program operation
- HFS 129.26 Hospice medication aide training program approval process
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- HFS 129.28 Hospice medication aide student qualifications
- HFS 129.29 Standards for hospice medication aide training programs
- HFS 129.30 Hospice medication aide training program operation

HFS 129.01 Authority and purpose. This chapter is promulgated under the authority of ss. 146.40 (3) and (5) and 227.11 (2) (a), Stats., to provide conditions of approval for training programs and competency evaluation programs for persons who work as nurse aides or feeding assistants in hospitals, nursing homes or facilities for the developmentally disabled, home health agencies or hospices certified under 42 USC 1395 to 1395ccc, and conditions for including persons in the department's registry of nurse aides.

HFS 129.02 Applicability. This chapter applies to any facility, agency or other organization that proposes to maintain a registry of nurse aides, train or administer competency evaluation testing of nurse aides, feeding assistants, or medication aides under a program approved by or under contract with the department under this chapter, and to all persons automatically included or eligible for inclusion and requesting inclusion in the department's registry of nurse aides.

HFS 129.03 Definitions.

(1) "Abuse" has the meaning specified in s. HFS 13.03 (1)

(2) "Basic nursing course" means a course or combination of courses that contain the basic nursing skills, competencies and knowledge that the department is satisfied are generally equivalent in content to the skills contained in s. HFS 129.07 (1).

(3) "Body mechanics" means the use of the muscle and skeletal systems during activity and when positioning the body for work tasks, given that the task is within the limits of worker capability when assisting in the movement, positioning and transfer of clients.

(4) "Caregiver misconduct registry" has the meaning specified in s. HFS 13.03 (4).

(5) "Client" means a person receiving care, treatment or diagnostic services from a hospital, nursing home, facility for the developmentally disabled, intermediate care facility for persons with mental retardation, home health agency or hospice.

(6) "Client care ergonomics" means a multifaceted, standardized approach for client mobility tasks, which incorporates the evaluation of client characteristics to assure proper selection and use of equipment by caregivers according to algorithms for client transfer and mobility activities.

(7) "Client related services" means care, treatment or diagnostic services provided to a client.

(8) "Clinical setting" means one of the following:

(a) A practice setting where care and treatment of clients occur.

(b) A healthcare-related setting, which may include a community-based residential facility or assisted living.

(9) "Competency evaluation program" means a testing program for nurse aides that is approved under this chapter and consists of the following components:

(a) A written or oral examination.

(b) A skills demonstration examination.

(10) "Complicated feeding problems" means difficulty in swallowing, recurrent lung aspiration, or tube or parenteral/IV feedings.

(11) "Department" means the Wisconsin Department of Health and Family Services.

(12) "Developmental tasks" means those functions normally associated with the aging process, including acceptance of and adjustment to psychosocial and physiological processes, transition throughout adulthood, retirement development, and life review.

(13) "Direct supervision" means that the RN or LPN be immediately available on the same unit, floor or wing as the nurse aide while the nurse aide is performing client related services.

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

(15) "Facility for the developmentally disabled" means a place or a distinct part of a place where five or more unrelated persons reside and who, because of their developmental disabilities, require access to 24-hour nursing care or treatment for developmental disabilities as defined under rules promulgated by the department for facilities for the developmentally disabled. "Facility for the developmentally disabled" does not include any of the following:

(a) A convent or facility owned or operated exclusively by and for members of a religious order that provides reception and care or treatment of an individual.

(b) A hospice that directly provides inpatient care.

(c) An assisted living facility, as defined in s. 50.034, Stats.

(d) A nursing home.

(16) "Feeding assistant" means a person at least 16 years old who has completed a State-approved feeding assistant training program and who is paid by a long term care facility, or a person who is used under an arrangement with another agency or organization to assist clients who have no feeding complications with the activities of eating and drinking. "Feeding assistant" does not mean an individual who is a licensed health professional or registered dietician; volunteers without money compensation; or a nurse aide.

(17) "General supervision" means at least intermittent face-to-face contact between supervisor and nurse aide, but does not require the continuous presence of the supervisor in the same area during client related services.

(18) "Handicapping condition" means a physical or mental impairment that makes ability to care for oneself unusually difficult or limits one's capacity to work.

(19) "Health care provider" means any of the following:

(a) A nursing home.

(b) A facility for the developmentally disabled.

(c) An intermediate care facility for the mentally retarded.

(d) A hospital.

(e) A home health agency.

(f) A hospice.

(g) A rural medical center that provides one or more of the services listed in pars. (a) to (f).

(20) "Home health agency" has the meaning prescribed in s. 50.49(1), Stats.

(21) "Hospice" means an organization, program or place as defined in s. 50.90(1), Stats., and is certified as a provider of services under 42 USC 1395 to 1395ccc.

(22) "Hospital" has the meaning prescribed in s. 50.32 (2), Stats.

(23) "Licensed health care professional" means a physician, physician's assistant, nurse practitioner, physical, speech or occupational therapist, an occupational therapy assistant, a registered nurse, a licensed practical nurse or any other health or health service professional subject to the jurisdiction of the Wisconsin department of regulation and licensing.

(24) "Licensed practical nurse" means an individual who is licensed under s. 441.10(3)(a) to (d), Stats., or who has a temporary permit under s. 441.10(3)(e), Stats.

(25) "Mechanical support" means any article, device or garment that is used only to achieve the proper position or balance of the client.

(26) "Medication aide" means a nurse aide who is able to administer medications in a nursing home or hospice after passing a state-approved medication course.

(27) "Misconduct" means abuse or neglect of a client or misappropriation of a client's property as specified in s. HFS 13.03 (1), (12) and (14).

(28) "Misappropriation" has the meaning specified in s. HFS 13.03 (12).

(29) "Neglect" has the meaning specified in s. HFS 13.03 (14).

(30) "Nurse aide" means a person, regardless of title, who provides routine client-related services under the supervision of a registered nurse (RN) or licensed practical nurse (LPN). The term "nurse aide" also includes aides who work for a hospital, home health agency or hospice. "Nurse aide" includes any of the following:

(a) Any individual on the nurse aide registry.

(b) Any individual providing nursing or nursing-related services to clients, regardless of the title under which an individual is employed, except individuals in sub. (32).

(c) Any individual who has successfully completed a training program under s. HFS 129.07 and a competency evaluation program under s. HFS 129.08.

(d) Any individual currently employed providing nursing or nursing related services, or employed within the last 2 calendar years as a nurse aide by a health care provider.

(e) Any individual eligible to be included on the registry under s. 146.40, Stats.

(f) Any student nurse on assignment for greater than 120 days.

“Nurse aide” does not mean an individual who is licensed, receives a permit, is certified or is registered under ch. 441, 448, 449, 450, 451, 455 or 459, Stats.

“Nurse aide” does not mean an individual whose duties primarily involve skills that are different from those taught in training and competency evaluation programs approved under s. HFS 129.07 and s. HFS 129.08. A volunteer is not a “nurse aide”.

(31) “Nursing home” has the meaning specified in s. 50.01 (3), Stats.

(32) “Nurse technician” means a nursing student who either is currently enrolled in a nursing program leading to registered nurse or practical nurse licensure, has graduated from such program and does not hold a temporary permit or who has been unsuccessful on the nursing licensure exam and is retaking the exam.

(33) “Onsite review” means an evaluation of a training program conducted at the physical location of the training program to verify the program is in compliance with the terms of the approval issued.

(34) “Plan of correction” means the training program’s plan to correct all areas identified as deficient during an onsite review.

(35) “Preliminary approval” means the initial 3 month approval issued by the department following the completed review and verification of all aspects of the application.

(36) “Primary instructor” means a registered nurse licensed to practice in Wisconsin who has a minimum of two years of nursing experience working as a registered nurse, at least 1 year of which must be in the provision of long-term care facility services, and who has completed a course in adult education or supervising nurse aides.

(37) “PRN medications” means medications administered as necessary based on the resident’s or patient’s condition.

(38) “Program” means the facility, agency or other entity or individual who operates an approved training program.

(39) “Program trainer” means an individual from a health related field who provides specialized training about that field to nurse aides under the general supervision of the primary instructor. Program trainers must have a minimum of 1 year of experience in the area in which they will provide training.

(40) “Qualified clinical setting” means a clinical setting unencumbered by restrictions imposed under 42 CFR 483.151.

(41) “Qualified medication consultant” means one of the following:

(a) A pharmacist licensed in Wisconsin.

(b) An Advanced Practice Nurse Prescriber for Adults.

(c) A masters-prepared Registered Nurse, currently teaching medication administration to R.N. or L.P.N. students.

(42) "Registered nurse" means an individual who is licensed as a registered nurse under s. 441.06, Stats., or who has a temporary permit under s. 441.08, Stats, to practice as a registered nurse.

(43) "Registry" means the department's record of all persons who are eligible to be employed by a facility for the developmentally disabled, a home health agency, a hospice, a hospital or a nursing home and who have either:

(a) Successfully completed a training and competency evaluation program.

(b) Met the eligibility requirements under s. HFS 129.09(6) to be included in the registry.

(44) "Restorative services" means the therapeutic practice, education and training to restore, promote, and maintain the client's fullest possible level of functioning.

(45) "Restraint" means any garment, device, or medication used primarily to modify client behavior by interfering with the free movement of the client or normal functioning of a portion of the body, and which the client is unable to remove easily, or confinement in a locked room, but does not include mechanical support.

(46) "Revocation" means withdrawal of a nurse aide training program's or competency evaluation program's approval for failing to comply with applicable state requirements specified in s.146.40, Stats. The department, after notice to a nurse aide training program or competency evaluation program, may suspend or revoke that program's approval in any case in which the department finds that the program has failed to comply with the applicable requirements of this subchapter, and the rules promulgated under this subchapter and any variances or waivers issued to the program.

(47) "Rural medical center" has the meaning specified in s. 50.50 (11), Stats.

(48) "Statement of deficiencies" means the official document on which citations are recorded.

(49) "Student nurse" means an individual who is currently enrolled in a school for professional nurses or a school for licensed practical nurses that meets standards established under s. 441.01 (4), Stats., and ch. N 1, or who has successfully completed the course work of a basic nursing course in any school that is board-approved under s. 441.04, Stats., but has not successfully completed the examination under s. 441.05 or 441.10 (2), Stats.

(50) "Substantial change" means any change to the facility, agency, organization or person that administers the training; program designee; program site; the curriculum(s); the classroom(s); the clinical site(s); primary instructor(s); and program trainer(s).

(51) "Suspension" means a temporary withdrawal of the department's approval for a facility, agency or other organization to provide a training or competency evaluation program if the entity providing the program is not in compliance with approval issued by the department.

(52) "Training program" means a program approved under this chapter to train nurse aides, feeding assistants or medication aides.

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

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

(55) "Waiver of prohibition" means a program is authorized to be taught in but not by the entity's staff that has had its approval denied or withdrawn pursuant to Public law 105.

History: Cr. Register, June, 1991, No. 426, eff. 7-1-91; emerg. am. (3), (5), (13) and (17), cr. (11m) and (11r), eff. 10-1-91; am. (3), (5), (13) and (17), cr. (11m) and (11r), Register, June, 1992, No. 438, eff. 7-1-92; r. and recr. (1), Register, December, 1992, No. 444, eff. 1-1-93.

HFS 129.04 Waivers and variances. (1) REQUIREMENTS FOR WAIVERS OR VARIANCES.

The department may grant a request for a waiver of or variance from a requirement of this chapter if the department finds that:

(a) The waiver or variance will not adversely affect the health, safety or welfare of any client; and that either:

(b) The requirement that the health care provider or program seeks relief from would result in unreasonable hardship or is infeasible as applied to the training program or competency evaluation program; or

(c) If the request is for a variance, the proposed alternative to a rule, including new concepts, methods, procedures, practice, techniques, equipment, personnel qualifications, pilot project or other alternative is in the interest of client care and management or more effective training or testing programs or management.

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

a. The rule from which the waiver or variance is requested.

b. The time period for which the waiver or variance is requested.

c. The reason or reasons for which the waiver or variance is requested. The health care provider or program shall provide an explanation of why the requirement from which the program seeks relief results in unreasonable hardship or is infeasible as applied to the program of the provider.

d. If the request is for a variance, the proposed alternative to the rule, including new concepts, methods, procedures, practice, techniques, equipment, personnel qualifications, pilot project or other alternative that the program proposes and a description of how the proposed alternative serves the interests of training and competency evaluation in a manner as protective as the requirement from which the variance is sought; and

e. Assurances that sub. (1) would be satisfied.

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

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

Note: A request for a waiver or variance should be addressed to the Division of Quality Assurance, P.O. Box 2969, Madison, WI 53701-2969.

(b) *Grants and denials.* 1. The department shall grant or deny in writing each request for a waiver or variance. The notice of denial shall contain reasons for the denial.

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

3. The department may impose additional conditions on a waiver or variance it considers necessary to protect the health, safety or welfare of clients.

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

(c) *Revocation.* The department may revoke a waiver or variance, with written notice to the program, subject to the hearing requirements in sub (d), for any of the following reasons:

1. The department determines the waiver or variance is adversely affecting the effectiveness of the healthcare provider or program.

2. The healthcare provider or program failed to comply with the waiver or variance as granted or with a condition of the waiver or variance.

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

4. Revocation is required by a change in law.

(d) *Hearings.* A healthcare provider or program may contest the denial of a requested waiver or variance by requesting a hearing under ch. 227, Stats. and s. HFS 129.10.

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

HFS 129.05 Nurse aide training program approval process. (1) APPLICATION. (a) A program shall apply for approval on a form provided by the department.

Note: To obtain a copy of the application form, write to the Division of Quality Assurance, P.O. Box 2969, Madison, Wisconsin 53701-2969.

(b) The program shall provide any additional information requested by the department during the department's review of the application.

(c) The program shall designate an individual who is responsible for the operation and compliance of the program with all applicable provisions of this chapter. The program shall note the designee on the application for approval.

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

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

- a. Program content, length and ratio of classroom instruction to skills training.
- b. Qualifications of instructors.
- c. Clinical setting and type of clinical supervision.
- d. Provision for written evaluation of the program.
- e. Reasonable accommodations for prospective students with handicapping conditions.
- f. Criteria for successful completion.
- g. Appropriate furnishing of physical facilities to meet classroom instruction and skills training needs.

2. Within 90 days after receiving a training program application, the department shall either issue a preliminary approval or deny the application. Preliminary approval may be granted for a period of 3 months. If the application is denied, the department shall give the program reasons, in writing, for the denial and describe the process to appeal the denial.

3. If an application for training program is denied, the program may not resubmit an application for approval to train nurse aides for one year from the date of the denial of the application.

(b) *Pre-approval review and monitoring.* 1. The department shall conduct a pre-approval onsite review prior to issuing a preliminary approval to verify that the classroom and equipment are adequate for the training program.

2. Following the 3 month preliminary approval period, the department shall conduct an onsite review to verify compliance with the requirements of this chapter. The department will either issue a formal approval or revoke the preliminary approval.

3. If preliminary approval for a training program is denied or revoked, the program may not resubmit a request for approval to train nurse aides for one year from the date the preliminary approval for the training program was denied or revoked.

(c) *Post-approval review and monitoring.* 1. The department shall conduct a post-approval review of a program every two years after the date on which the department formally approves the

program. The department may conduct an announced or an unannounced on-site review of the program at any time to verify the program remains in compliance with this chapter.

2. The program designee shall submit an annual report to the department on a form provided by the department and shall provide any additional information requested by the department during the department's review of the program. The program designee shall provide reasonable means for the department to examine records and gather requested information.

3. The program designee shall submit for approval any substantial change in the program to the department in writing. A program may not implement the proposed change in the program without the department's written approval. In this subdivision, "substantial change" means any change in the program designee under s. HFS 129.05 (1) (c), primary instructor under s. HFS 129.06 (1) , training course for primary instructors under s. HFS 129.06 (3), curriculum under s. HFS 129.07, or program site under s. HFS 129.07 (2) (a) or s. 129.07 (2) (c).

4. An approved training program may be granted temporary inactive status for up to two years if no training was conducted in the previous 2-year time period. After a 3-year time period of inactivity, the training program will be required to submit a new application in its entirety in order to begin classes again.

5. If at any time the department determines that a program has failed to comply with a requirement of this chapter, the department may, after providing written notice, impose a plan of correction on the program, or suspend or revoke approval of the program.

(d) *Enforcement.* 1. The department may deny or withdraw approval of a new or existing program if any of the following is true:

- a. The program can not provide satisfactory evidence that the program meets the standards for program approval.
- b. No classes were taught for 24 consecutive months.
- c. The program fails to permit a site visit of the training program.

2. The department may withdraw program approval immediately or prescribe the time within which the deficiencies identified during an onsite review must be corrected. All notices of deficiency must be given in writing to the program contact, identified in HFS 129.05 (1) (c). The program contact may submit a plan of correction to the department. If the program fails to correct the deficiency within the specified time, the approval may be withdrawn.

3. When program approval is withdrawn, the program shall:

- a. Submit a plan to the department within ten (10) business days for the completion of the currently enrolled students with another program currently in good standing with the department.
- b. Allow students who have started that program to complete the course with another program currently in good standing with the department
- c. Provide for custody of the records for the required three year time period.

4. The department shall deny approval to a nurse aide training program and shall withdraw approval from a previously approved nurse aide training program offered by or in a licensed nursing facility, which in the previous two years:

a. Has been subject to an extended or partial extended survey as a result of a finding of substandard quality or care; or

b. Has been subject to a federal denial of payment, the appointment of a temporary manager or termination of its provider agreement, or

c. Has been assessed a total civil money penalty of \$5,000 or more; or

d. Has operated under Section 1819(b) (4) C (ii) (II) or Section 1919(b) (4) (ii) waiver (i.e., waiver of a full time registered professional nurse); or

e. Has been closed or its residents have been transferred to other facilities

5. If the approval is withdrawn, the program may request a hearing as outlined in s. HFS 129.10.

6. If approval of the program is withdrawn, the program may not reapply for program approval for one year from the date of the withdrawal of the program approval.

(e) *Nurse Aide Training and Competency Evaluation Program (NATCEP) waiver of prohibition.* 1 Amendments to Section 1819(f) (2) and Section 1919(f) (2) of the Social Security Act permit the department to waive the 2-year prohibition. The department may authorize a waiver of the 2-year prohibition for NATCEP programs offered in but not by a facility under the following circumstances:

a. No other such program is offered within a reasonable distance of the facility. A reasonable distance is construed to mean:

(1). There is no approved program within 45 miles or 60 minutes one-way from the facility requesting a waiver.

(2). The only approved program within 45 miles or 60 minutes one-way from the facility is out of state and would require the individual to first qualify on another state's registry and then apply to Wisconsin as an out-of-state transfer applicant.

(3). There is documented lack of qualified instructors to provide the program at other sites within the 45 miles or 60 minutes one-way radius.

b. An adequate environment must exist in the facility for operating the program. An adequate environment is construed to mean:

(1) The citations leading to the prohibition were non-resident and non-nursing care related.

(2) If the citations leading to the prohibition were resident or nursing care related:

(a) The citations were corrected at revisit and there were no cites at or since the previous standard survey that were resident or nursing care related; or

(b) The program termination resulted from a new cite at a standard survey revisit and the facility had no other cites at or since the previous standard survey that were resident or nursing care related; or

(c) The facility had an immediate jeopardy situation in a resident or nursing care related area that was corrected at the time of survey and had no other cites at or since the previous standard survey that were resident/nursing care related; or

(d) The facility had a history of resident or nursing care related cites, but has demonstrated efforts beyond normal means to attain and maintain substantial compliance. History is construed to mean since the most recent training program approval.

c. The facility's physical environment is adequate in that the physical or structural requirements are in substantial compliance or there is a waiver request pending.

2 The program provided in the facility must be by another entity unrelated to the facility that has agreed to provide the training. Competency testing must also be done by an entity unrelated to the facility or the training program.

3 The facility requesting the waiver must notify the State long term care ombudsman of the request for waiver. The ombudsman may comment to the Office Director identifying any concerns about whether the facility should serve as a training site.

History: Cr. Register, June, 1991, No. 426, eff. 7-1-91; emerg. am. (1) (a), eff. 10-1-91; am. (1) (a) and (2) (c) 4., Register, June, 1992, No. 438, eff. 7-1-92; am. (1) (a), Register, December, 1992, No. 444, eff. 1-1-93.

HFS 129.06 Standards for instructors of nurse aide training programs. (1) PRIMARY INSTRUCTOR. (a) The primary instructor for a training program shall be a registered nurse licensed to practice in Wisconsin, and who has a minimum of 2 years of experience working as a registered nurse of which at least 1 year of an instructor's experience must be actual work experience in providing care in a skilled nursing facility that meets the requirements of 1919(a), (b), (c) & (d) of the Social Security Act.

(b) Notwithstanding sub (a), the primary instructor for a training program in a hospital-based program, shall have at least one of the 2 years experience working as a registered nurse in a hospital.

(c) Notwithstanding sub (a), for a primary instructor in a training program in a home health agency-based program, shall have at least one of the 2 years experience working as a registered nurse in the provision of home health care.

(d) A primary instructor shall provide to the program a resume documenting the instructor's education and clinical experience in meeting clients' psychosocial, behavioral, cognitive and physical needs, and the program shall maintain the instructor's resume on file and shall include a copy of the instructor's resume with the program's application.

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

(f) A primary instructor is considered "active" as long as the instructor remains affiliated with an approved course. Should the primary instructor leave the program and not become affiliated with another program the instructor's approval as a primary instructor is inactivated.

(g). The department may revoke approval of a primary instructor when the department determines the conduct of the primary instructor is detrimental to the educational interests of the students.

(2) PROGRAM TRAINER. (a) Only professionals from the health care and public health fields may serve as program trainers to meet specialized training needs. These professionals may include licensed registered nurses, licensed practical nurses, pharmacists, dietitians, social workers, registered sanitarians, fire safety experts, health care administrators, gerontologists, psychologists, physical and occupational therapists, activity therapists, speech and language pathologists, audiologists, and high school instructors who are approved by the administration in their respective districts to teach health occupation courses.

(b) A program trainer shall have a minimum of one year of work experience in the area the program trainer will provide training.

(c) A program trainer shall work under the general supervision of the primary instructor.

(3) TRAINING COURSE FOR PRIMARY INSTRUCTORS. Application for approval of a training course for primary instructors shall be made on a form provided by the department. The department shall review an application for approval of a training course for primary instructors and shall either approve or deny the application within 90 days after receiving the application. The application shall include all of the following:

(a) The instructor shall be a registered nurse licensed to practice in this state and have a minimum of 2 years of experience as an instructor of nursing practice or nurse aides.

(b) The course shall be a minimum of 16 hours in length.

(c) The training plan shall include the following areas:

1. The principles of adult learning and training techniques.
2. Formulating training objectives, including behavior objectives which state measurable performance criteria to provide a basis for competency evaluation.
3. Designing the curriculum to provide a logical organization of the material to be covered.
4. Developing lesson plans.
5. Choosing appropriate teaching strategies and methodologies.

6. Developing learning materials.

7. Applying methods for evaluating trainee learning.

8. Effectively supervising trainees' clinical practice.

9. Defining criteria for successful achievement of training program objectives, including development of oral and written examinations and development of methods for demonstrating skills based on behaviorally stated course objectives; and

10. Developing a recordkeeping system.

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

HFS 129.07 Standards for nurse aide training programs. (1) CURRICULUM. (a) *Minimum requirements.* A training program shall include theory and practice in at least the 6 care areas specified in sub. (b) to (g) and each of their components included in this subsection.

(b) *Interpersonal communication and social interaction.* The program shall include the theory of and practice in communicating and interacting on a one-to-one basis with a client, serving as part of a team implementing client care objectives, demonstrating sensitivity to a client's emotional, social and psychological needs through directed interactions, and skills that enable expressions of age-appropriate behavior by allowing a client to make personal choices and by reinforcing behavior that supports a client's sense of dignity. A nurse aide shall be able to do all of the following:

1. Identify the components of a caregiver-client relationship and be able to recognize and demonstrate understanding of:

a. The uniqueness of each client, in terms of that person's age, color, disability, family status, financial status, gender, marital status, race, and sexual orientation, and cultural, generational, social, ethnic, religious or other background, values or characteristics.

b. The needs of a client with Alzheimer's disease, dementia, mental illness, mental retardation or other cognitive disabilities or impairments.

c. Ways both workers and clients can cope with stress.

d. What constitutes misconduct.

e. The messages conveyed by body language, speech and facial expressions.

2. Demonstrate an ability to establish effective relationships with clients and be able to:

a. Communicate with them with respect and dignity.

b. Explain procedures and activities to clients before carrying out procedures or beginning activities.

c. Demonstrate concern for clients who have long-term or disabling illnesses or are dying.

d. Identify developmental tasks associated with the aging process.

3. Demonstrate an ability to use appropriate verbal and nonverbal communication skills with clients and be able to:

a. Recognize effective listening techniques.

b. Distinguish assertive from aggressive responses.

c. Identify the difference between non-acceptable and acceptable touching during job performance.

d. Identify therapeutic interventions and specialized techniques for responding to client's wandering and confusion.

4. Recognize common barriers to communication, including language, vision changes, hearing loss, speech problems, memory loss, disorientation and pain.

5. Demonstrate an ability to promote the independence of clients within the limitations of their physical, mental and intellectual impairments by fostering self-help skills through appropriate responses to clients' attempts to provide self care, including recognizing clients' level of ability in self care activities.

6. Identify the role of the family and other persons of importance to the client in the client's care and as resources for client emotional support.

(c) *Basic nursing skills.* The program shall include the theory of and practice in basic nursing skills, including bed making, taking vital signs, measuring height and weight, caring for the client's environment, measuring fluid and nutrient intake and output, assisting in the provision of proper nutritional care, walking or transferring the client using body mechanics and appropriately selected equipment with regard to principles of client care ergonomics, and maintaining infection control and safety standards. A nurse aide shall:

1. Demonstrate acceptable personal hygiene.

2. Recognize the components of working relationships.

3. Identify how and when to seek guidance, using the supervisory channels of communication within the facility or agency.

4. Use proper body mechanics.

5. Demonstrate an understanding of the meaning of common medical terms and abbreviations.

6. Observe and report changes in client behavior and physical status, including signs and symptoms of common diseases and conditions.

7. Recognize when a client may be choking and respond appropriately.
8. Recognize the normal physical and psychological changes associated with aging.
9. Identify the basic principles of nutrition and hydration.
10. Recognize and report deviations from a client's normal food and fluid intake and output.
11. Recognize the basic requirements of commonly prescribed therapeutic diets.
12. Use common measures to promote a client's skin integrity, considering the client's ethnicity, race and age.
13. Demonstrate appropriate techniques in walking, transferring, positioning and transporting clients.
14. Recognize and respond appropriately to unsafe environmental conditions, including damp floors, frayed electrical cords and loose hand rails.
15. Recognize and respond appropriately to emergency situations including following emergency evacuation procedures.
16. Demonstrate appropriate hand washing techniques.
17. Understand and use commonly used alternatives to restraints in accordance with current professional standards.
18. Maintain the safety and cleanliness of client care areas.
19. Make use of proper isolation technique.
20. Perform commonly accepted infection control practices, including proper gloving technique and proper disposal of blood and body fluids and secretions.
21. Make occupied and unoccupied beds.
22. Measure temperature, pulse and respiration.
23. Measure a client's weight and height.
24. Record objective information.
25. Apply nonprescription ointments to unbroken skin areas.
26. Recognize the general effects of prescribed routine medications.
27. Recognize therapeutic interventions and specialized non-pharmacological pain control interventions.

28. Assist with care of clients when death is imminent.
29. Assist with post-mortem care.
30. Maintain the safety and cleanliness of areas where food is stored.

(d) *Personal care skills.* The program shall include the theory of and practice in basic personal care skills, including bathing, mouth care, grooming, dressing, toileting, and assistance with eating, hydration and skin care. A nurse aide shall demonstrate the ability to do all of the following:

1. Give a complete or partial bed bath and assist clients in taking baths and showers.
2. Provide care of the client's perineal area.
3. Apply appropriate oral hygiene practices when assisting a client with oral hygiene, including caring for the client's dentures.
4. Care for a client's nails, hair and skin.
5. Shave and shampoo a client, including applying nonprescription medicated shampoos.
6. Dress and undress a client.
7. Prepare a client for meals.
8. Assist in feeding a client, including helping a client use adaptive devices and feeding utensils and encouraging a client to eat nutritionally balanced meals.
9. Assist a client with bowel and bladder elimination.

(e) *Basic restorative services.* The program shall include the theory of and practice in providing restorative services. Basic restorative services include the application of assistive devices for ambulation, eating and dressing, maintenance of range of motion through appropriate exercises, proper turning and positioning both in bed and chair, proper transferring techniques, bowel and bladder training, and care and use of prosthetic devices such as hearing aids, artificial eyes and artificial limbs. A nurse aide shall demonstrate the ability to do all of the following:

1. Recognize the importance of bowel and bladder programs.
2. Recognize the method for maintaining and improving musculoskeletal functioning by promoting joint mobility, body alignment and movement, including being able to:
 - a. Position clients by use of pillows, towel rolls, padding and footboards.
 - b. Perform simple range of motion exercises.
 - c. Assist clients in the use of crutches, walkers, wheelchairs, canes, prostheses and appliances.

3. Transfer clients safely and according to principles of patient care ergonomics and with proficiency in use of available equipment (mechanical lifts, friction reducing devices; wheelchairs, gait belts, etc).

4. Reinforce breathing exercises, including coughing and deep breathing.

5. Help clients use hearing aids and visual aids.

(f) *Rights of clients.* 1. The program shall cover principles and requirements relating to clients' rights. The nurse aide shall demonstrate an understanding of the following obligations:

a. To provide privacy for clients in treatment, living arrangements and caring for personal needs.

b. To maintain the confidentiality of client health and personal records.

c. To allow clients to make personal choices to accommodate the clients' needs.

d. To provide help needed by clients in getting to and participating in activities, including client and family group meetings.

e. To maintain the personal possessions of clients in good and secure condition.

f. To interact with clients without abusing or neglecting them.

g. To interact with clients without misappropriating their property.

h. To immediately report every instance of misconduct as defined in s. HFS 13.03 (1), s. HFS 13.03 (12), and s. HFS 13.03 (14) to appropriate facility or agency staff.

2. The nurse aide shall demonstrate behavior that recognizes that clients have rights and that the aide respects those rights. The nurse aide shall:

a. Demonstrate respect and concern for each client's rights, preferences and awareness of age, color, disability, family status, financial status, gender, marital status, race, sexual orientation, and ethnic, cultural, social, generational and religious differences.

b. Show respect for cultural, ethnic and religious food preferences.

c. Recognize what constitutes abuse of clients and demonstrate an understanding of how to interact with clients without abusing them or without appearing to abuse them.

d. Demonstrate prevention and intervention skills with combative clients that balance appropriate client care with a need to minimize the potential for injury to the aide and others.

e. Recognize the role of state and federal regulatory agencies in licensing or otherwise approving providers and in investigating complaints of abuse of client property.

f. Demonstrate an understanding of the process by which a client or staff member may file a complaint on behalf of a client and seek redress for a perceived violation of client rights.

g. Recognize the role of client advocacy groups as client resources.

h. Demonstrate awareness of how to file a complaint with the department regarding operations within the provider setting.

(g) *Dementias*. The program shall include instruction about dementia and specific techniques for meeting the basic needs of clients with dementia. The nurse aide shall demonstrate an understanding of the following:

1. The nature of dementia, including the cause, course and symptoms of the impairment. The effects that brain changes have on the person's moods, abilities and functioning.

2. The effects on the client of staff verbal and nonverbal communication with the client and means of modifying these communications and approaches to facilitate effective interaction between clients and staff.

3. The feeding and fluid intake problems associated with dementia and the specialized techniques for addressing those problems.

4. The effect of the environment on clients with dementia and the appropriate environmental stimuli to use with those clients to reduce stress and maximize normal functioning and how to incorporate strategies that preserve function and prevent excess disability.

5. Possible causes of dementia related symptomatic behavior changes, specifically focusing on understanding behavior as an attempt to communicate unmet needs and then how to address the unmet need including an understanding of how pain impacts behavior.

6. Ways to help the person with dementia continue meaningful involvement in his or her day, the importance of structure and routine and the incorporation of the person's life story and past interests, routines, tastes, values and background.

7. The stress involved for the client, family and nurse aide in caring for a client with dementia and techniques for coping with this stress and ways to address the person with dementia's core needs of having self-esteem boosted, being useful, giving and receiving love, and caring for self and others.

(2) PROGRAM OPERATION. (a) *Class Setting*. 1. Access to classroom facilities that are adequate to meet the needs of the program. Both a classroom and lab will be evaluated for adequacy based on the number of students enrolled and how the space is used. Programs must ensure that classroom and skills labs have adequate temperature controls, clean and safe conditions, adequate space to accommodate students, adequate lighting, and all equipment needed, including audiovisual equipment and any equipment needed for simulating resident care. Lab equipment must be in the skill lab at all times for demonstration, practice, and student demonstration. Any area designated as a classroom or lab in a facility-based program must be an area that is not designated for resident care.

2. There must be qualified faculty members for both the classroom and the skills portion of the program.

3. Reasonable accommodations must be made for students and prospective students with handicapping conditions.

(b) *Program length.* 1. A training program must be a minimum of 120 hours in length. This requirement includes a minimum of thirty two (32) hours of clinical experience in an approved clinical setting. The initial sixteen (16) hours of training must be provided in a classroom setting prior to a student's direct contact with residents. Tours of a facility including observations of residents and day-to-day facility activities may be incorporated into the classroom hours; however, competency evaluation and provider orientation shall not be counted toward meeting the 120-hour minimum requirement.

2. The five areas that must be covered in this initial sixteen hours of classroom training are:

- a. Communication and interpersonal skills.
- b. Infection control.
- c. Safety and emergency procedures.
- d. Promoting resident's independence.
- e. Respecting residents' rights.

3. Students may be employed as a nurse aide after sixteen (16) hours of classroom training if the above topics have been covered in class pursuant to the requirements of this rule and the student is a full-time permanent employee, and is currently enrolled in an approved training program. The program must provide the employer with verification that the program has provided the above instruction.

4. The program shall provide notification to students sponsored by Medicaid-certified nursing facilities that the students are not responsible for any costs associated with training, including deposits for textbooks or supplies used.

(c) *Clinical setting.* Before students perform any services, they must be trained and found proficient in providing those services by the RN primary instructor. The training program shall have all of the following:

1. Access to a qualified clinical setting that is adequate to meet the needs of the program.

a. Clinical sites must be in compliance with state and federal law. The program designee or primary instructor and the nursing facility with which the program has contracted are responsible for verifying that the clinical facility is in compliance with state and federal law. This verification must be documented in the program's files and must be available during the evaluation process.

b. The agreement between the program and the clinical site must be reviewed and renewed annually and upon any change of facility or school administration. A copy of this must be submitted to the department.

c. During classroom and lab instructions, students should be oriented to the various forms used to document resident information. Instructors must supervise documentation on the appropriate flow sheets and forms during the clinical rotation.

d. Before a student begins a clinical rotation, the primary instructor must evaluate and document that the student successfully demonstrated the ability to perform a skill.

e. Students may not give hands-on care to residents that are not assigned to them unless under the direct supervision of the primary instructor.

f. Students under the general supervision of the primary instructor may be paired with facility nurse aides during their clinical rotation.

g. Students must maintain safe practices, infection control and respect resident rights at all times.

h. Students must demonstrate knowledge regarding the assigned residents' diagnoses and identified needs.

i. Students and instructors must wear clothing that is in compliance with program policy and that is appropriate for performing resident care. The uniform must include a nametag that designates the name of the nurse aide training program and the individual's status (i.e., student or instructor).

j. The scheduled clinical hours must provide experiences that meet expected outcomes outlined in the program curriculum.

k. The length of the clinical day will not exceed eight (8) hours.

l. A health care facility may serve as the site of clinical instruction for up to 2 nurse aide training programs at a time.

m. The program shall not be used as a substitute for staff orientation or staff education programs.

2. There must be an adequate number of primary instructors in the clinical setting to provide safe and effective supervision and assistance.

a. Primary instructors must not be involved in another role while supervising students in the clinical area.

b. The ratio of instructors to trainees in skills training must be adequate to ensure that each trainee receives safe and effective assistance and supervision. A ratio of 6 to 8 students per instructor is considered to be adequate in most circumstances.

c. The primary instructor must evaluate and document that a student demonstrated successfully the ability to perform a skill before the student begins a clinical rotation.

d. The primary instructor makes all student clinical assignments with the approval of the facility staff. The instructor must complete a review of the residents' charts to retrieve pertinent information needed by the students to provide the required cares. Care plan information is to be reviewed at the beginning of each clinical experience and should include new orders or changes in resident status.

e. Student assignments must be shared with the assigned clinical unit in advance of the arrival of the students.

f. Students should be given individual assignments. More than two students should not be assigned to the same resident at the same time.

g. Clinical assignments should include:

(1) Care of residents with varied levels of care needs.

(2) The opportunity to be evaluated on organizational skills and time management.

h. The RN primary instructor is responsible for supervising the clinical performance of all LPN program trainers.

(d) *Facility-Based Program.* Training of nurse aides may be performed under the general supervision of the director of nursing (DON) for a facility; however, the DON is prohibited from acting as the primary instructor or as a program trainer. Instructors must not be involved in more than one role while supervising students in the clinical area.

(e) *Expectations and records.* 1. The training program shall maintain a list of the skills and a summary of the knowledge that a trainee will complete by the end of the training program.

2. The primary instructor shall initial and date each individual skill verifying that the student has satisfactorily performed that skill. Upon satisfactory completion of all required skills and competencies and attainment of the necessary knowledge, as well as achievement of the stated course completion criteria, the trainee qualifies to enter a competency evaluation program.

3. The primary instructor shall provide a copy of the trainee's performance record to the trainee.

(f) *Record retention.* The training program shall retain all records required by this section for a period of at least 3 years after the training program is completed.

History: Cr. Register, June, 1991, No. 426, eff. 7-1-91; emerg. am. (2) (b) (intro.), (c) (intro.), (d) (intro.), (e) (intro.), (f) 2. intro., 3. intro. and (g) 7., eff. 10-1-91; am. (2) (b) (intro.), (c) (intro.), (d) (intro.), (e) (intro.), (f) 2. intro., 3. intro. and (g) 7., Register, June, 1992, No. 438, eff. 7-1-92.

HFS 129.08 Standards for nurse aide competency evaluation programs. (1) **EXAMINER QUALIFICATIONS.** The examiner conducting the clinical competency evaluation of a trainee shall be an RN with a minimum of 1 year experience caring for the elderly or chronically ill of any age.

(2) **WRITTEN OR ORAL EVALUATION COMPONENT.** (a) All instructions for the written or oral evaluation component will be given by the RN examiner. Once the written or oral evaluation has begun, the RN may designate another person to proctor this portion.

(b) The competency evaluation program shall develop a pool of test questions that address all 6 content areas and their components under s. HFS 129.07 (1). The pool of test questions shall include at least enough questions to form 3 separate and complete examinations.

(c) The competency evaluation program shall develop written and oral examinations from the pool of test questions. The content of the written and oral examinations shall reflect the content and emphasis of the training program approved by the department.

(d) The written and oral examinations shall be given in English. If the trainee will be working in a provider setting in which the predominant language is other than English, the program cannot refuse to test in the language that is predominant in that work setting.

(e) The competency evaluation program may develop an oral examination for nurse aides with limited literacy skills. To do so, the program should adapt the written examination for oral testing. The oral examination shall cover the same subject areas included in the original written examination

adapted for oral testing, and shall include a component to determine the aide's ability to read basic, objective, job-related information, such as reading a client's name band or a client's flow sheet.

(f) A minimum of 50 written or oral questions shall be asked in each examination. The questions shall cover at least the 6 care areas under s. HFS 129.07 (1) and shall be selected randomly from the following areas:

1. A minimum of 4 questions in the area of interpersonal communication and social interaction.
 2. A minimum of 7 questions in the area of basic nursing skills. Of these 7 questions, at least one question shall address each of the following areas:
 - a. Observation, reporting and documentation of changes in client status and services furnished.
 - b. Recognizing and reporting change of client condition and status to supervisor.
 - c. Knowledge of emergency procedures.
 - d. Knowledge of infection control procedures.
 - e. Maintenance of a clean, safe and healthy environment.
 3. A minimum of one question in the area of personal care skills.
 4. A minimum of 3 questions in the area of basic restorative services.
 5. A minimum of 5 questions in the area of client rights. Of these 5 questions, at least one question shall address each of the following areas:
 - a. Right to respect.
 - b. Right to privacy and confidentiality.
 - c. Right to maintain personal property.
 6. A minimum of 5 questions in the area of dementias.
- (g) To successfully complete the written or oral portion of the competency evaluation program, the trainee must obtain satisfactory scores as identified in the program application as required under s. HFS 129.05 (2) (a) 1. f. on the required items.

(3) **DEMONSTRATION COMPONENT.** (a) The competency evaluation program shall develop a pool of skill demonstration scenarios. There shall be a sufficient number of skill demonstration scenarios that measure the individual's ability to perform the required job tasks. Skills demonstration scenarios shall be randomly selected from the pool of skills to be demonstrated. The care areas of interpersonal communication and social interaction shall be integrated throughout the skills demonstration scenarios.

(b) The skills demonstration shall consist of a demonstration of a minimum of five randomly selected items drawn from a pool consisting of the tasks generally performed by nurse aides. This pool of skills must include all skills listed in s. HFS 129.07.

(c) The criteria for successful completion of a competency evaluation program shall include the passing scores in all required skills.

(4) REPEATING THE EXAMINATION. To be included on the Nurse Aide Registry, an individual must successfully pass a Wisconsin-approved nurse aide competency evaluation examination within 1 year of completing an approved nurse aide training program. If an individual fails to pass a component of the competency evaluation examination, the individual need only retake the failed component of the competency evaluation examination. The individual may retake the component(s) failed as many times as required within that 1-year time period. A repeat examination shall differ in content from the examination previously taken by the individual.

(5) PROGRAM OPERATION. The competency evaluation program shall maintain the following standards in operating the program:

(a) Reasonable accommodations for students with handicapping conditions.

(b) An adequate number of examiners to provide safe and effective supervision and assistance.

(c) Assurance that examiners do not test students they have trained.

(d) Skills demonstration exercise portions of the exam shall be conducted at a ratio of one examiner to one student.

(e) Competency evaluation facilities that are adequate to meet the needs of the testing program.

(f) Retention of all records required under this section for a period of at least 3 years.

(g) A system to prevent disclosure of the pool of test questions and the results of the individual competency evaluations.

History: Cr. Register, June, 1991, No. 426, eff. 7-1-91; emerg. am. (2) (b) 2. and (c), eff. 10-1-91; am. (2) (b) 2. and (c), r. and recr. (3) (a) 4., Register, June, 1992, No. 438, eff. 7-1-92.

HFS 129.09 Nurse aide registry. (1) Content of the registry. Information about a nurse aide on the registry shall include:

(a) The aide's eligibility for employment in a department-approved or licensed health care provider in so far as the nurse aide's training, competency evaluation, or work experience meet the requirements of this chapter.

Note: Additional employment eligibility requirements appear in other state and federal statutes, regulations, and rules, and employers shall refer to those authorities that address the employer's provider type.

(b) The aide's social security number.

(c) The aide's full name, including middle initial.

(d) The aide's current mailing address.

(e) The aide's date of birth.

(f) The date the aide completed a training program approved under s. HFS 129.06, if applicable.

(g) The date the aide completed a competency evaluation program, if applicable.

(h) The competency evaluation program number, if applicable.

(i) The dates, if any, that indicate the aide's employment status.

(j) The date the aide was included on the registry.

(k) The two character alphabetic postal code of any other state in which a finding of abuse, neglect, or misappropriation has been placed on the nurse aide registry against the aide.

(l) Any finding made by the department under s. 146.40 (4r)(b), Stats., or, if appealed, by a hearing officer under s. 146.40 (4r)(d), Stats., that the nurse aide neglected or abused a client, or misappropriated the property of a client, and a brief rebuttal statement by the affected nurse aide under s. 146.40(4r)(e), Stats., if the nurse aide disputes the finding.

(2) NOTIFICATION OF COMPLETION. (a) The examiner who conducts a competency evaluation program shall notify the department or the department's contractor when an individual has satisfactorily completed the competency evaluation program. The notification shall be in writing on a form provided by the department and shall be submitted to the department or the department's contractor within 30 days after the individual satisfactorily completes the program.

(b) An individual who is eligible for inclusion in sub. (5) in the registry, but for whom notification is not required under par. (a), or a hospital, nursing home, facility for the developmentally disabled, home health agency or hospice on behalf of that individual, may apply to the department to include that individual in the registry. Application shall be made on a form provided by the department.

(3) ACTION BY THE DEPARTMENT. (a) Upon receiving an application under sub. (2)(b), the department or its contractor shall review the application and make any inquiries necessary to determine if the individual is eligible to be included in the registry. False eligibility information submitted to the department or its contractor shall result in denial of the application or, if the application had already been processed, shall result in the individual's removal from the registry.

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

(4) RELEASE OF REGISTRY INFORMATION. The registry shall serve as an official record of individuals who are qualified by training and testing, or experience, to work as a nurse aide. The department may use registry information in its surveys of facilities and agencies. With the exception of s. HFS 129.09 (1)(b), the information included in the registry about nurse aides is public information. A written request for registry information shall be accompanied by a self-addressed, stamped envelope.

Note: Written requests for registry information should be sent to the Office of Caregiver Quality, P.O. Box 2969, Madison, WI 53701-2969.

(5) ELIGIBILITY FOR INCLUSION ON THE REGISTRY. An individual is eligible to be included in the Wisconsin Nurse Aide Registry only if at least one of the following is true:

(a) The individual has, within 120 days of beginning employment as a nurse aide, successfully completed a training program and a competency evaluation program for nurse aides that are approved by the department under s. 146.40, Stats.

(b) The individual has successfully completed an approved training program and a competency evaluation program in another state that meet criteria for acceptance in this state.

(c) The individual has completed a basic nursing course from a board-approved school for nursing under s. 441.01(4), Stats., or has completed a basic nursing course approved in another state by that state's Board of Nursing and the student nurse has successfully completed a competency evaluation program.

(6) ELIGIBILITY TO WORK AS A NURSE AIDE. (a) *State-licensed-only settings.* Except as is provided in sub. (7), an individual on the Wisconsin Nurse Aide Registry under any of the paragraphs in sub.(5), regardless of the title under which an individual is employed, is eligible to be employed as a nurse aide by a hospital or a state-licensed-only home health agency, nursing home, hospice, or facility for the developmentally disabled.

(b) *Federally certified settings.* With the exceptions below and except as is provided in sub. (7), and regardless of the title under which an individual is employed, an individual is eligible to be employed in a federally certified nursing home, home health agency, hospice, or intermediate care facility for the mentally retarded if the individual is included on the Wisconsin Nurse Aide Registry under sub.(5)(a), (5)(b), or (5)(c), and if the individual has performed nursing or nursing-related services for monetary compensation at any time during the 24 consecutive months immediately before the individual's employment in one of these settings would begin. If an individual has not performed nursing or nursing-related services for monetary compensation at any time during the 24 consecutive months immediately before the individual's employment would begin, in order to be eligible to be employed in one of these settings, the individual shall successfully complete a department-approved training and competency evaluation program, or department-approved competency evaluation program for nurse aides. The exceptions are:

1. If an individual on the Wisconsin Nurse Aide Registry under sub. (5)(c) does not meet the requirements of sub. (6)(b), that individual is eligible for employment as a nurse aide in a federally certified home health agency if the employing agency verifies the nurse aide meets home health standards under 42 CFR 484.36.

2. If an individual on the Wisconsin Nurse Aide Registry under sub.(5)(b) or (c) does not meet the requirements of sub. (6)(b), the individual is eligible for employment in a federally certified intermediate care facility for the mentally retarded.

(c) Other allowable employment. 1. An individual currently enrolled as a student nurse who has completed a basic nursing course at a board-approved school of nursing under s. 441.01 (4) is eligible to be employed as a nurse aide in a hospital, facility for the developmentally disabled, or federally certified intermediate care facility for the mentally retarded even if that individual is not included on the

Wisconsin Nurse Aide Registry and even if that individual has not successfully completed a competency evaluation program under subsec. (5)(c).

(7) EMPLOYMENT PROHIBITIONS. A federally certified nursing home shall not hire and shall not continue to employ a nurse aide who has a finding of abuse, neglect or misappropriation entered on the Wisconsin Nurse Aide Registry as a result of an incident that occurred in a federally-certified nursing home. A federally certified intermediate care facility for the mentally retarded shall not hire or continue to employ a nurse aide who has a finding of abuse, neglect or misappropriation entered on the Wisconsin Nurse Aide Registry, or who has a prior employment history of child or client abuse, neglect, or misappropriation.

(8) REMOVING NURSE AIDES FROM THE REGISTRY. The names of the nurse aides who have not updated their employment on the registry in the previous five-year time period will be removed from the Registry, except for the names of nurse aides with substantiated findings of misconduct. In order to be placed on the Registry again, the person must successfully complete another nurse aide training program and competency evaluation.

History: Cr. Register, June, 1991, No. 426, eff. 7-1-91; emerg. am. (1) (a) and (b), (2) (a) and (j), (3) (b) and (5), eff. 10-1-91, am. (1), (2) (a), (j), (3) (b) and (5), Register, June, 1992, No. 438, eff. 7-1-92; renum. (2) (intro.) and (a) to (j) to be (2) (a) (intro.) and 1. to 9. and (b) and am. (2) (a) 8., 9. and (b), Register, December, 1992, No. 444, eff. 1-1-93.

HFS 129.10 Nurse aide program appeals. (1) SUBJECT OF APPEAL. Except for the denial of a NATCEP under 42 CFR 483.151 (b) (2) or (3) or the withdrawal of approval of a NATCEP under 42 CFR 483.15 (e)(1) or (3), an aggrieved party may appeal to the department of administration's division of hearings and appeals any of the following:

(a) A denial of a request for a waiver or variance under s. HFS 129.04 (2) or the revocation of a waiver or variance under s. HFS 129.04 (2) (c).

(b) A denial of an application for approval of training program under s. HFS 129.05 (1).

(c) A denial of an application for approval of a competency evaluation program under s. HFS 129.08.

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

(e) A denial under s. HFS 129.09 (5) of an application to include a person in the Registry.

(f) A suspension or revocation of approval or the imposition of a plan of correction under s. HFS 129.05 (2) (d) 2.

(2) APPEALS OF WAIVERS OR VARIANCES. A health care provider may contest the denial of a waiver or variance by requesting a hearing under s. 227.42, Stats. The request for hearing shall be filed with the department of administration's division of hearings and appeals within 10 working days after receipt of the notice of denial. The request for hearing is considered filed when received by that division.

(3) ALL OTHER PROGRAM APPEALS. An appeal shall be in writing and shall take the form of a request for a hearing. The request for a hearing shall be filed with the department of administration's division of hearing and appeals no later than 30 calendar days after the date of the denial, suspension or revocation, and is considered filed when received by that division.

(4) BURDEN OF PROOF. The program or individual shall bear the burden of providing, by the preponderance of credible evidence, that the denial of a waiver or variance was unreasonable.

Note: The address of the Department of Administration's Division of Hearings and Appeals is P.O. Box 7875, Madison, Wisconsin 53707. Appeals may be delivered in person to that office at 5005 University Avenue, Room 201, Madison, Wisconsin.

History: Cr. Register, June, 1991, No. 426, eff. 7-1-91; r. (1) (c) and (e), renum. (1) (d) and (f) to (h) to be (1) (c) to (f), Register, June, 1992, No. 438, eff. 7-1-92; renum. from HFS 129.11, Register, December, 1992, No. 444, eff. 1-1-93.

HFS 129.11 Feeding assistant program requirements. (1) Wisconsin's feeding assistant training programs must require enrolled individuals to successfully complete an approved training program, which includes the following federally-mandated topics, covered during a minimum of eight (8) hours of instruction:

(a) Feeding techniques.

(b) Assistance with feeding and hydration.

(c) Communication and interpersonal skills.

(d) Appropriate responses to resident behavior.

(e) Safety and emergency procedures, including the Heimlich maneuver.

(f) Infection control.

(g) Resident rights.

(h) Recognizing changes in residents that are inconsistent with the norm and the importance of reporting changes to the nurse.

(2) The feeding assistant training program must also provide instruction on the following topics:

(a) Wisconsin's Caregiver Program, including background check requirements, the need to promptly report any misconduct allegations, the definitions of abuse or neglect of a client or misappropriation of a client's property and the Rehabilitation Review requirements.

(b) The resident population who will be served by the feeding assistant in a facility-based program. The facility-based training program curriculum must include training specific to the identified population type(s). This training must include, but is not limited to:

1. Characteristics of the population, such as the resident's physical, social and mental health needs, and specific medications or treatments needed by the residents.

2. Program services needed by the residents.

3. Meeting the needs of persons with a dual diagnosis (co-occurrence of mental health disorders and alcohol or drug dependence or abuse), and maintaining or increasing his or her social participation.

4. Self direction, self care and vocational abilities.

5. Instruction of feeding assistants who have been trained by another facility's training program, for the current entity's specific selected population.

(3) Programs may choose to add increased training requirements.

(4) The program determines the number of extra hours required for the training topics listed under sub. (2). However, the training must be in addition to the minimum eight (8) hours required for the federally mandated topics under s. HFS 129.11 (1) (a) to (h).

(5) Training programs must stress the only direct, hands-on duty a feeding assistant is permitted to perform is assisting residents who have no complicated feeding problems to eat or drink.

HFS 129.12 Feeding assistant training program curriculum. (1) Feeding assistant training programs must use a training curriculum, which has been pre-approved by the department and determined to comply with the federally mandated topics under s. HFS 129.11 (1) (a) to (h).

(2) Feeding assistant training programs must use the Department of Health and Family Services, Division of Quality Assurance video, The Wisconsin Caregiver Program: A Blueprint for Excellence, to provide feeding assistant students instruction regarding the requirements of the Caregiver Program.

(3) Facility-based training programs must submit to the department proposed training materials to provide feeding assistants instruction regarding the facility's selected resident population.

(4) Although the pre-approved standardized training curriculums include additional skill information, e.g., intake and output, special care needs for residents with dysphasia, etc., the instructor must emphasize that the feeding assistant will not be permitted to perform any other hands-on duty, beyond assisting residents who have no complicated feeding problems to eat and drink.

HFS 129.13 Feeding assistant training program completion. (1) An individual may not provide hands-on assistance with feeding or hydrating residents unless the individual has successfully completed the following:

(a) A State-approved training program for feeding assistants, including additional instruction on the selected resident population and the Wisconsin Caregiver Program requirements.

(b) After completing the training course, a State-approved standardized written quiz with a score of 75 percent or greater. Individuals may request the quiz to be administered orally. Instructors should consider the needs of persons who have limited English proficiency or literacy difficulties.

(c) A State-approved standardized skill demonstration, determining hand washing and resident feeding competency with a score of 75 percent or greater.

(2) The instructor must observe the trainee's performance and initial and date each skill to verify the satisfactory or unsatisfactory performance.

(3) Programs may choose to add increased testing requirements.

(4) Students who do not successfully pass the initial competency evaluation will be allowed the opportunity to review the training materials and retake the test. Programs can establish the number of times a candidate may retake the test. However, the program must document the failure, opportunity for review and subsequent retake testing date.

(5) The instructor must issue a State-approved certificate to each participant who successfully completes the feeding assistant program, documenting the name of the participant, the training program and the date of successful completion.

HFS 129.14 Standards for instructors of feeding assistant training programs.

(1) Feeding assistant training programs shall determine the appropriate qualifications for their instructors (e.g., registered nurse, dietitian, speech therapist, etc.), based on the needs of the selected resident and facility.

(2) Training programs must provide the name and qualifications of the proposed instructor to the department.

(3) The primary instructor may supplement the course by including other individuals for lecture or demonstration whose qualifications or experience add benefit to the training program.

(4) A paid feeding assistant is not permitted to lead the training of another feeding assistant student.

HFS 129.15 Feeding assistant training program approval process. (1) Entities wishing to operate a feeding assistant training program shall apply for approval on a form provided by the department with their proposed selected resident population, curriculum, and proposed feeding assistant instructor information to the department.

(2) The department will review the application and supporting materials and will determine whether to approve or deny the feeding assistant training program. The department will issue a written notice regarding the decision within 45 calendar days of receiving a complete application.

(3) Approved feeding assistant training programs will be issued, at no cost, one copy (to each instructor and student, if applicable) of the standardized training curriculum the program selects, a Wisconsin Caregiver Program video cassette, standardized competency evaluation materials, feeding assistant training program, and a feeding assistant roster template.

HFS 129.16 Feeding assistant employment requirements. (1) A nursing home or facility for the developmentally disabled may not employ or use any individual as a feeding assistant unless the individual has:

(a) Reached 16 years of age.

(b) Successfully passed a caregiver background check, having no offenses on the Offenses Affecting Caregiver Eligibility Misconduct Offenses List, s. HFS 12, Appendix A, that bar employment as a caregiver.

(c) Successfully completed a feeding assistant training and competency evaluation program and has been determined competent to provide feeding and hydration services.

(2) Facilities must ensure feeding assistants only serve residents who have no complicated feeding problems with eating and hydration.

(3) Residents with complicated feeding problems, as defined in HFS 129.03 (10) must be fed and hydrated by either a licensed health care professional or a nurse aide.

(4) The facility must base their resident selection for feeding assistants based on the charge nurse's assessment and each resident's latest assessment and plan of care.

(5) Feeding assistants between the ages of 16 and 18 years of age must work under the direct supervision of an RN or LPN.

(6) Feeding assistants 18 years and older must work under the general supervision of a registered nurse (RN), or licensed practical nurse (LPN). The feeding assistant is not permitted to perform other nursing or nursing-related duties (e.g., measuring or recording intake or output, transferring, toileting, etc.).

(7) A nursing home or facility for the developmentally disabled may not employ or use any individual who has successfully completed a feeding assistant training and competency evaluation program as a feeding assistant unless that nursing home or facility for the developmentally disabled has a department approved feeding assistant training program.

HFS 129.17 Feeding assistant training program operation. Approved feeding assistant training programs must submit the following information to the department.

(1) The program designee shall submit for approval any substantial change in the program to the department in writing. A program may not implement the proposed change in the program without the department's written approval. In this subdivision, "substantial change" means any change in the program designee, primary instructor under s. HFS 129.14 (2) and the curriculum under s. HFS 129.12.

(2) The program designee must submit an annual report to the department on a form provided by the department, and must indicate the number of feeding assistants who were trained and tested during the year, including the number of individuals who dropped out or who failed the program.

HFS 129.18 Feeding assistant training program record retention requirements. (1) Feeding assistant training programs must maintain the following records:

(a) For a minimum of three (3) years, all student skill checklists, written examinations, certificates and other relevant training records.

(b) Documentation of the training conducted and identification of the instructor conducting the training.

(c) Record of all individuals who have successfully completed the feeding assistant training and competency testing program.

(2) Training programs must maintain the security of the test materials and certificate templates, to ensure disclosure or forgery does not occur.

(3) Facilities employing feeding assistants must maintain the following personnel and other records:

(a) A feeding assistant roster, recording all individuals employed by the facility as feeding assistants who successfully completed the feeding assistant training and competency evaluation, including a written or oral exam and a skill demonstration.

(b) A copy of the feeding assistant training certificate, kept in the individual's personnel file.

(c) The selected resident's medical record, documenting no complicated feeding condition exists.

(d) Annual in-service session(s), relating to feeding assistant duties.

(e) Annual evaluation documentation, determining a feeding assistant's continued competence in feeding residents.

HFS 129.19 Feeding assistant NATCEP prohibitions. (1) Substandard quality of care citations under 42 CFR 483 that result in a NATCEP prohibition will be reviewed to determine the appropriate action for the feeding assistant training program. Program decisions will be made on a case-by-case basis.

(2) Citations normally resulting in a NATCEP prohibition, that directly relate to poor quality care due to the feeding assistant program, may result in termination of the feeding assistant training program.

(3) Feeding assistant programs may request a waiver of the NATCEP prohibition by submitting a request in writing to the department. The department will issue a written decision, either approving or denying the request, within 45 calendar days of receiving a complete waiver request.

HFS 129.20 Feeding assistant program appeals. (1) For any of the following department actions, a feeding assistant training program may request a hearing by filing an appeal with the Division of Hearings and Appeals (DHA).

(a) A denial of an application to operate a feeding assistant training program.

(b) A denial of an approval of a feeding assistant instructor.

(c) A termination or suspension of an approved feeding assistant training program.

(d) An imposed plan of correction.

(e) A denial of a request for a waiver or the revocation of a waiver.

(2) The request for a hearing must be in writing and must be filed with the Division of Hearings and Appeals no later than 30 days after the date of the denial, suspension or revocation. The appeal is considered filed when received by DHA.

Note: The address of the Department of Administration's Division of Hearings and Appeals is P.O. Box 7875, Madison, Wisconsin 53707. Appeals may be delivered in person to that office at 5005 University Avenue, Room 201, Madison, Wisconsin.

HFS 129.21 Skilled nursing facility medication aide training program approval process.

(1) Entities wishing to operate a skilled nursing facility medication aide program must submit a proposal

for developing a medication aide course. The proposal contents are determined by the department. The proposal is subject to approval or denial by the department. The department will issue a decision within 30 calendar days of a completed proposal submittal.

(2) After a proposal is approved, medication aide course curriculum, course outline, instructor qualifications and other materials must be submitted to and approved by the department before a training program can be implemented. The department will issue a decision on a completed course submittal within 90 calendar days.

NOTE: The department will limit the number of approved programs to a maximum of ten, subject to determined needs as submitted in the program development proposal. If there is a geographical or consumer-based need, as determined by the department, additional programs may be approved. All medication aide training programs for skilled nursing facilities must be approved by the department.

(3) POST APPROVAL REVIEW MONITORING. (a) The department shall conduct a post-approval review of a program every two years after the date on which the department formally approved the program. The department may conduct an on-site review of the program at any time to verify the program remains in compliance with this chapter.

(b) The program designee shall submit a report at least every two years to the department on a form provided by the department and shall provide any additional information requested by the department during its review of the program. The program designee shall provide reasonable means for the department to examine records and gather requested information.

(c) The program designee shall report any substantial change in the program to the department in writing within 10 days of the change. A program may not operate without the department's approval of any replacement or change. Notwithstanding s. HFS 129.03 (53), in this subdivision, "substantial change" means any change in the primary instructor under s. HFS 129.22 (1), or curriculum under s. HFS 129.24 (1).

(d) All approved courses are subject to inspection. If at any time the department determines that a program has failed to comply with a requirement of this chapter, the department may, after providing written notice, impose a plan of correction on the program, suspend or revoke approval of the program.

(e). The department may revoke approval of an instructor when the department determines the conduct of the instructor is detrimental to the educational interests of the students.

Note: Current course proposal and course curriculum content requirements can be obtained from the department.

HFS 129.22 Standards for instructors of skilled nursing medication aide training programs. A medication aide program instructor must be one of the following:

(1) A registered nurse, licensed in Wisconsin, with teaching experience and one or more years of experience in one of the following positions within the last 5 years immediately before the person will be a program instructor:

- (a) An instructor in a school of nursing.
- (b) A director of nursing in a long-term care facility or a hospital.
- (c) An in-service director in a long-term care facility.
- (d) A supervisory nurse in a long-term care facility.
- (2) A State of Wisconsin approved Primary Instructor for Nurse Aide Training.

(3) A pharmacist who is licensed in Wisconsin, with teaching experience, and who has at least one year of experience as a consultant to a long-term care facility.

HFS 129.23 Skilled nursing medication aide student qualifications. (1) **STUDENT REQUIREMENTS.** The student must be at least 18 years of age, have a high school diploma or high school equivalency diploma (HSED), and be listed on the Wisconsin Nurse Aide Registry with current eligibility to work in federally certified healthcare settings.

(2) **WORK REQUIREMENTS.** The student must have at least 2,000 hours of experience as a nurse aide in direct patient care within the last 3 years and have worked a minimum of 40 hours as a nurse aide, within the last 90 days, with the residents to whom the student will be administering medications during the clinical experience portion of the course.

(3) **WRITTEN RECOMMENDATION.** The student must have 4 recommendations in writing, two from licensed charge nurses, one from the Director of Nursing, and one from the administrator of the entity in which the student will be working during the clinical experience.

HFS 129.24 Standards for skilled nursing medication aide training programs. (1) **CURRICULUM.** (a) *Minimum requirements.* A training program must include the following 6 areas, specified in sub. (b) to (h) and each of their components included in this subsection.

(b) *Introduction.*

1. To the course.
2. To the role of the medication aide.

(c) *Legal and Ethical Considerations.*

1. Federal and State nursing home standards, regulations, statutes, and administrative rules.
2. Wisconsin state practice act specific to registered nurse delegation.
3. Professional and staff roles and liabilities.
4. Resident rights regarding administration of medications.
5. Confidentiality of information related to residents.

6. Facility policies and procedures for administration of medications.

(d) Overview of body systems related to the routes of medication administration and the classes of medications.

1. Anatomy of body structures that pertain to medication administration, including structure of the eye, ear, nose, mouth, vagina, rectum, and skin, which are necessary to administer medication correctly via these routes.

2. Functions of these body structures that impact medication administration and effectiveness; and administration.

3. Diseases of these body structures that impact medication administration and medication effectiveness.

Note: Examples of anatomy, function and diseases are provided in the curriculum development guide.

(e) Medication fundamentals.

1. Medication orders.

2. Medication mathematics, weights and measures.

3. Dosage forms, including pills, capsules, ointments, patches, and suppositories.

4. Drug effects and actions.

5. Classes or types of commonly used medications in skilled nursing facilities.

a. Use of the drug or drug indication.

b. Side effects of the medications.

c. Specific medication administration requirements.

Note: Chemotherapy is not part of the basic medication aide course.

6. Medication packaging systems.

7. Medication storage, destruction or return of medication.

(f) Medication administration.

1. Techniques and procedures of various routes of medication administration.

Note: Injections, medications administered via a tube, nebulizers, and oxygen routes will not be evaluated as part of the basic skilled nursing medication aide curriculum.

2. Six “rights” of medication administration, including right patient, right drug, right dose, right route, right time, and right documentation.

(g) *Observations, communication, and reporting.* Requirements for timely reporting and documenting the administration of all medication, including the need for PRN medications and the resident’s response, refusal to take medication, omission of medications, errors in the administration of medication and drug reactions and any change in the condition of a resident.

(h) *Medication safety.*

1. Prevention of medication errors.
2. Causes and reporting of medication errors.

(2) FACILITY AND CLASS SIZE. (a) The class facilities shall be of sufficient size and structure so as to allow adequate space and equipment to instruct the students.

(b) The total number of students in any one class shall not exceed 24.

(3) COURSE STRUCTURE. (a) *Instruction.* The program must contain a minimum of 100 hours of instruction of which 60 hours must be spent in classroom instruction and 40 hours of which must be clinical experience in a skilled nursing facility. The department will not approve a program as a video-based program; however, videos, the internet, and other technology can be used to supplement the classroom instruction.

(b) *Medication consultant.* The program must have a designated, “qualified medication consultant” who will act as a resource for medication issues, concerns, questions and assist in course updates;

(4) GRADING. (a) The curriculum must contain a minimum of 6 quizzes. Copies of examples of the quizzes must be submitted for approval as part of the curriculum. The curriculum must require the student to achieve an average of 85 percent or better on the quizzes before being allowed to take the final written exam.

(b) The curriculum must contain a final written exam. A copy of the final written exam or exams must be submitted for approval as a part of the curriculum. The curriculum must require the student to achieve a grade of 85% or better on the final written exam before being allowed to take the practicum exam.

(c) The curriculum must contain a practicum exam. Copies of the practicum exam must be submitted for approval as part of the curriculum. The curriculum must require the student to achieve a grade of 85% or better on the practicum exam to be allowed to complete the clinical experience portion in a skilled nursing facility.

(d) The student must satisfactorily complete the clinical experience portion in a skilled nursing facility under the direct supervision of a Registered Nurse preceptor.

(e) The curriculum must contain a policy on quiz, final exam, and practicum exam retakes. The curriculum policy is subject to Department approval.

(5) RECORD RETENTION. (a) The records of the program shall be retained on file by the instructional entity for at least 3 years.

(b) The records file for each class must contain the following:

1. Records of each student's attendance.
2. Each student's quiz scores.
3. A copy of each final exam and the exam's answer key.
4. Each student's final exam answer sheets.
5. Each student's practicum exam scores.
6. Each student's clinical competency skills check list.
7. Copies of each student's certificates of completion.
8. Copies of each student's Registry forms;
9. Forms evaluating each student's performance.

HFS 129.25 Skilled nursing medication aide training program operation. Approved medication aide training programs must submit the following information to the department:

(1) Any substantial changes in the program must be reported to the department in writing within 10 calendar days. The program must not implement the change until department approves the program's proposed change in writing.

(2) The program must submit to the department and to an entity designated by the department the required records for nurse aide registry designation as a medication aide.

HFS 129.26 Hospice medication aide program approval process. (1) All medication aide training programs for hospice agencies must be approved by the department.

(2) Entities wishing to operate a hospice medication aide program must submit a course syllabus, course curriculum, text book, list of students, proof of all student qualifications and course instructor's names and qualifications.

HFS 129.27 Standards for instructors of hospice medication aide training programs.

(1) A hospice medication aide program instructor must be a registered nurse, licensed in Wisconsin, with 1 or more years experience as an instructor in a school of nursing or other educational institution, or

(2) A registered nurse with 2 or more years experience as a director of nursing (DON), or

(3) A registered nurse with 1 or more years experience as an in-service director in a health care facility, or

(4) A registered pharmacist with a current license who has 1 or more years experience as a hospice consultant, or

(5) Other healthcare professionals the department approves.

HFS 129.28 Hospice medication aide student qualifications. (1) **STUDENT REQUIREMENTS.** The student must be at least 18 years of age at the completion of the course, have a high school diploma or high school equivalency diploma (HSED), be listed on the Wisconsin Nurse Aide Registry, and be currently eligible to work in a federally-certified facility for at least 9 months before the end of the medication aide course.

Note: Nurse Aides who have completed the 100-hour Skilled Nursing Facility Certified Medication Aide program are deemed to meet the Hospice Certified Medication Aide program requirements.

(2) **WORK EXPERIENCE.** The student must be actively employed as a nurse aide by a hospice agency and must complete 2,000 hours in direct patient care within the three years immediately preceding the start of the course or by the end of the course.

(3) **WRITTEN RECOMMENDATION.** The student must be recommended in writing by the hospice administrator, and by a Registered Nurse who is working with the nurse aide.

HFS 129.29 Standards for hospice medication aide training programs. (1) **CURRICULUM.** (a) *Minimum requirements.* A training program includes the following 6 areas specified in pars. (b) to (h) and each of their components included in this subsection.

(b) *Introduction.*

1. To the course; and
2. To the role of the medication aide.

(c) *Legal and Ethical Considerations.*

1. Federal and State hospice standards, regulations, statutes, and administrative rules.
2. Wisconsin state practice Act for Nursing specific to registered nurse delegation.
3. Professional and staff roles and liabilities.
4. Patient rights regarding administration of medications.
5. Confidentiality of information related to patients.
6. Facility policies and procedures for administration of medications.

(d) *Overview of body systems related to the routes of medication administration and the classes of medications.*

1. Anatomy of body structures that pertain to medication administration, including structure of the eye, ear, nose, mouth, vagina, rectum, and skin, which are necessary to administer medication correctly via these routes.

2. Functions of these body structures that impact medication administration and effectiveness; and administration.

3. Diseases of these body structures that impact medication administration and medication effectiveness.

Note: Examples of anatomy, function and diseases are provided in the curriculum development guide.

(e) *Medication fundamentals.*

1. Medication orders.

2. Medication mathematics, weights and measures.

3. Dosage forms, including pills, capsules, ointments, patches, and suppositories.

4. Drug effects and actions.

5. Classes or types of commonly used medications in hospice settings.

a. Use of the drug or drug indication.

b. Side effects of the medications.

c. Specific medication administration requirements.

Note: Chemotherapy is not part of the basic medication aide course.

6. Medication packaging systems.

7. Medication storage, destruction or return of medication.

(f) *Medication administration.*

1. Techniques and procedures of various routes of medication administration.

Note: Injections, medications administered via a tube, nebulizers, and oxygen routes will not be evaluated as part of the basic skilled nursing medication aide curriculum.

2. Six “rights” of medication administration including right patient, right drug, right dose, right route, right time, and right documentation.

(g) *Observations and reporting.* 1. Requirements for timely reporting and documenting the administration of all medication, including the need for PRN medications and the resident's response, refusal to take medication, omission of medications, errors in the administration of medication and drug reactions and any change in the condition of a resident.

(h) *Medication safety.*

1. Prevention of medication errors.
2. Causes of medication errors.
3. Reporting of medication errors.

(2) FACILITY AND CLASS SIZE. (a) The class facilities shall be of sufficient size and structure so as to allow adequate space and equipment to instruct the students.

(b) The total number of students in any one class shall not exceed 24.

(3) COURSE STRUCTURE. The program must have a minimum of 40 hours of instruction of which 32 hours is lecture and 8 hours of which is quizzes, final examination and practicum. The 32 hours of lecture should contain hands on and demonstrations of the appropriate techniques of medication administration. The program will not be approved as a prerecorded video-based program; however, videos internet and other technology can be used to supplement the classroom instruction.

(4) GRADING. (a) The program must have a minimum of 6 quizzes. The student must achieve an average of 85 percent on the quizzes to be allowed to take the final written examination.

(b) The student must achieve a grade of 85 percent or better on the final written examination to take the practical clinical experience. The final written examination is a state-generated examination and is administered by the department or its designee. A score of 85 percent is required to pass the final written examination. One retake is allowed and the student must wait 3 months before retaking the final written examination.

(c) The student must satisfactorily complete the practical clinical experience before taking the practicum exam. The practicum examination will be administered after the final written examination and the student must achieve a grade of 85 percent or better on the practicum examination to pass the course. No retakes are allowed on the practicum examination.

(d) If the student does not successfully pass either the final written examination or the practicum exam, they must retake the entire course.

(5) CERTIFICATION. The department or designee will issue a certificate to each student who satisfactorily completes the course. The nurse aide is advised to retain this certificate as this information is not maintained on the Nurse Aide Registry. The department or designee will maintain a database of hospice nurse aides who complete this course.

(6) RECORD RETENTION. (a) The records of the program shall be retained on file by the instructional entity for at least 3 years.

(b) The records file for each student in each class must contain the following:

1. Each student's qualifications.
2. Each student's record of attendance.
3. Each student's quiz scores.
4. Copy of the practicum requirements.
5. Copies of each student's certificate of completion.
6. Program evaluation forms.

HFS 129.30 Hospice medication aide training program operation. (1) Approved hospice medication aide training programs must complete the following prior to conducting each course:

(a) Submit a sample of the practicum questions or scenarios to the department not later than 2 weeks prior to the practicum examination.

(b) Establish a date for the state-generated final examination with the department.

(2) A representative approved by the department will administer the final examination. The representative will collect copies of sample quizzes, quiz scores practicum scores and course evaluations.

(3) The department representative will contact the course coordinator 1 week after the final examination with the student results. A certificate of completion will be sent to the coordinator for distribution to each student who successfully passed the course.

(4). The department may revoke approval of an instructor when the department determines the conduct of the instructor is detrimental to the educational interests of the students.

EFFECTIVE DATE: This rule shall take effect on the first day of the month following publication in the Wisconsin administrative register, as provided in s. 227.22 (2), Stats.

Wisconsin Department of Health and Family Services

Dated:

Karen E. Timberlake, Department Secretary

SEAL:

