



Department of Health

KATHY HOCHUL
Governor

MARY T. BASSETT, M.D., M.P.H.
Commissioner

KRISTIN M. PROUD
Acting Executive Deputy Commissioner

October 19, 2022

DAL NH 22-22
Re: Statewide Approval for an
Extension of the 1135 Waiver of the
Requirements Contained in **42 CFR
§483.35(d)** Training and Certification of
Nurse Aides

Dear Nursing Home Administrator:

On April 7, 2022, the Centers for Medicare & Medicaid Services (CMS) issued [QSO-22-15-NH & NLTC & LSC \(PDF\)](#) - Update to COVID-19 Emergency Declaration Waivers for Specific Providers. As stated in QSO-22-15, CMS ended specific blanket waivers and the use of Temporary Nurse Aides (TNAs). The employment and training flexibilities ended on June 7, 2022.

Ending the blanket waivers on June 7, 2022, started the 120-day clock for all trained students to test and be listed on the Nurse Aide Registry by October 7, 2022. The Department has strongly encouraged TNAs to test and be listed on the Nurse Aide Registry as soon as possible and not to wait until the deadline approached.

CMS was aware that there may be instances where the volume of aides that must complete a state approved Nurse Aide Training Program (NATP) exceeds the available capacity for enrollees in a training program or taking the exam. If a NATP had documentation that demonstrated their attempts to complete their training and testing (e.g., timely contacts to state officials- **completion of the weekly Drupal survey**, multiple attempts to enroll in a program or test), a waiver of these requirements (42 CFR §483.35(d)) was available and the aide may continue to work in the facility while continuing to attempt to become certified as soon as possible. The Department had verified capacity issues existed in both in training and testing; therefore, the Department requested a CMS waiver on behalf of all approved NATPs.

On October 5, 2022, the Department received a statewide approval for an extension of the 1135 waiver of the requirements contained in **42 CFR §483.35(d)** Training and Certification of Nurse Aides. This approval is valid until 04/05/2023 (180) days or the end of the Public Health Emergency (whichever date comes first for New York).

On October 7, 2022 CMS further clarified new nurse aides can get trained, tested and certified while the waiver is in effect. **However, the waiver only applies to staff who would otherwise be ineligible to work because they had been employed four months and were not able to complete training and certification due to an insufficient number of training and testing sites.** This waiver allows them to work longer than four months without being

certified. Per CMS, the waiver requires ongoing reporting by the Department to demonstrate progress.

The Department continues to strongly encourage providers to prepare for the end of the Public Health Emergency as soon as possible which includes getting TNAs hired under the 1135 waiver trained, tested and listed on the Nurse Aide Registry as soon as possible.

Sincerely,

Sheila McGarvey
Deputy Center Director
Office of Long Aging and Long Term Care