



TO: Medical Care Advisory Committee
DATE: November 12, 2020
FROM: Diana Conces
Director of Policy, Rules and Training

SUBJECT: Nurse Aide Training and Competency Evaluation Program.

Agenda Item No.: 6

Amendments to: Texas Administrative Code, Title 26, Part 1, Chapter 556, §556.2, §556.3, §556.6, and §556.9

BACKGROUND: Federal Requirement Legislative Requirement Other: Program Initiative

The purpose of the proposal is to allow a Nurse Aide Training and Competency Evaluation Program (NATCEP) provider to offer certain components of required training online. A NATCEP is a program approved by Health and Human Services Commission (HHSC) to train and evaluate an individual’s ability to work as a nurse aide in a nursing facility. Currently, all NATCEP training is provided in a classroom and clinical setting.

In addition, due to the challenges presented by the COVID-19 pandemic and the need for greater awareness and emphasis on infection control, HHSC is proposing NATCEP providers increase infection control training and continuing education requirements for nurse aides.

ISSUES AND ALTERNATIVES:

There are no known concerns, issues, or objections to the proposal. This program initiative is a response to a critical shortage in trained nurse aides in nursing homes. External stakeholders, such as Texas Health Care Association and Leading Age, have requested that HHSC allow NATCEP providers to offer online training opportunities for portions of the NATCEP classroom curriculum. This option will increase the number of nurse aides qualified for employment in a nursing facility.

STAKEHOLDER INVOLVEMENT:

The proposed amendments were published on the HHS Rulemaking webpage for informal comment from February 27 through March 12, 2020, and sent to external stakeholders for review. A public meeting was held on July 12, 2019, to discuss the rules and receive stakeholder input. All comments received from stakeholders were favorable, and HHSC staff took these comments into consideration when drafting the proposal.

FISCAL IMPACT:

There will be no fiscal implications to state or local governments as a result of enforcing and administering the proposed amendments.

There is no adverse economic effect on small businesses, micro-businesses, or rural communities related to the rule as there is no requirement to alter current business practices. The proposed rules will give NATCEP providers the option to provide a portion of the NATCEP training online. NATCEP providers that choose not to add an online component to their training program will not incur any additional costs as a result of the proposed rules. In addition, no rural communities contract with HHSC in any program or service affected by the proposed rule.

FISCAL IMPACT:

None

RULE DEVELOPMENT SCHEDULE:

November 12, 2020	Present to the Medical Care Advisory Committee
November 19, 2020	Present to HHSC Executive Council
January 2020	Publish proposed rules in <i>Texas Register</i>
April 2021	Publish adopted rules in <i>Texas Register</i>
April 2021	Effective date

REQUESTED ACTION: (Check appropriate box)

The MCAC recommends approval of the proposed rules for publication.

Information Only

TITLE 26 HEALTH AND HUMAN SERVICES
PART 1 HEALTH AND HUMAN SERVICES COMMISSION
CHAPTER 556 NURSE AIDES

PROPOSED PREAMBLE

The Executive Commissioner of the Texas Health and Human Services Commission (HHSC) proposes amendments to §556.2, concerning Definitions; §556.3, concerning Nurse Aide Training and Competency Evaluation Program (NATCEP) Requirements; §556.6, concerning Competency Evaluation Requirements; and §556.9, concerning Nurse Aide Registry and Renewal.

BACKGROUND AND PURPOSE

The purpose of the proposal is to allow a NATCEP provider to offer certain components of required training online in a virtual classroom location. A NATCEP is a program approved by HHSC to train and evaluate an individual's ability to work as a nurse aide in a nursing facility. Currently, all NATCEP training is provided in a classroom and clinical setting.

This program initiative is a response to a critical shortage in trained nurse aides in nursing homes. External stakeholders, such as Texas Health Care Association and Leading Age, have requested that HHSC allow NATCEP providers to offer online training opportunities for portions of the NATCEP classroom curriculum. This option will increase the number of nurse aides qualified for employment in a nursing facility.

Due to the challenges presented by the COVID-19 pandemic and the need for greater awareness and emphasis on infection control, HHSC is also proposing NATCEP providers increase infection control training and continuing education requirements for nurse aides.

SECTION-BY-SECTION SUMMARY

The proposed amendment to §556.2 adds definitions for "classroom training," "clinical training," "infection control," and "personal protective equipment," and amends the definitions for "employee misconduct registry," "nurse aide registry," and "informal review."

The proposed amendment to §556.3 standardizes the minimum number of hours of training required to be provided by a NATCEP to a trainee by deleting obsolete language, allows for certain hours to be provided online with security and identification verification requirements, requires eight hours of infection control that include training with personal protective equipment (PPE) before a trainee has any direct contact with a resident, and requires a NATCEP to maintain records of training and make these available to HHSC. The proposed amendment to §556.3(e)(3) updates the civil money penalty of not less than \$10,697 to align with current Centers for Medicare and Medicaid Services requirements.

The proposed amendment to §556.6 allows only HHSC, or an entity HHSC approves, to provide a competency evaluation, which must be administered by a skills examiner at an approved evaluation site and deletes the requirements that a NATCEP must provide a facility to administer a competency evaluation and administer a competency evaluation to other eligible trainees from another NATCEP.

The proposed amendment to §556.9 adds the requirement that a nurse aide must complete an HHSC course in infection control and PPE every year.

FISCAL NOTE

Trey Wood, Chief Financial Officer, has determined that for each year of the first five years that the rules will be in effect, enforcing or administering the rules does not have foreseeable implications relating to costs or revenues of state or local governments.

GOVERNMENT GROWTH IMPACT STATEMENT

HHSC has determined that during the first five years that the rules will be in effect:

- (1) the proposed rules will not create or eliminate a government program;
- (2) implementation of the proposed rules will not affect the number of HHSC employee positions;
- (3) implementation of the proposed rules will result in no assumed change in future legislative appropriations;
- (4) the proposed rules will not affect fees paid to HHSC;
- (5) the proposed rules will create new rules;
- (6) the proposed rules will expand existing rules;
- (7) the proposed rules will not change the number of individuals subject to the rules; and
- (8) the proposed rules will not affect the state's economy.

SMALL BUSINESS, MICRO-BUSINESS, AND RURAL COMMUNITY IMPACT ANALYSIS

Trey Wood has also determined that there will be no adverse economic effect on small businesses, micro-businesses, or rural communities.

The proposed rules will give NATCEP providers the option to provide a portion of the NATCEP training online. NATCEP providers that choose not to add an online component to their training program will not incur any additional costs because of the proposed rules. In addition, no rural communities contract with HHSC in any program or service affected by the proposed rule. HHSC lacks sufficient information to determine the economic impact on small businesses, micro-businesses, or rural communities.

HHSC determined that alternative methods to achieve the purpose of the proposed rules for small businesses, micro-businesses, or rural communities would not be consistent with ensuring the health, safety, and welfare of the residents of Texas.

LOCAL EMPLOYMENT IMPACT

The proposed rules will not affect a local economy.

COSTS TO REGULATED PERSONS

Texas Government Code §2001.0045 does not apply to these rules because the rules are necessary to protect the health, safety, and welfare of the residents of Texas and do not impose a cost on regulated persons.

PUBLIC BENEFIT AND COSTS

David Kostroun, Deputy Executive Commissioner for Regulatory Services, has determined that for each year of the first five years the rules are in effect, the public benefit will be more flexibility for trainees to participate in NATCEP from a provider that chooses to provide a portion of the training online, which will increase the number of nurse aides qualified for employment. As a result, nursing facilities will have more ability to meet required staffing levels and resident needs.

Trey Wood has also determined that for the first five years the rule is in effect, there could be a cost to persons required to comply with the rule as proposed. The proposed rule gives NATCEP providers the option to provide a portion of the NATCEP training online. NATCEP providers that do not choose to add an online component to their training program will not incur any additional costs because of these rules. HHSC lacks sufficient information to determine the economic impact to persons required to comply.

TAKINGS IMPACT ASSESSMENT

HHSC has determined that the proposal does not restrict or limit an owner's right to his or her property that would otherwise exist in the absence of government action and, therefore, does not constitute a taking under Texas Government Code §2007.043.

PUBLIC COMMENT

Questions about the content of this proposal may be directed to Bridney Jones at (512) 438-4266 in HHSC Long-term Care Regulatory Services. Written comments on the proposal may be submitted to Rules Coordination Office, P. O. Box 13247, Mail Code 4102, Austin, Texas 78711-3247, or 4900 North Lamar Boulevard, Austin, Texas 78751; or emailed to HHSRulesCoordinationOffice@hhsc.state.tx.us.

To be considered, comments must be submitted no later than 31 days after the date of this issue of the *Texas Register*. Comments must be: (1) postmarked or shipped before the last day of the comment period; (2) hand-delivered before 5:00 p.m. on the last working day of the comment period; or (3) emailed before midnight on the last day of the comment period. If the last day to submit comments falls on a holiday, comments must be postmarked, shipped, or emailed

before midnight on the following business day to be accepted. When emailing comments, please indicate "Comments on Proposed Rule 19R027" in the subject line.

STATUTORY AUTHORITY

The amendments are authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, and §531.021, which provides HHSC with the authority to administer federal funds and plan and direct the Medicaid program in each agency that operates a portion of the Medicaid program; Texas Human Resources Code §32.021, which provides that HHSC shall adopt necessary rules for the proper and efficient operation of the Medicaid program; and Texas Health and Safety Code Chapter 250, which requires HHSC to maintain a Nurse Aide Registry.

The amendments implement Texas Government Code §§531.0055 and 531.021; Texas Human Resources Code §32.021; and Texas Health and Safety Code §242.037 and Chapter 250.

This agency hereby certifies that this proposal has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

ADDITIONAL INFORMATION

For further information, please call: (210) 619-8292.

Legend:

Single Underline = Proposed new language

~~[Strikethrough and brackets]~~ = Current language proposed for deletion

Regular print = Current language

(No change.) = No changes are being considered for the designated subdivision

TITLE 26 HEALTH AND HUMAN SERVICES
PART 1 HEALTH AND HUMAN SERVICES COMMISSION
CHAPTER 556 NURSE AIDES

§556.2. Definitions.

The following words and terms, when used in this chapter, have the following meanings, unless the context clearly indicates otherwise.

(1) Abuse--The willful infliction of injury, unreasonable confinement, intimidation, or punishment with resulting physical harm, pain, or mental anguish.

(2) Act--The Social Security Act, codified at United States Code, Title 42, Chapter 7.

(3) Active duty--Current full-time military service in the armed forces of the United States or as a member of the Texas military forces, as defined in Texas Government Code §437.001, or similar military service of another state.

(4) Active status--The designation given to a nurse aide listed on the NAR who is eligible to work in a nursing facility.

(5) Armed forces of the United States--The Army, Navy, Air Force, Coast Guard, or Marine Corps of the United States, including reserve units of those military branches.

(6) Classroom training--The teaching of curriculum components through in-person instruction taught in a physical classroom location, which may include skills practice, or through online instruction taught in a virtual classroom location.

(7) Clinical training--The teaching of hands-on care of residents in a nursing facility under the required level of supervision of a licensed nurse, which may include skills practice prior to performing the skills through hands-on care of a resident. The clinical training provides the opportunity for a trainee to learn to apply the classroom training to the care of residents with the assistance and required level of supervision of the instructor.

(8) ~~(6)~~ Competency evaluation--A written or oral examination and a skills demonstration administered by a skills examiner to test the competency of a trainee.

(9) [(7)] Competency evaluation application--An HHSC form used to request HHSC approval to take a competency evaluation.

(10) [(8)] Curriculum--The publication titled Texas Curriculum for Nurse Aides in Long Term Care Facilities developed by HHSC.

(11) [(9)] Direct supervision--Observation of a trainee performing skills in a NATCEP.

(12) [(10)] Employee misconduct registry (EMR)--[~~EMR--Employee misconduct registry.~~] The registry maintained by HHSC in accordance with Texas Health and Safety Code, Chapter 253, to record findings of reportable conduct by certain unlicensed employees.

(13) [(11)] Facility--A nursing facility that participates in Medicaid, a skilled nursing facility that participates in Medicare, or a nursing facility that participates in both Medicaid and Medicare.

(14) [(12)] Facility-based NATCEP--A NATCEP offered by or in a facility.

(15) [(13)] General supervision--Guidance and ultimate responsibility for another person in the performance of certain acts.

(16) [(14)] HHSC--The Texas Health and Human Services Commission or its designee.

(17) Infection control--Principles and practices that prevent or stop the spread of infections in the facility setting.

(18) [(15)] Informal Review (IR)--[~~IR--Informal review.~~] An opportunity for a nurse aide to dispute a finding of misconduct [~~made by HHSC~~] by providing testimony and supporting documentation to an impartial HHSC staff person.

(19) [(16)] Licensed health professional--A person licensed to practice healthcare in the state of Texas including:

- (A) a physician;
- (B) a physician assistant;
- (C) a physical, speech, or occupational therapist;
- (D) a physical or occupational therapy assistant;
- (E) a registered nurse;
- (F) a licensed vocational nurse; or

(G) a licensed social worker.

(20) [~~(17)~~] Licensed nurse--A registered nurse or licensed vocational nurse.

(21) [~~(18)~~] LVN--Licensed vocational nurse. An individual licensed by the Texas Board of Nursing to practice as a licensed vocational nurse.

(22) [~~(19)~~] Military service member--A person who is on active duty.

(23) [~~(20)~~] Military spouse--A person who is married to a military service member.

(24) [~~(21)~~] Military veteran--A person who has served on active duty and who was discharged or released from active duty.

(25) [~~(22)~~] Misappropriation of resident property--The deliberate misplacement, exploitation, or wrongful, temporary or permanent use of a resident's belongings or money without the resident's consent.

(26) [~~(24)~~] NATCEP--Nurse aide training and competency evaluation program. A program approved by HHSC to train and evaluate an individual's ability to work as a nurse aide in a facility.

(27) [~~(25)~~] Neglect--The failure to provide goods and services necessary to avoid physical harm, mental anguish, or mental illness.

(28) [~~(26)~~] Non-facility-based NATCEP--A NATCEP not offered by or in a facility.

(29) [~~(27)~~] Nurse aide--An individual who provides nursing or nursing-related services to residents in a facility under the supervision of a licensed nurse and who has successfully completed a NATCEP or has been determined competent by waiver or reciprocity. This term does not include an individual who is a licensed health professional or a registered dietitian or who volunteers services without monetary compensation.

(30) [~~(23)~~] Nurse Aide Registry (NAR)--[~~NAR—Nurse Aide Registry.~~] A listing of nurse aides, maintained by HHSC, that indicates if a nurse aide has active status, revoked status, or is unemployable based on a finding of having committed an act of abuse, neglect or misappropriation of resident property.

(31) [~~(28)~~] Nurse aide training and competency evaluation program (NATCEP) application--A HHSC form used to request HHSC initial approval to offer a NATCEP, to renew approval to offer a NATCEP, or to request HHSC approval of changed information in an approved NATCEP application.

(32) [~~(29)~~] Nursing services--Services provided by nursing personnel that include, but are not limited to:

- (A) promotion and maintenance of health;
- (B) prevention of illness and disability;
- (C) management of health care during acute and chronic phases of illness;
- (D) guidance and counseling of individuals and families; and
- (E) referral to other health care providers and community resources when appropriate.

(33) [~~(30)~~] Performance record--An evaluation of a trainee's performance of major duties and skills taught by a NATCEP.

(34) [~~(31)~~] Person--A corporation, organization, partnership, association, natural person, or any other legal entity that can function legally.

(35) Personal protective equipment (PPE)--Specialized clothing or equipment, worn by an employee for protection against infectious materials.

(36) [~~(32)~~] Program director--An individual who is approved by HHSC and meets the requirements in §556.5(a) of this chapter (relating to Program Director, Program Instructor, Supplemental Trainers, and Skills Examiner Requirements).

(37) [~~(33)~~] Program instructor--An individual who is approved by HHSC to conduct the training in a NATCEP and who meets the requirements in §556.5(b) of this chapter.

(38) [~~(34)~~] Resident--An individual accepted for care or residing in a facility.

(39) [~~(35)~~] RN--Registered nurse. An individual licensed by the Texas Board of Nursing to practice professional nursing.

(40) [~~(36)~~] Skills examiner--An individual who is approved by HHSC and meets the requirements in §556.5(d) of this chapter.

(41) [~~(37)~~] Trainee--An individual who is enrolled in and attending, but has not completed, a NATCEP.

§556.3. Nurse Aide Training and Competency Evaluation Program (NATCEP) Requirements.

(a) To train nurse aides, a facility must apply for and obtain approval from HHSC to offer a NATCEP or the facility must contract with another entity offering a NATCEP.

(b) A person that wants to offer a NATCEP must file a complete NATCEP application with HHSC.

(c) A person applying to offer a NATCEP must submit a separate NATCEP application for each ~~[classroom]~~ location from which training is delivered or administered.

(d) A NATCEP application must identify one or more facilities that the NATCEP uses as a clinical site.

(e) HHSC does not approve a NATCEP offered by or in a facility if, within the previous two years, the facility:

(1) has operated under a waiver concerning the services of a registered nurse under §1819(b)(4)(C)(ii)(II) or §1919(b)(4)(C)(i)-(ii) of the Act;

(2) has been subjected to an extended or partially extended survey under §1819(g)(2)(B)(i) or §1919(g)(2)(B)(i) of the Act;

(3) has been assessed a civil money penalty of not less than \$10,697 ~~[\$5,000]~~ as described in §1819(h)(2)(B)(ii) or §1919(h)(2)(A)(ii) of the Act;

(4) has been subjected to denial of payment under Title XVIII or Title XIX of the Act;

(5) has operated under state-appointed temporary management to oversee the operation of the facility under §1819(h) or §1919(h) of the Act;

(6) had its participation agreement terminated under §1819(h)(4) or §1919(h)(1)(B)(i) of the Act; or

(7) pursuant to state action, closed or had its residents transferred under §1919(h)(2) of the Act.

(f) A facility that is prohibited from offering a NATCEP under subsection (e) of this section must contract with a person who has not been employed by the facility or by the facility's owner to offer NATCEP in accordance with §1819(f)(2) and §1919(f)(2) of the Act if:

(1) the NATCEP is offered to employees of the facility that is prohibited from training nurse aides under subsection (e) of this section;

(2) the NATCEP is offered in, but not by, the prohibited facility;

(3) there is no other NATCEP offered within a reasonable distance from the facility; and

(4) an adequate environment exists for operating a NATCEP in the facility.

(g) A person who wants to contract with a facility in accordance with subsection (f) of this section must submit a completed application to HHSC in accordance with §556.4 of this chapter (relating to Filing and Processing an Application for a Nurse Aide Training and Competency Evaluation Program (NATCEP)) and include the name of the prohibited facility in the application. HHSC may withdraw the application within two years of approving it if HHSC determines that the facility is no longer prohibited from offering a NATCEP.

(h) A NATCEP must provide at least 100 hours of training to a trainee. The 100 hours must include:

(1) 60 hours of classroom training; and

(2) 40 hours of clinical training with at least one program instructor for every 10 trainees.

~~[(h) Before September 1, 2013, a NATCEP must provide at least 75 hours of training to a trainee. The 75 hours must include:]~~

~~[(1) 51 hours of classroom training; and]~~

~~[(2) 24 hours of clinical training, which includes care of residents and has at least one program instructor for every 10 trainees.]~~

(i) A NATCEP that provides online training must:

(1) maintain records in accordance with subsection (g) of this section and otherwise comply with this chapter;

(2) adopt, implement, and enforce a policy and procedures for establishing that a trainee who registers in an online training is the same trainee who participates in and completes the course. This policy and associated procedures must describe the procedures the NATCEP uses to:

(A) verify a trainee's identity;

(B) ensure protection of a trainee's privacy and personal information; and

(C) document the hours completed by each trainee; and

(3) verify on the NATCEP application that the online course has the security features required under paragraph (2) of this subsection.

~~[(i) Effective September 1, 2013, a NATCEP must provide at least 100 hours of training to a trainee. The 100 hours must include:]~~

~~[(1) 60 hours of classroom training; and~~

~~—(2) 40 hours of clinical training, which includes care of residents and has at least one program instructor for every 10 trainees.]~~

(j) A NATCEP must teach the curriculum established by HHSC and described in the Code of Federal Regulations, Title 42, §483.152. The NATCEP must include at least 16 introductory hours of classroom training in the following areas before a trainee has any direct contact with a resident:

- (1) communication and interpersonal skills;
- (2) infection control;
- (3) safety and emergency procedures, including the Heimlich maneuver;
- (4) promoting a resident's independence;
- (5) respecting a resident's rights;
- (6) basic nursing skills, including:
 - (A) taking and recording vital signs;
 - (B) measuring and recording height and weight;
 - (C) caring for a resident's environment;
 - (D) recognizing abnormal changes in body functioning and the importance of reporting such changes to a supervisor; and
 - (E) caring for a resident when death is imminent;
- (7) personal care skills, including:
 - (A) bathing;
 - (B) grooming, including mouth care;
 - (C) dressing;
 - (D) toileting;
 - (E) assisting with eating and hydration;
 - (F) proper feeding techniques;
 - (G) skin care; and

- (H) transfers, positioning, and turning;
- (8) mental health and social service needs, including:
 - (A) modifying the aide's behavior in response to a resident's behavior;
 - (B) awareness of developmental tasks associated with the aging process;
 - (C) how to respond to a resident's behavior;
 - (D) allowing a resident to make personal choices, providing and reinforcing other behavior consistent with the resident's dignity; and
 - (E) using a resident's family as a source of emotional support;
- (9) care of cognitively impaired residents, including:
 - (A) techniques for addressing the unique needs and behaviors of a resident with a dementia disorder including Alzheimer's disease;
 - (B) communicating with a cognitively impaired resident;
 - (C) understanding the behavior of a cognitively impaired resident;
 - (D) appropriate responses to the behavior of a cognitively impaired resident;
 - and
 - (E) methods of reducing the effects of cognitive impairments;
- (10) basic restorative services, including:
 - (A) training a resident in self care according to the resident's abilities;
 - (B) use of assistive devices in transferring, ambulation, eating, and dressing;
 - (C) maintenance of range of motion;
 - (D) proper turning and positioning in bed and chair;
 - (E) bowel and bladder training; and
 - (F) care and use of prosthetic and orthotic devices; and
- (11) a resident's rights, including:
 - (A) providing privacy and maintenance of confidentiality;

(B) promoting the resident's right to make personal choices to accommodate their needs;

(C) giving assistance in resolving grievances and disputes;

(D) providing needed assistance in getting to and participating in resident, family, group, and other activities;

(E) maintaining care and security of the resident's personal possessions;

(F) promoting the resident's right to be free from abuse, mistreatment, and neglect and the need to report any instances of such treatment to appropriate facility staff; and

(G) avoiding the need for restraints in accordance with current professional standards.

(k) A NATCEP must have a program director and a program instructor when the NATCEP applies for initial approval by HHSC in accordance with §556.7 of this chapter (relating to Review and Reapproval of a Nurse Aide Training and Competency Evaluation Program (NATCEP)) and to maintain HHSC approval. The program director and program instructor must meet the requirements of §556.5(a) and (b) of this chapter (relating to Program Director, Program Instructor, Supplemental Trainers, and Skills Examiner Requirements).

(l) A NATCEP must teach eight hours of infection control that includes the proper use of personal protective equipment (PPE) before a trainee has any direct contact with a resident.

(m) [~~(h)~~] A NATCEP must verify that a trainee:

(1) is not listed on the NAR in revoked status;

(2) is not listed as unemployable on the EMR; and

(3) has not been convicted of a criminal offense listed in Texas Health and Safety Code (THSC), §250.006(a), or convicted of a criminal offense listed in THSC, §250.006(b) within the five years immediately before participating in the NATCEP.

(n) [~~(m)~~] A NATCEP must ensure that a trainee:

(1) completes the first 16 introductory hours of training (Section I of the curriculum) before having any direct contact with a resident;

(2) only performs services for which the trainee has been trained and has been found to be proficient by a program instructor;

(3) is under the direct supervision of a licensed nurse when performing skills as part of a NATCEP until the trainee has been found competent by the program instructor to perform that skill;

(4) is under the general supervision of a licensed nurse when providing services to a resident after a trainee has been found competent by the program instructor; and

(5) is clearly identified as a trainee during the clinical training portion of the NATCEP.

(o) ~~[(n)]~~ A NATCEP must submit a NATCEP application to HHSC if the information in an approved NATCEP application changes. A NATCEP may not continue training or start new training until HHSC approves the change. HHSC conducts a review of the NATCEP information if HHSC determines the changes are substantive.

(p) ~~[(o)]~~ A NATCEP must use an [a] HHSC performance record to document major duties or skills taught, trainee performance of a duty or skill, satisfactory or unsatisfactory performance, and the name of the instructor supervising the performance. At the completion of the NATCEP, the trainee and the employer, if applicable, will receive a copy of the performance record.

(q) ~~[(p)]~~ A NATCEP must maintain records for each session of classroom training, whether offered in person or online, and of clinical training, and must make these records [and make them] available to HHSC or its designees at any reasonable time. [The records must include:]

(1) The classroom and clinical training records must include:

(A) ~~[(1)]~~ dates and times of all classroom and clinical training;

(B) ~~[(2)]~~ the full name and social security number of each [a] trainee;

(C) ~~[(3)]~~ a [attendance] record of the date and time of each classroom and clinical training session a trainee attends;

(D) ~~[(4)]~~ a final course grade [for the training portion of the NATCEP] that indicates pass or fail for each [a] trainee; and

(E) ~~[(5)]~~ a [daily] physical or electronic sign-in record [records] for each classroom and clinical training session. An electronic sign-in must include a form of identity verification for the trainee conducted in compliance with the requirements of subsection (i)(2) of this section.

(2) A NATCEP must provide to HHSC, on the NATCEP application, the physical address where all records are maintained and must notify HHSC of any change in the address provided.

(r) ~~[(q)]~~ A facility must not charge a nurse aide for any portion of the NATCEP, including any fees for textbooks or other required course materials, if the nurse aide is employed by or has received an offer of employment from a facility on the date the nurse aide begins a NATCEP.

(s) ~~[(r)]~~ HHSC reimburses a nurse aide for a portion of the costs incurred by the nurse aide to complete a NATCEP if the nurse aide is employed by or has received an offer of employment from a facility within 12 months after completing the NATCEP.

(t) ~~[(s)]~~ HHSC must approve a NATCEP before the NATCEP solicits or enrolls trainees.

(u) ~~[(t)]~~ HHSC approval of a NATCEP only applies to the required curriculum and hours. HHSC does not approve additional content or hours.

(v) ~~[(u)]~~ A new employee or trainee orientation given by a facility to a nurse aide employed by the facility does not constitute a part of a NATCEP.

(w) ~~[(v)]~~ A NATCEP that provides training to renew a nurse aide's listing on the NAR must include training in geriatrics and the care of residents with a dementia disorder, including Alzheimer's disease.

§556.6. Competency Evaluation Requirements.

(a) Only HHSC, or an entity HHSC approves, may provide a competency evaluation, which must be administered by a [A] skills examiner [must administer a competency evaluation] at an approved evaluation site.

(b) A trainee is eligible to take a competency evaluation if the trainee has successfully completed the training portion of a NATCEP, as determined by the program director, or is eligible under §556.11 of this chapter (relating to Waiver, Reciprocity, and Exemption Requirements).

(c) If a trainee cannot take a competency evaluation at the NATCEP location where the trainee received training, the trainee may take a competency evaluation at another location approved to offer ~~[approved NATCEP that offers]~~ the ~~[competency]~~ evaluation ~~[and accepts the trainee for a competency evaluation]~~.

(d) An eligible trainee ~~[who does not take a competency evaluation at the location where the trainee received training]~~ must obtain from the program director a signed competency evaluation application and a certificate or letter of completion of training. The trainee must arrange ~~[with another approved NATCEP]~~ to take the competency evaluation at an approved location and must follow the instructions on the competency evaluation application.

(e) A NATCEP must:

~~[(1) provide a facility where a trainee may perform the skills demonstration and a location where a trainee may take the written or oral examination;]~~

(1) ~~[(2)]~~ promptly, after one of its trainees successfully completes the NATCEP training, approve trainees to take a competency evaluation ~~[offer a competency evaluation to its own trainees promptly after successful completion of the training portion of a NATCEP];~~

~~[(3) administer a competency evaluation to other eligible trainees the NATCEP has accepted for the competency evaluation;]~~

(2) ~~[(4)]~~ provide the trainees with information regarding scheduling ~~[schedule]~~ a competency evaluation; and

(3) ~~[(5)]~~ ensure that the trainee ~~[trainees]~~ accurately completes ~~[complete]~~ the competency evaluation applications.

(f) A trainee must:

(1) take a competency evaluation within 24 months after completing the training portion of a NATCEP;

(2) verify the arrangements for a competency evaluation ~~[evaluations];~~

(3) complete a competency evaluation application and submit the application in accordance with application instructions;

(4) request another competency evaluation if the trainee fails a competency evaluation; and

(5) meet any other procedural requirements specified by HHSC or its designated skills examiner.

(g) A competency evaluation must consist of:

(1) a skills demonstration that requires the trainee to demonstrate five randomly selected skills drawn from a pool of skills that are generally performed by nurse aides, including all personal care skills listed in the curriculum; and

(2) a written or oral examination, which includes 60 scored multiple choice questions selected from a pool of test items that address each course requirement in the curriculum. Written examination questions must be printed in a test booklet with a separate answer sheet. An oral examination must be a recorded presentation read from a prepared text in a neutral manner that includes questions to test reading comprehension.

(h) A trainee with a disability, including a trainee with dyslexia as defined in Texas

Education Code §51.970 (relating to Instructional Material for Blind and Visually Impaired Students and Students with Dyslexia), may request a reasonable accommodation for the competency evaluation under the Americans with Disabilities Act.

(i) To successfully complete the [a NATCEP] competency evaluation, a trainee must achieve a score HHSC designates as a passing [pass] score on:

- (1) the skills demonstration~~[, as determined by HHSC]~~; and
- (2) the written or oral examination~~[, as determined by HHSC]~~.

(j) A trainee who fails the skills demonstration or the written or oral examination may retake the competency evaluation twice.

(1) A trainee must be advised of the areas of the competency evaluation that the trainee did not pass.

(2) If a trainee fails a competency evaluation three times, the trainee must complete the training portion of a NATCEP before taking a competency evaluation again.

(k) HHSC informs a trainee before taking a competency evaluation that HHSC records successful completion of the competency evaluation on the NAR.

(l) HHSC records successful completion of the competency evaluation on the NAR within 30 days after the date the trainee passes the competency evaluation.

(m) A facility must not offer or serve as a competency evaluation site if the facility is prohibited from offering a NATCEP under the provisions of §556.3(e) of this chapter (relating to Nurse Aide Training and Competency Evaluation Program (NATCEP) Requirements).

(n) A trainee may not be charged ~~[facility must not charge a nurse aide]~~ for any portion of a competency evaluation if the trainee ~~[nurse aide]~~ is employed by or has received an offer of employment from a facility on the date the trainee ~~[nurse aide]~~ takes the competency evaluation.

(o) HHSC reimburses a nurse aide for a portion of the costs incurred by the individual ~~[nurse aide]~~ to take a competency evaluation if the individual ~~[nurse aide]~~ is employed as a nurse aide by, or has received an offer of employment from, a facility within 12 months after taking the competency evaluation.

§556.9. Nurse Aide Registry and Renewal.

(a) To be listed on the NAR as having active status, a nurse aide must successfully complete a NATCEP, as described in §556.6(i) of this chapter (relating to

Competency Evaluation Requirements).

(b) HHSC does not charge a fee to list a nurse aide on the NAR or to renew the nurse aide's listing of active status on the NAR.

(c) A nurse aide listed on the NAR must inform HHSC of the nurse aide's current address and telephone number.

(d) A listing of active status on the NAR expires 24 months after the nurse aide is listed on the NAR or 24 months after the last date of verified employment as a nurse aide, whichever is earlier. To renew active status on the NAR, the following requirements must be met:

(1) A facility must submit a HHSC Employment Verification form to HHSC that documents that the nurse aide has performed paid nursing or nursing-related services at the facility during the preceding year.

(2) A nurse aide must submit a HHSC Employment Verification form to HHSC to document that the nurse aide has performed paid nursing or nursing-related services, if documentation is not submitted in accordance with paragraph (1) of this subsection by the facility or facilities where the nurse aide was employed.

(3) A nurse aide must complete an HHSC course in infection control and proper use of PPE every year

(4) [~~(3)~~] A nurse aide must complete at least 24 hours of in-service education every two years. The in-service education must include training in geriatrics and the care of residents with a dementia disorder, including Alzheimer's disease. The in-service education must be provided by:

(A) a facility;

(B) an approved NATCEP;

(C) HHSC; or

(D) a healthcare entity, other than a facility, licensed or certified by HHSC; by the Department of State Health Services; or by the Board of Nursing.

(5) [~~(4)~~] No more than 12 hours of the in-service education required by paragraph (4) [~~(3)~~] of this subsection may be provided by an entity described in paragraph (4)(D) [~~(3)(D)~~] of this subsection.