

# Nursing Assistant Training & Competency under COVID 1135 Waiver and State Law Clarification

MDH will update this memo if CMS revises the 1135 waiver related to training and certification of nurse aides.

This clarification is related to Minnesota Statutes 144A.61 Subdivision 6a that implements federal CFR §483.35(d) related to nursing assistants and the “four month” federal requirement under CFR §483.35(d).

42 CFR 483.35(d), with the exception of 42 CFR 483.35(d) (1) (i) and 42 CFR 483.35(c) is waived under CMS 1135 waiver. This can be found at:

[COVID-19 Emergency Declaration Blanket Waivers for Health Care Providers \(PDF\)](#)

[\[https://www.cms.gov/files/document/summary-covid-19-emergency-declaration-waivers.pdf\]](https://www.cms.gov/files/document/summary-covid-19-emergency-declaration-waivers.pdf)

The requirement in Minnesota Statute 144A.61 Subdivision 6a are identical to those waived in the federal waiver therefore the state law at 144A.61 Subdivision 6a is effectively waived.

Minnesota Statute 144A.61 Subdivision 6a is underlined below:

144A.61 NURSING ASSISTANT TRAINING [\[https://www.revisor.mn.gov/statutes/cite/144A.61\]](https://www.revisor.mn.gov/statutes/cite/144A.61)

*Subdivision 1. Authority. The commissioner of health, in consultation with the commissioner of human services, shall implement the provisions of Public Law 100-203, the Omnibus Budget Reconciliation Act of 1987, that relate to training and competency evaluation programs, testing, and the establishment of a registry for nursing assistants in nursing homes and boarding care homes certified for participation in the medical assistance or Medicare programs. The commissioner of health may adopt permanent rules that may be necessary to implement Public Law 100-203 and provisions of this section. The commissioner of health may contract with outside parties for the purpose of implementing the provisions of this section. At the request of the commissioner, the Board of Nursing may establish training and competency evaluation standards; review, evaluate, and approve curricula; review and approve training programs; and establish a registry of nursing assistants.*

*Subd. 2. Nursing assistants. For the purposes of this section and section 144A.611 "nursing assistant" means a nursing home or certified boarding care home employee, including a nurse's aide or an orderly, who is assigned by the director of nursing to provide or assist in the provision of nursing or nursing-related services under the supervision of a registered nurse. "Nursing assistant" includes nursing assistants employed by nursing pool companies but does not include a licensed health professional.*

*Subd. 3. Curricula. The chancellor of vocational technical education shall develop curricula to be used for nursing assistant training programs for employees of nursing homes and boarding care homes.*

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*Subd. 3a. Competency evaluation program. The commissioner of health shall approve the competency evaluation program. A competency evaluation must be administered to persons who desire to be listed in the nursing assistant registry. The tests may only be administered by technical colleges, community colleges, or other organizations approved by the Department of Health. The commissioner of health shall approve a nursing assistant for the registry without requiring a competency evaluation if the nursing assistant is in good standing on a nursing assistant registry in another state.*

*Subd. 4. Technical assistance. The chancellor of vocational technical education shall, upon request, provide necessary and appropriate technical assistance in the development of nursing assistant training programs.*

*Subd. 5. [Repealed, 1977 c 326 s 18]*

*Subd. 6. [Repealed, 1989 c 282 art 3 s 98]*

*Subd. 6a. Nursing assistants hired in 1990 and after. Each nursing assistant hired to work in a nursing home or in a certified boarding care home on or after January 1, 1990, must have successfully completed an approved competency evaluation prior to employment or an approved nursing assistant training program and competency evaluation within four months from the date of employment.*

*Subd. 7. Violation, penalty. Violation of this section by a nursing home or certified boarding care home shall be grounds for the issuance of a correction order. Under the provisions of sections 144.653 or 144A.10, the failure of the nursing home or certified boarding care home to comply with the correction order shall result in the assessment of a fine in the amount of \$300.*

*Subd. 8. Exceptions. Employees of nursing homes conducted in accordance with the teachings of the body known as the Church of Christ, Scientist, shall be exempt from the requirements of this section and section 144A.611.*

*Subd. 9 Electronic transmission. The commissioner of health must accept electronic transmission on applications and supporting documentation for interstate endorsement for the nursing assistant registry.*

## **Federal Nursing Assistant Requirements waived under 1135: Long-Skilled Nursing Facilities (SNFs) and/or Nursing Facilities (NFs)**

42 CFR 483.35(d), with the exception of 42 CFR 483.35(d) (1) (i) and 42 CFR 483.35(c) is waived under CMS 1135 waiver. This 1135 waiver can be found at:

[COVID-19 Emergency Declaration Blanket Waivers for Health Care Providers \(PDF\)](https://www.cms.gov/files/document/summary-covid-19-emergency-declaration-waivers.pdf)  
[<https://www.cms.gov/files/document/summary-covid-19-emergency-declaration-waivers.pdf>]

The CMS 1135 waiver related to the Training and Certification of Nurse Aides states:

**Training and Certification of Nurse Aides.** CMS is waiving the requirements at 42 CFR 483.35(d) (With the exception of 42 CFR 483.35(d) (1) (i)), which require that a SNF and NF may not employ anyone for longer than four months unless they met the training and certification requirements under § 483.35(d). CMS is waiving these requirements to assist in potential staffing shortages seen with the COVID-19 pandemic. To ensure the health and safety of nursing home residents, CMS is not waiving 42 CFR § 483.35(d)(1)(i), which requires facilities to not use any individual working as a nurse aide for more than four months, on a full-time basis, unless that individual is competent to provide nursing and nursing related services. We further note that we are not waiving § 483.35(c), which requires facilities to ensure that nurse aides are able to demonstrate competency in skills and techniques necessary to care for residents' needs, as identified through resident assessments, and described in the plan of care.

Application to individuals working in a Minnesota SNF/NF under this 1135 waiver:

- Individuals working in a Minnesota SNF/NF under the Training and Certification of Nurse Aides 1135 waiver do not need evidence of being current or being on the Minnesota Nursing Assistant Registry for the duration of this 1135 waiver.
- Individuals working in a Minnesota SNF/NF under the Training and Certification of Nurse Aides 1135 waiver coming into Minnesota from another state do not need evidence of being current or being on the Minnesota Nursing Assistant Registry for the duration of this 1135 waiver.

Training and Certification of Nurse Aides

The language in the federal regulation below is waived except for language underlined below which is NOT waived under the Training and Certification of Nurse Aides 1135 waiver and is still in effect:

*§483.35(d) Requirement for facility hiring and use of nurse aides-*

*§483.35(d) (1) General rule.*

*A facility must not use any individual working in the facility as a nurse aide for more than 4 months, on a full-time basis, unless—*

*(i) That individual is competent to provide nursing and nursing related services; and*

*(ii)(A) That individual has completed a training and competency evaluation program, or a competency evaluation program approved by the State as meeting the requirements of §483.151 through §483.154; or*

*(B) That individual has been deemed or determined competent as provided in §483.150(a) and (b).*

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*§483.35(d) (2) Non-permanent employees.*

*A facility must not use on a temporary, per diem, leased, or any basis other than a permanent employee any individual who does not meet the requirements in paragraphs (d)(1)(i) and (ii) of this section.*

*§483.35(d) (3) Minimum Competency*

*A facility must not use any individual who has worked less than 4 months as a nurse aide in that facility unless the individual—*

- (i) Is a full-time employee in a State-approved training and competency evaluation program;*
- (ii) Has demonstrated competence through satisfactory participation in a State-approved nurse aide training and competency evaluation program or competency evaluation program; or*
- (iii) Has been deemed or determined competent as provided in §483.150(a) and (b)*

*§483.35(d) (4) Registry verification.*

*Before allowing an individual to serve as a nurse aide, a facility must receive registry verification that the individual has met competency evaluation requirements unless—*

- (i) The individual is a full-time employee in a training and competency evaluation program approved by the State; or*
- (ii) The individual can prove that he or she has recently successfully completed a training and competency evaluation program or competency evaluation program approved by the State and has not yet been included in the registry. Facilities must follow up to ensure that such an individual actually becomes registered.*

*§483.35(d) (5) Multi-State registry verification.*

*Before allowing an individual to serve as a nurse aide, a facility must seek information from every State registry established under sections 1819(e) (2) (A) or 1919(e) (2) (A) of the Act that the facility believes will include information on the individual.*

*§483.35(d) (6) Required retraining.*

*If, since an individual's most recent completion of a training and competency evaluation program, there has been a continuous period of 24 consecutive months during none of which the individual provided nursing or nursing-related services for monetary compensation, the individual must complete a new training and competency evaluation program or a new competency evaluation program.*

*§483.35(d) (7) Regular in-service education.*

*The facility must complete a performance review of every nurse aide at least once every 12 months, and must provide regular in-service education based on the outcome of these reviews. In-service training must comply with the requirements of §483.95(g).*

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*§483.35(c) Proficiency of nurse aides.*

*The facility must ensure that nurse aides are able to demonstrate competency in skills and techniques necessary to care for residents' needs, as identified through resident assessments, and described in the plan of care.*

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