



# TEMPORARY RULE-MAKING FINDINGS OF NEED

[Authority G.S. 150B-21.1]

OAH USE ONLY

VOLUME:

ISSUE:

1. Rule-Making Agency: N.C. Medical Care Commission

2. Rule citation & name: 10A NCAC 13B .0301 NURSE AIDE I TRAINING AND COMPETENCY EVALUATION

3. Action: ☐ Adoption ☒ Amendment ☐ Repeal

4. Was this an Emergency Rule: ☒ Yes ☐ No Effective date: 04/20/20

5. Provide dates for the following actions as applicable:

- a. Proposed Temporary Rule submitted to OAH: 04/09/20
- b. Proposed Temporary Rule published on the OAH website: 04/14/20
- c. Public Hearing date: 05/05/20
- d. Comment Period: 04/20/20 – 5/11/20
- e. Notice pursuant to G.S. 150B-21.1(a3)(2): 04/09/20
- f. Adoption by agency on: 06/9/20
- g. Proposed effective date of temporary rule [if other than effective date established by G.S. 150B- 21.1(b) and G.S. 150B-21.3]:
- h. Rule approved by RRC as a permanent rule [See G.S. 150B-21.3(b2)]: n/a

6. Reason for Temporary Action. Attach a copy of any cited law, regulation, or document necessary for the review.

- ☒ A serious and unforeseen threat to the public health, safety or welfare.
- ☐ The effective date of a recent act of the General Assembly or of the U.S. Congress.  
Cite:  
Effective date:
- ☐ A recent change in federal or state budgetary policy.  
Effective date of change:
- ☐ A recent federal regulation.  
Cite:  
Effective date:
- ☐ A recent court order.  
Cite order:
- ☐ State Medical Facilities Plan.
- ☒ Other: Emergency rule Eff. 04/20/20

**Explain:** On March 10, 2020, the Governor of North Carolina, by issuing Executive Order No. 116, declared a state of emergency to coordinate a response and enact protective measures to help prevent the spread of COVID-19. The COVID-19 is a respiratory disease that can result in serious illness or death. The World Health Organization, the Center for Disease Control and Prevention, and the United States Department of Health and Human Services have declared COVID-19 a public health threat and emergency. In conjunction with government guidance, on March 16, 2020, the state-approved vendor, Pearson VUE, suspended all nurse aide testing in North Carolina until conditions are deemed safe to re-open. In order to assist the healthcare workforce and the citizens of North Carolina who need medical care, the Division of Health Service Regulation seeks to amend 10A NCAC 13O .0301 under emergency procedures by requesting reciprocity for out-of-state nurse aides who are active and in good standing on another state's Nurse Aide I Registry.

**7. Why is adherence to notice and hearing requirements contrary to the public interest and the immediate adoption of the rule is required?**

The Division of Health Service Regulation is requesting reciprocity for out-of-state nurse aides to mitigate the risk of potential staffing shortages seen with the COVID-19 pandemic. Currently, nurse aide students who have successfully completed a state-approved nurse aide I training program in North Carolina are unable to complete the North Carolina state-approved nurse aide I competency exam. On March 16, 2020, the state-approved vendor, Pearson VUE, suspended all nurse aide I testing in North Carolina until conditions are deemed safe to re-open. It is a requirement for individuals to pass the North Carolina state-approved nurse aide I competency exam in order to be listed on the North Carolina Nurse Aide I Registry. The North Carolina Nurse Aide I Registry is a registry of all individuals who meet the state and federal training and testing requirements to perform Nurse Aide I tasks. Per federal and state requirements, any individual who works as a nurse aide I in a Nursing Home must be listed on the Nurse Aide I Registry.

**8. Rule establishes or increases a fee? (See G.S. 12-3.1)**

☐ Yes

Agency submitted request for consultation on:  
Consultation not required. Cite authority:

☒ No

**9. Rule-making Coordinator: Nadine Pfeiffer**

Phone: 919-855-3811

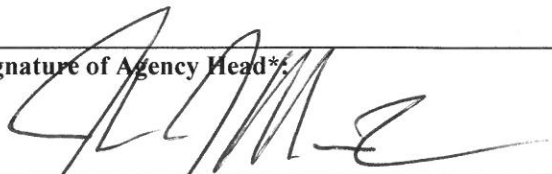
E-Mail: Nadine.pfeiffer@dhhs.nc.gov

**Agency contact, if any: Jana Busick**

Phone: 919-855-3757

E-Mail: jana.busick@dhhs.nc.gov

**10. Signature of Agency Head\*:**



\* If this function has been delegated (reassigned) pursuant to G.S. 143B-10(a), submit a copy of the delegation with this form.

Typed Name: John Meier, IV, M.D.

Title: Chairman, N.C. Medical Care Commission

E-Mail: JJMIV1964@gmail.com

**RULES REVIEW COMMISSION USE ONLY**

Action taken:

Submitted for RRC Review:

☐ Date returned to agency:

REQUEST FOR TECHNICAL CHANGE FOR TEMPORARY RULE

AGENCY: Medical Care Commission

RULE CITATION: 10A NCAC 130 .0301

**DEADLINE FOR RECEIPT: Friday, June 12, 2020**

**PLEASE NOTE:** *This request may extend to several pages. Please be sure you have reached the end of the document.*

The Rules Review Commission staff has completed its review of this Rule prior to the Commission's next meeting. The Commission has not yet reviewed this Rule and therefore there has not been a determination as to whether the Rule will be approved. You may call our office to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends the following technical changes be made:

*In (a)(2), (b), and (c), would it just be "reciprocity", as opposed to "reciprocity transfer"? The word "transfer" implies that they will no longer be certified in their home state. I assume that's not the intent.*

*In (b), delete "meet the following criteria:" so that it reads "... the applicant shall:"*

*Please consider revising (b)(3) to say "provide a copy of his or her unexpired government-issued identification containing a photograph and signature." This makes it clear that the expiration is tied to the identification, not the signature.*

*In (c), change "to" to "and" in "to be listed" so that it reads For the applicant to be approved for reciprocity ~~transfer~~ of a nurse aide certification or registration ~~and to~~ be listed...*

*In (c)(2), please change "... with an active status and good standing status" to "...as active and in good standing" to make consistent with (b)(2)*

*In (c)(4), just to be sure that I understand, if a person has worked one eight hour day in the past 24 months, he or she would need to provide this information? If so, I think it's clear as written. I just want to verify.*

*In (c)(4), change "another" to "the other State" or "the reciprocal State's..."*

*In (c)(6), please change "42 CFR 483 Part 152" and "42 CFR 483 Part 154" to "42 CFR 483.152" and "42 CFR 483.154"*

*In (d) and (d)(2), can there be a second request for additional information after an initial request? initially questioned the use of "receipt of additional information" on line 23, given (d)(2).*

Amber May  
Commission Counsel  
Date submitted to agency: June 10, 2020

*Since you've incorporated 42 CFR 483 Subpart D by reference, are (f) through (h) necessary? They recite the CFR.*

*If you need (h) (which I don't think you do), please delete "business." 42 CFR 483.154 says that a record of successful completion must be provided within 30 days.*

*In (j), 42 CFR 483.154 says at least three, but that a state can allow for more. Is the intent here to set the limit at 3? If so, please make that more clear. Also, remove the reference to 42 CFR 483.154 (again, you've already incorporated it by reference.)*

*In your History Note, what specific part gives you authority for this Rule? I'm thinking 42 CFR 483.151, but there may be others.*

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

Amber May  
Commission Counsel  
Date submitted to agency: June 10, 2020

10A NCAC 13O .0301 is amended under temporary procedures with changes as follows:

### SECTION .0300 - NURSE AIDE I REGISTRY

#### 10A NCAC 13O .0301 NURSE AIDE I TRAINING AND COMPETENCY EVALUATION

(a) To be eligible to be listed on the NC Nurse Aide I Registry by the Health Care Personnel Education and Credentialing Section, a person ~~shall~~ shall:

- (1) pass a Nurse Aide I training program approved by the Department in accordance with 42 CFR Part 483.151 through Part 483.152 and the State of North Carolina's Nurse Aide I competency ~~exam~~ exam; or
- (2) apply to the Department for approval to be listed on the NC Nurse Aide I Registry by reciprocity transfer of a nurse aide certification or registration from another State to North Carolina.

(b) In applying for reciprocity transfer of a nurse aide certification or registration to be listed on the NC Nurse Aide I Registry pursuant to Subparagraph (a)(2) of this Rule, the applicant shall meet the following criteria:

- (1) submit a completed application to the Department that includes the following:
  - (A) first, middle, and last name;
  - (B) the applicant's prior name(s), if any;
  - (C) mother's maiden name;
  - (D) gender;
  - (E) social security number;
  - (F) date of birth;
  - (G) mailing address;
  - (H) email address;
  - (I) home telephone number;
  - (J) any other State registries of nurse aides upon which the applicant is listed;
  - (K) certification or registration numbers for any State nurse aide registries identified in Part (b)(1)(J) of this Rule;
  - (L) original issue dates for any certifications or registrations identified in Part (b)(1)(K) of this Rule;
  - (M) expiration dates for any certifications or registrations identified in Part (b)(1)(K) of this Rule; and
  - ~~(N) training program name(s);~~
  - ~~(O) training program locations(s);~~
  - ~~(P) training program completion date(s) with a passing score; and~~
  - (Q) employment history;

(2) provide documentation verifying that his or her registry listing is active and in good standing in the State(s) of transfer, dated no older than 30 calendar days prior to the date the application is received by the Department; and

(3) provide a copy of his or her Social Security card and a ~~[valid]~~ government-issued identification containing a photograph and ~~[signature]~~ signature that is not expired.

(c) For the applicant to be approved for reciprocity transfer of a nurse aide certification or registration to be listed on the NC Nurse Aide I Registry, the Department shall verify the following:

(1) the applicant has completed an application in accordance with Subparagraph (b)(1) of this Rule;

(2) the applicant is listed on another State's registry of nurse aides with an active ~~status and good~~ standing status;

(3) the applicant has no pending or substantiated findings of abuse, neglect, exploitation, or misappropriation of resident or patient property recorded on another State's registry of nurse aides;

(4) if the applicant has been employed as a nurse aide for monetary compensation consisting of at least a total of eight hours of time worked performing nursing or nursing-related tasks delegated and supervised by a Registered ~~[Nurse]~~ Nurse, then the applicant shall provide the employer name, employer address, and dates of employment for the previous 24 consecutive months;

(5) the name listed on the Social Security card and government-issued identification containing a photograph and signature submitted with the application matches the name listed on another State's registry of nurse aides or that the applicant has submitted additional documentation verifying any name changes; and

(6) ~~[that]~~ the applicant completed a State-approved nurse aide training and competency evaluation program that meets the requirements of 42 CFR 483 Part 152 or a State-approved competency evaluation program that meets the requirements of 42 CFR 483 Part 154.

(d) The Department shall within 10 business days of receipt of an application for reciprocity transfer of a nurse aide certification or registration or receipt of additional information from the applicant:

(1) inform the applicant by letter whether he or she has been approved; or

(2) request additional information from the applicant.

The applicant shall be added to the NC Nurse Aide I Registry within three business days of Department approval.

~~(b)~~ (c) This Rule incorporates 42 CFR Part 483 Subpart D by reference, including all subsequent amendments and editions. Copies of the Code of Federal Regulations may be accessed electronically free of charge from [www.gpo.gov/fdsys/browse/collectionCfr.action?collectionCode=CFR](http://www.gpo.gov/fdsys/browse/collectionCfr.action?collectionCode=CFR).

~~(e)~~ (f) The State of North Carolina's Nurse Aide I competency exam shall include each course requirement specified in the Department-approved Nurse Aide I training program as provided for in 42 CFR Part 483.152.

~~(d)~~ (g) The State of North Carolina's Nurse Aide I competency exam shall be administered and evaluated only by the Department or its contracted testing agent as provided for in 42 CFR Part 483.154.

(~~e~~) (h) The Department shall include a record of completion of the State of North Carolina's Nurse Aide I competency exam in the NC Nurse Aide I Registry within 30 business days of passing the written or oral exam and the skills demonstration as provided for in 42 CFR Part 483.154.

(~~f~~) (i) If the State of North Carolina's Nurse Aide I competency exam candidate does not pass the written or oral exam and the skills demonstration as provided for in 42 CFR Part 483.154, the candidate shall be advised by the Department of the areas that the individual did not pass.

(~~g~~) (j) Every North Carolina's Nurse Aide I competency exam candidate shall have, as provided for in 42 CFR Part 483.154, the opportunity to take the exam three times before being required to retake and pass a Nurse Aide I training program.

(~~h~~) (k) A person who is currently listed on any state's Nurse Aide I Registry shall not be required to take the Department-approved Nurse Aide I training program to be listed or, if his or her 24-month listing period has expired, relisted on the NC Nurse Aide I Registry, unless the person fails to pass the State of North Carolina's Nurse Aide I competency exam after three attempts.

(~~i~~) (l) U.S. military personnel who have completed medical corpsman training and retired or non-practicing nurses shall not be required to take the Department-approved Nurse Aide I training program to be listed or relisted on the Nurse Aide I Registry, unless the person fails to pass the State of North Carolina's Nurse Aide I competency exam after three attempts.

*History Note: Authority G.S. 131E-255; 42 CFR Part 483;  
Eff. January 1, 2016;  
Emergency Amendment Eff. April 20, 2020; 2020;  
Temporary Amendment Eff. June 26, 2020.*