ARTICLE 33-43
NURSE AIDE TRAINING, COMPETENCY EVALUATION, AND REGISTRY

Chapter
33-43-01 Nurse Aide Training, Competency Evaluation, and Registry

CHAPTER 33-43-01
NURSE AIDE TRAINING, COMPETENCY EVALUATION, AND REGISTRY

Section
33-43-01-01 Definitions
33-43-01-02 Conflict With Federal Requirements
33-43-01-03 Responsibilities of Training Programs for Screening of Potential Students
33-43-01-04 Nurse Aide Training Program Requirements
33-43-01-05 Nurse Aide Competency Evaluation
33-43-01-06 Administration of Nurse Aide Competency Evaluation Programs
33-43-01-07 Withdrawal and Approval of Nurse Aide Training Program Status
33-43-01-08 Completion of the Nurse Aide Competency Evaluation Program
33-43-01-09 Registry Information
33-43-01-10 Disclosure of Information
33-43-01-11 Initial Certified Nurse Aide, Home Health Aide, and Nurse Aide Registration and Renewal
33-43-01-12 Supervision and Delegation of Nursing Interventions
33-43-01-13 Medication Assistant Requirements for Supervision
33-43-01-14 Medication Assistant I Training and Competency Evaluation Program Requirements
33-43-01-15 Medication Assistant II Training and Competency Evaluation Program Requirements
33-43-01-16 Specific Delegation of Medication Administration
33-43-01-17 Routes or Types of Medication Administration
33-43-01-18 Pro Re Nata Medications
33-43-01-19 Medication Interventions That May Not Be Delegated
33-43-01-20 Medication Assistant I and II Initial Registration and Renewal
33-43-01-21 Complaint Investigations
33-43-01-22 Disciplinary Actions
33-43-01-23 Hearing Process for Individuals on the Nurse Aide Registry
33-43-01-24 Review Process for Findings of Neglect Placed on an Individual Nurse Aide's Registry Listing
33-43-01-25 Grandfather Provisions
33-43-01-26 Waiver Provision

33-43-01-01. Definitions.

1. "Abuse" includes mental, physical, sexual, and verbal abuse. "Mental abuse" includes humiliation, harassment, threats of punishment, or deprivation. "Physical abuse" includes hitting, slapping, pinching, kicking, and controlling behavior through corporal punishment. "Sexual abuse" includes sexual harassment, sexual coercion, sexual contact, or sexual assault. "Verbal abuse" includes any use of oral, written, or gestured language that includes disparaging and derogatory terms to residents or their families, or within their hearing distance, to describe residents, regardless of their age, ability to comprehend, or disability.

2. "Agency" means home health agency.

3. "Certified nurse aide" means an individual who has successfully completed the requirements for the department-approved certified nurse aide training and competency evaluation program, or department-approved certified nurse aide competency evaluation program to provide

nursing or nursing-related services to residents and is entered on the department's nurse aide registry as a certified nurse aide.

4. "Competence" means the application and integration of knowledge, skills, ability, and judgment necessary to meet standards.

5. "Delegation" means the authorization for performance of selected nursing interventions from a licensed nurse to a certified nurse aide, home health aide, nurse aide, or medication assistant I or II.

6. "Deny" means the department's refusal to issue or renew a current registration on the nurse aide registry.

7. "Department" means the state department of health.

8. "Encumber" means to place on probation.

9. "Health care facility" means any health care facility licensed by the department which provides nursing-related services to consumers of nursing care other than nursing facilities.

10. "Home health aide" means an individual who renders personal related service under the supervision of a registered nurse and is registered on the department's nurse aide registry as a home health aide.

11. "Letter of concern" means a statement of the department's concerns regarding the conduct of a registrant.

12. "Medication administration" means the delivery of medication, by an individual delegated to and supervised by a licensed nurse, to a client whose use of that medication must be monitored and evaluated applying specialized knowledge, skills, and abilities possessed by a licensed nurse.

13. "Medication assistant" means an individual who is registered on the nurse aide registry as a certified nurse aide or nurse aide who has successfully completed the requirements of a department-approved medication assistant program for a specific employment setting. Upon successful completion of a medication assistant program, the certified nurse aide or nurse aide is eligible to be registered on the department's nurse aide registry as a medication assistant I or a medication assistant II.

    a. Medication assistant I is a certified nurse aide or nurse aide who has completed all the requirements for a department-approved medication assistant I program. A medication assistant I is limited to employment in a setting in which a licensed nurse is not regularly scheduled.

    b. Medication assistant II is a certified nurse aide who has completed all the requirements for a department-approved medication assistant II program. A medication assistant II may be employed both in a setting in which a licensed nurse is regularly scheduled and a setting in which a licensed nurse is not regularly scheduled.

14. "Medication assistant training program" means a program of study and clinical practice in the administration of routine, regularly scheduled medications which meets the department's requirements.

15. "Misappropriation of a resident property" means the deliberate misplacement, exploitation, or wrongful, temporary or permanent, taking or use of a resident's belongings or money, or both, without the resident's consent.

16. "Neglect" includes failure to carry out resident services as directed or ordered by the physician or other authorized personnel, failure to give proper attention to residents, or failure to carry out resident services through careless oversight.

17. "Nurse aide" means any individual who is registered on the nurse aide registry and who has successfully completed the competency requirements identified by the department to provide nursing or nursing-related services to an individual in a health care facility or other setting and is registered on the department's registry as a nurse aide.

18. "Nurse aide competency evaluation" means a testing mechanism consisting of both a written or oral and a manual skills component, testing the necessary knowledge needed by a certified nurse aide, home health aide, or nurse aide to provide safe care in a nursing facility, other health care facility, or other setting.

19. "Nurse aide registry" means a listing of individuals who the department has determined to have successfully completed the requirements established by the department to be designated as a certified nurse aide, home health aide, or nurse aide or medication assistant I or II.

20. "Nurse aide training program" means a program to train nurse aides offered by a public or private organization that has been approved by the department.

21. "Nursing facility" means a nursing facility licensed by the department, and does not include any institution that is for the care and treatment of persons with intellectual disabilities or persons with related conditions.

22. "Other misconduct" means a conviction of a crime or proof of behavior which has a direct bearing on the individual's ability to care for others or is a threat to the health and safety of patients or clients.

23. "Other setting" includes settings such as a clinic, outpatient service provider, or individual home where the individual on the department's nurse aide registry is employed to provide nursing-related services.

24. "Qualified instructor for a certified nurse aide training program" means a registered nurse with a minimum of two years of nursing experience, at least one year of which must be in the provision of long-term care facility services. Instructors must have completed a course in teaching adults or have experience in teaching adults or supervising nurse aides. In a nursing facility-based program, the director of nursing is prohibited from performing the actual training. However, a director of nursing who meets the qualified instructor requirements may provide the general supervision for the program. Other health-related professionals who have a minimum of one-year experience in their field may supplement the instructor.

25. "Qualified instructor for a home health aide training program" is a registered nurse who possesses a minimum of two years of nursing experience, at least one year of which must be in the provision of home health care services. Other professionals may be used to provide instruction under the supervision or the qualified instructor.

26. "Qualified instructor for a nurse aide training program" is a registered nurse.

27. "Regularly scheduled presence of a licensed nurse" means that a licensed nurse is present a minimum of eight hours in a twenty-four-hour period of time in a setting where nursing care is continuously delivered.

28. "Revoke" means the withdrawal by the department of the registration of an individual to be employed as a certified nurse aide, home health aide, nurse aide, or medication assistant I or II for a specified period of time of no less than one year. If no specified period of time is

identified by the department, revocation is permanent. For a certified nurse aide, a finding of abuse or neglect will result in permanent revocation, although the finding of neglect may be requested to be removed after one year under section 33-43-01-24.

29. "Routine, regularly scheduled medication" means the components of an identified medication regimen for an individuals or groups of individuals with stable conditions which are administered on a routine basis and do not require determination of need, drug calculation, or dosage conversion.

30. "Significant requirements" means federal certification or state licensure requirements that have a serious or measurable impact on the health and safety of the resident in the facility. This includes a nursing waiver. Significant requirements shall be determined to be out of compliance based on the considerations of severity of the noncompliance issue, frequency of the noncompliance issue, and history of prior noncompliance issues.

31. "Stable" means a situation in which the patient's or client's clinical and behavioral status and nursing care needs are determined by the registered nurse or licensed practitioner to be predictable, nonfluctuating, and consistent or in which the fluctuations are expected and the interventions are planned.

32. "Supervised practical skills training" means manual skills training in a laboratory or other setting in which the nurse aide demonstrates knowledge while performing tasks on an individual while under the direct supervision of a licensed nurse under the general supervision of a qualified instructor.

33. "Supervision" means maintaining accountability to determine whether or not nursing care is adequate and delivered appropriately. Supervision includes the assessment and evaluation of the patient or client's condition and responses to the nursing plan of care and evaluation of the competence of the person providing the nursing or nursing-related care.

    a. "Direct supervision" means that the responsible licensed nurse or licensed practitioner is physically present in the patient or client area and is available to assess, evaluate, and respond immediately.

    b. "Indirect supervision" means that the responsible licensed nurse or licensed practitioner is available through periodic inspection and evaluation or by telecommunication, or both, for direction, consultation, and collaboration.

34. "Suspend" means the withholding or withdrawing by the department of the registration of an individual on the department's nurse aide registry for a specified or indefinite period of time not to exceed one year.

History: Effective July 1, 2011.
General Authority: NDCC 23-44-01, 23-44-02
Law Implemented: NDCC 23-44-01, 23-44-02

33-43-01-02. Conflict with federal requirements.

If any part of this chapter is found to conflict with federal requirements, the more stringent shall apply. Such as finding or determination shall be made by the department and shall not affect the remainder of this chapter.

History: Effective July 1, 2011.
General Authority: NDCC 23-01-03, 23-01-11, 23-44-02
Law Implemented: NDCC 23-01-11, 23-44-02

33-43-01-03. Responsibilities of training programs for screening of potential students.

1. Certified nurse aide, home health aide, nurse aide, and medication assistant training programs must screen potential students or individuals seeking entry into a training program. This screening should be completed prior to beginning the training program and should occur in sufficient advance of the training to minimize delays and allow for changes in career choices in a timely manner.

2. Those applicants with a history including conviction of a crime substantially related to the qualification, functions, or duties of a certified nurse aide, home health aide, nurse aide, or medication assistant or a finding on a state nurse aide registry or federal registry should be informed they might not be allowed to begin the training program or take the test without providing specific information relating to their background, criminal history, or impairment.

3. The training program is responsible to provide sufficient screening to identify those individuals that would be a risk to the vulnerable populations served by the certified nurse aide, home health aide, nurse aide, or medication assistant and to submit that information to the department for review prior to entering the individual into a program.

History: Effective July 1, 2011.
General Authority: NDCC 23-44-02
Law Implemented: NDCC 23-44-02

33-43-01-04. Nurse aide training program requirements.

1. Any individual employed by a nursing facility to provide nursing or nursing-related services who is not a licensed nurse or volunteer or pursuing nurse aide certification and entry on the nurse aide registry must successfully complete a department-approved certified nurse aide training program consisting of a minimum of seventy-five hours and a department-approved competency evaluation or a department-approved competency evaluation.

    a. The certified nursing aide training program must be under the general supervision of a qualified instructor.

        (1) A qualified instructor for certified nurse aide training is a registered nurse with a minimum of two years of nursing experience, at least one year of which must be in the provision of long-term care facility services.

        (2) Instructors must have completed a course in teaching adults or have experience in teaching adults or supervising nurse aides.

        (3) In a nursing facility-based program, the director of nursing is prohibited from performing the actual training. However, a director of nursing who meets the qualified instructor requirements may provide the general supervision for the program.

        (4) Other health-related professionals who have a minimum of one-year experience in their field may supplement the instructor.

    b. Individuals employed by nursing facilities pursuing registration as a certified nurse aide must complete a minimum of sixteen hours of classroom training in the following areas from a department-approved nurse aide training program prior to any hands-on contact with residents or patients. The areas are:

        (1) Communication and interpersonal skills;

        (2) Infection control;

(3) Safety and emergency procedures, including the Heimlich maneuver;

(4) Promoting residents' independence; and

(5) Respecting residents' rights.

c. The remainder of the seventy-five-hour-approved training and competency evaluation program must be completed within four months of the date of first employment in the facility as a nurse aide and must include at least sixteen hours of supervised practical training.

d. Other areas that are required to be addressed in the certified nurse aide training program include:

(1) Basic nursing skills;

(2) Personal care skills;

(3) Mental health and social service needs;

(4) Care of residents or clients with cognitive impairments;

(5) Basic restorative services; and

(6) Resident or patient rights.

e. Individuals may not perform tasks for which competence has not been determined unless under the direct supervision of a licensed nurse.

f. Individuals trained and determined proficient by the instructor to provide specific services to residents who have not completed the competency evaluation program shall provide these services under the general provision of a licenced nurse.

g. The certified nurse aide training program must ensure that individuals in the training program who are employed by or have an offer of employment from a nursing facility to work as a certified nurse aide are not charged for any portion of the nurse aide training program, including fees for textbooks or other required course materials.

2. Any individual employed by a home health agency to provide home health aide services directly or by contract must successfully completed a home health aide training and competency evaluation program or competency evaluation program.

a. The training program must total at least seventy-five clock hours, with at least sixteen of the seventy-five hours being devoted to classroom training prior to initiating the supervised practical training. At least sixteen hours of the total program hours must be devoted to supervised practical training.

b. The training, including supervised practical training, of the home health aides must be performed under the general supervision of a qualified instructor.

(1) A qualified instructor for a home health training program is a registered nurse who possesses a minimum of two years of nursing experience, at least one year of which must be in the in the provision of home health care services.

(2) Other professionals may be used to provide instruction under the supervision of the qualified instructor.

c. The training must, at a minimum, include the following topics:

(1) Communication skills;

(2) Observation, reporting, and documentation of patient status and care or services furnished;

(3) Reading and recording of temperature, pulse, and respirations;

(4) Basic infection control procedures;

(5) Basic elements of body functioning and changes in body functioning that must be reported to an aide's supervisor;

(6) Maintenance of a clean, safe, and healthy environment;

(7) Recognizing emergencies and knowledge of emergency procedures;

(8) The physical, emotional, and developmental needs of and ways to work with the patients served;

(9) Patient rights;

(10) Appropriate and safe techniques in personal hygiene and grooming which include:

(a) Bed bath;

(b) Sponge, tub, or shower bath;

(c) Sink, tub, or bed shampoo;

(d) Oral hygiene; and

(e) Nail or skin care.

(11) Safe transfer techniques and ambulation;

(12) Normal range of motion and positioning;

(13) Adequate nutrition and fluid intake; and

(14) Any other tasks the agency may choose to have the home health aide perform.

d. The agency must maintain sufficient documentation to demonstrate that the requirements for the training of home health aides of this section are met.

3. Any individual who is not a licensed nurse who is employed directly or by contract to provide nursing or nursing-related services by a health care facility or other setting that is not a nursing facility or a home health agency must successfully complete a nurse aide training program under the direction of a qualified instructor and competency evaluation or competency evaluation.

a. A qualified instructor for a nurse aide training program is a licensed nurse.

b. The training program must, at a minimum, include the following areas:

(1) Infection control;

(2) Safety and emergency procedures;

(3) Collection and documentation of basic subjective and objective client data, including vital signs;

(4) Activities of daily living (bathing, dressing, personal hygiene, oral hygiene, transfer, ambulation, toileting, and eating) applicable to setting.

(5) Decisionmaking skills;

(6) Client rights, including freedom from abuse, neglect, misappropriation of client property, respect, privacy, dignity, and confidentiality;

(7) Communication and interpersonal skills; and

(8) Care of the client with cognitive impairments.

c. The nurse aide may not need to be retrained for each client cared for by the nurse aide, provided the nurse aide's knowledge and skills are maintained.

d. Additional training must be provided to nurse aides by a qualified instructor for clients whose needs or conditions would require variation from the typical manner the nursing-related task would be performed.

e. The nurse aide shall perform the delegated nursing-related task only on the client for whom the delegation is specified, exactly as taught, and in accordance with employers' policies or directives.

History: Effective July 1, 2011.
General Authority: NDCC 23-01-11, 23-17.3-08, 23-44-02
Law Implemented: NDCC 23-01-11, 23-17.3-05, 23-17.3-08, 23-44-02

33-43-01-05. Nurse aide competency evaluation.

1. Any individual employed by a nursing facility to provide nursing or nursing-related services, who is not a licensed nurse or volunteer, must successfully complete a department-approved certified nurse aide competency evaluation program to be eligible to apply to be placed on the department's nurse aide registry.

   a. The department-approved certified nurse aide competency evaluation program must allow a nurse aide the option of establishing competency through written or oral and manual skills examination.

   b. The written or oral examination must address all areas required in the department-approved training program.

   c. The written or oral examination must be developed from a pool of test questions, only a portion of which may be utilized in any one examination.

   d. The competency evaluation program must include a demonstration of the randomly selected tasks the individual will be expected to perform as part of the individual's function as a nurse aide.

   e. The competency evaluation program must provide for a system that prevents disclosure of both pool questions and the individual competency evaluations.

   f. The competency evaluation program must ensure that nurse aides employed by or having an offer of employment from a facility are not charged for any portion of the competency evaluation program.

2. Any individual employed by a home health agency to provide home health aide services must complete a home health competency evaluation program to be eligible to apply to be placed

on the department's nurse aide registry. The competency evaluation program consists of the following:

a. The competency evaluation must be conducted by a registered nurse who possesses a minimum of two years of nursing experience, at least one year must be in the provision of home health care.

b. The competency evaluation must address each of the items listed in subdivision c of subsection 2 of section 33-43-01-04.

(1) The items listed in paragraphs 3, 10, 11, and 12 of subdivision c of subsection 2 of section 33-43-01-04 must be completed by observation of the aide's performance of the tasks with a patient or other live individual.

(2) All other items listed in subdivision c of subsection 2 of section 33-43-01-04 can be evaluated through written or oral examination or observation of the aide with a patient.

c. A home health aide is not considered to have successfully passed a competency evaluation program if the aide has an unsatisfactory rating in more than one of the required areas.

(1) A home health aide cannot perform any task for which the aide is evaluated to perform unsatisfactorily unless under the direct supervision of a licensed nurse.

(2) The home health aide must receive training in the areas determined unsatisfactory and pass a subsequent evaluation satisfactorily prior to performing a task without supervision.

d. The agency must maintain documentation that the competency evaluation requirements of this subsection have been met be each home health aide.

3. Any individual who is employed directly or by contract by a health care facility or other setting that is not a nursing facility or a home health agency must successfully complete a nurse aide competency evaluation program to be eligible to apply to be placed on the department's nurse aide registry.

a. The competency evaluation program must be completed by a licensed nurse or employer.

b. The competency evaluation must, at a minimum, address the areas listed in subdivision a of subsection 3 of section 33-43-01-04.

c. A nurse aide is not considered to have successfully passed a competency evaluation program if the individual has an unsatisfactory rating in a required area identified in subdivision a of subsection 3 of section 33-43-01-04.

d. A nurse aide may perform tasks for which the aide has been competency evaluated to perform, and may not perform tasks for which the competency evaluation was unsatisfactory unless under the direct supervision of a licensed nurse.

History: Effective July 1, 2011.
General Authority: NDCC 23-01-11, 23-17.3-08, 23-44-02
Law Implemented: NDCC 23-01-11, 23-17.3-05, 23-17.3-08, 23-44-02

33-43-01-06. Administration of nurse aide competency evaluation programs.

1. A certified nurse aide competency evaluation must be administered and evaluated by the department or a department-approved entity that is not a nursing facility licensed by the department.

    a. The entity that administers the competency evaluation must advise the individual in advance that a record of the successful or unsuccessful completion of the evaluation will be included on the department's nurse aide registry.

    b. The skills demonstration portion of the test must be administered in the facility or laboratory setting comparable to the setting in which the individual will function.

    c. The skills demonstration portion of the test must be administered and evaluated by a registered nurse with at least one year of experience in providing care for the elderly or chronically ill of any age.

    d. The department may permit the written or oral examination to be proctored by facility personnel if the department determines that the procedure adopted assures the competency evaluation is:

        (1) Secure from tampering.

        (2) Standardized and scored by a testing, educational, or other organization approved by the department.

        (3) Exempt from any scoring by facility personnel.

    e. The department shall retract the right to proctor nurse aide competency evaluations from facilities in which the department finds any evidence of impropriety, including tampering by facility personnel.

2. A home health aide competency evaluation program must be administered consistent with the requirements in subsection 2 of section 33-43-01-05 and may be evaluated for compliance periodically by the department. However, the department may permit the use of a home health aide competency evaluation program that is standardized and scored by a testing, educational, or other organization approved by the department.

3. A nurse aide competency evaluation program must be administered consistent with the requirements in subsection 3 of section 33-43-01-05 and may be evaluated as determined necessary by the department.

History: Effective July 1, 2011.
General Authority: NDCC 23-17.3-08, 23-44-02
Law Implemented: NDCC 23-17.3-05, 23-17.3-08, 23-44-02

33-43-01-07. Withdrawal and approval of nurse aide training program status.

1. Certified nurse aide training program status withdrawal and approval of status is as follows:

    a. The department shall withdraw approval of a nursing facility-based certified nurse aide training program when a determination has been made that the facility has been found to be out of compliance with significant federal certification or state licensure requirements. The facility may apply for reinstatement after providing evidence of remaining in compliance with significant requirements for a period of twenty-four consecutive months.

    b. The department shall withdraw approval of a certified nurse aide training and competency evaluation program if the entity providing the program refuses to permit

announced or unannounced visits by the department to ascertain compliance with program requirements.

c. Approval of a nurse aide training and competency evaluation program shall be granted by the department for a period not to exceed two years.

d. The department may approve only those certified nurse aide training programs that meet the requirements in subsection 1 of section 33-43-01-04.

2. Home health aide training program status withdrawal and approval of training program status is as follows:

a. A home health aide training program must meet the requirements of subsection 2 of section 33-43-01-04 to be considered approved by the department.

b. Home health agencies that have had state or federal enforcement action, other than the citation of deficiencies, filed against them in the past two years are not eligible to operate a home health aide training program.

3. Nurse aide training withdrawal and approval of training status is as follows:

a. Nurse aide training must meet the requirements of subsection 3 of section 33-43-01-04 to be considered approved by the department.

b. Failure to meet the requirements of subsection 3 of section 33-43-01-04 may result in a determination by the department that the entity can no longer provide nurse aide training until the requirements are met.

History: Effective July 1, 2011.
General Authority: NDCC 23-17.3-08, 23-44-02
Law Implemented: NDCC 23-17.3-05, 23-17.3-08, 23-44-02

33-43-01-08. Completion of the nurse aide competency evaluation program.

1. To complete the competency evaluation successfully the individual shall, at a minimum, successfully complete the competencies in subsection 1, 2, or 3 of section 33-43-01-05.

2. A record of successful completion of the competency evaluation for individuals seeking registration as a certified nurse aide, home health aide, or nurse aide must be included in the nurse aide registry within fourteen days of the date the individual was found to be competent.

3. If the individual fails to complete the evaluation satisfactorily, the competency evaluation program must advise the individual of the areas of which the individual was adequate or inadequate, and that the individual has not more than three opportunities to take the competency evaluation.

4. If the individual seeking registration fails the competency evaluation on the third attempt, the individual must enroll in and complete a department-approved certified nurse aide training program, home health aide training program, or nurse aide training program prior to taking the competency evaluation again.

History: Effective July 1, 2011.
General Authority: NDCC 23-17.3-08, 23-44-02
Law Implemented: NDCC 23-17.3-05, 23-17.3-08, 23-44-02

33-43-01-09. Registry information.

1. The department is responsible for the entering of individual names on the nurse aide registry upon receipt of information verifying completion of a department-approved certified nurse aide training and competency evaluation program or a department-approved certified nurse aide competency evaluation program, a home health aide training and competency evaluation program or a home health aide competency evaluation program, or a nurse aide competency evaluation program.

2. Upon the completion of a department-approved medication assistant I competency evaluation program by a certified nurse aide or nurse aide, or department-approved medication assistant II competency evaluation program by a certified nurse aide and application to the department, the department will add information to the certified nurse aide or nurse aide's registry listing verifying the completion of the medication assistant I or II program.

3. Information included on the registry must include name, address, social security number, birth date, registry categories, the date the nurse aide became eligible for entry on the registry, and the place of employment. The social security number will not be included in registry information released to the public.

4. The department shall include documentation of validated findings of abuse, neglect, misappropriation of resident property, or other misconduct by the certified nurse aide, home health aide, or nurse aide or medication assistant I or II on the registry when validated by the department.

5. Certified nurse aide applicants for the nurse aide registry who submit proof of meeting the requirements of another jurisdiction will be granted reciprocity and entered on the nurse aide registry and may use the title "certified nurse aide". The individual must meet North Dakota requirements for active registry status.

6. Nurse aides meeting the waiver provisions of twenty-four months of continuous employment as a nurse aide prior to December 19, 1989, granted by the department will be listed on the registry with a special designation. This designation will signify the nurse aide has been waived from training and testing requirements but is not certified.

History: Effective July 1, 2011.
General Authority: NDCC 23-01-11, 23-17.3-08, 23-44-02
Law Implemented: NDCC 23-01-11, 23-17.3-08, 23-44-02

33-43-01-10. Disclosure of information.

1. Information contained in the registry will be disclosable to any Medicare or Medicaid participating facility, nursing facility, home health agency, hospital, basic care facility, assisted living facility, ombudsman, other representative of an official agency, or other individuals requesting information, upon request.

2. Upon request, the department shall provide the requester with the following information regarding individuals on the registry:

   a. The date the individual's name was eligible for entry on the registry.

   b. Any documented validated findings of abuse, neglect, misappropriation, or other misconduct, including the nature of the allegation and summary of the evidence supporting the validated finding, the date and outcome of hearing if one occurred, and any statement by the individual disputing the allegation that led to the validated finding.

   c. Any additional information that the department deems necessary.

3. All information contained on the registry regarding a certified nurse aide, home health aide, nurse aide, or medication assistant I or II will be provided to that individual upon written request to the department.

History: Effective July 1, 2011.
General Authority: NDCC 23-44-02
Law Implemented: NDCC 23-44-02

33-43-01-11. Initial certified nurse aide, home health aide, and nurse aide registration and renewal.

Individuals may not be employed to provide nursing or nursing-related services as a certified nurse aide, home health aide, or nurse aide, or hold themselves out to be a certified nurse aide, home health aide, or nurse aide unless the individual is registered on the department's nurse aide registry according to this chapter.

1. An individual who applies for initial registry status as a certified nurse aide shall submit a completed certified nurse aide application and verification of successful completion of a department-approved certified nurse aide training and competency evaluation program or competency evaluation program. Upon receipt and review for approval of the required information, the individual will be placed on the department's registry with a designation of certified nurse aide.

   a. An individual who is enrolled in a department-approved certified nurse aide training and competency evaluation program may be employed to perform nursing or nursing-related services under the supervision of a licensed nurse for no more than four months without obtaining registry status.

   b. An individual who is not a licensed nurse who is not enrolled in a department-approved certified nurse aide training program may not be employed in a nursing facility to provide nursing or nursing-related services until the individual obtains registry status as a certified nurse aide.

   c. Individuals who have met the requirements for registry listing as a certified nurse aide in other states, have a current registry status, and no validated finding may be endorsed onto the department's registry as a certified nurse aide.

   d. Registry status is limited to twenty-four months. Upon receipt of a completed certified nurse aide renewal application, and verification of employment within the immediate past twenty-four months, the certified nurse aide registry status will be updated to indicate current status.

   e. A certified nurse aide who has not performed at least eight hours of nursing or nursing-related services for pay within a continuous twenty-four-month period shall complete a department-approved training and competency evaluation program or a department-approved competency evaluation to renew current registry status.

   f. An individual seeking initial certified nurse aide registry status or registry renewal as a certified nurse aide on the department's nurse aide registry may not be charged a fee.

2. An individual who applies for initial registry status as a home health aide shall submit a completed home health aide application, a nonrefundable fee of twenty-five dollars, and an attestation from a qualified instructor that the individual has successfully completed a home health aide training and competency program or home health aide competency program. Upon receipt and review for approval of the required information, the individual will be placed on the department's registry with a designation of home health aide.

a. An individual who is in a home health aide training and competency program may be employed to perform nursing or nursing-related services under the supervision of a licensed nurse for no more than four months without obtaining registry status.

b. An individual who is not in a home health aide training program may not be employed by the home health agency to provide home health aide services until the individual obtains registry status as a home health nurse aide.

c. Initial registry listing will be subject to renewal on or before September thirtieth of the second year and every two years thereafter.

d. Upon receipt of a completed home health aide renewal application and a nonrefundable fee of twenty-five dollars, the home health aide registry status will be updated to indicate current status. The home health aide's registry status will be considered temporary until such time the payment is confirmed and may be rescinded if payment is not received.

3. An individual who applies for initial registry status as a nurse aide shall submit a completed nurse aide application, including documentation of verification of competency and a nonrefundable fee of twenty-five dollars. Upon receipt and review for approval of the required information, the individual will be placed on the department's registry with a designation of nurse aide.

a. An individual who is in a nurse aide training and competency evaluation program may be employed to perform nursing or nursing-related services under the supervision of a licensed nurse for no more than four months without obtaining registry status.

b. An individual who is not in a nurse aide training program may not be employed as a nurse aide until the individual obtains registry status as a nurse aide.

c. Initial registry listing will be subject to renewal on or before September thirtieth of the second year and every two years thereafter.

d. Upon receipt of a completed nurse aide renewal application, including verification of competence within the past twelve months and a nonrefundable fee of twenty-five dollars, the nurse aide registry will be updated to indicate current status. The nurse aide's registry status will be considered temporary until such time the payment is confirmed and may be rescinded if payment is not received.

History: Effective July 1, 2011.
General Authority: NDCC 23-01-11, 23-17.3-08, 23-44-02
Law Implemented: NDCC 23-01-11, 23-17.3-05, 23-17.3-08, 23-44-02

33-43-01-12. Supervision and delegation of nursing interventions.

An individual on the department's nurse aide registry may perform nursing interventions which have been delegated by a licensed nurse. An individual on the department's nurse aide registry as delegated and supervised by a licensed nurse:

1. Contributes to the assessment of the health status of clients, including interactions of clients with family members or group members by:

a. Collecting basic subjective and objective data from observations and interviews, including taking vital signs; and

b. Reporting and recording the collected data.

2. Identifies basic signs and symptoms of deviations from normal health status and provides basic information which licensed nurses' use in identification of problems and needs.

3. Contributes to the development of the plan of care for individuals by reporting basic data.

4. Participates in the giving of direct care by:

   a. Assisting with activities of daily living and encouraging self-care;

   b. Providing comfort measures and emotional support to the client whose condition is stable and predictable;

   c. Assisting with basic maintenance and restorative nursing;

   d. Supporting a safe and healthy environment;

   e. Documenting and communicating completion of delegated nursing interventions and client responses; and

   f. Seeking guidance and direction when appropriate.

5. Contributes to the evaluation by:

   a. Documenting and communicating client responses; and

   b. Assisting with collection of data.

History: Effective July 1, 2011.
General Authority: NDCC 23-44-02, 43-12.1-16.1
Law Implemented: NDCC 23-44-02, 43-12.1-16.1

33-43-01-13. Medication assistant requirements for supervision.

An individual on the department's nurse aide registry may perform medication administration that has been delegated by a licensed nurse.

1. In a nursing facility, the medication assistant may perform medication assistance only when a licensed nurse is on the unit and available for immediate direction.

2. In a health care facility where the licensed nurse delegates the intervention of giving medications to another individual, the individual on the department's nurse aide's registry may perform the delegated medication assistance only when a licensed nurse is available for direction.

3. In any other setting where the licensed nurse delegates the intervention of medication administration to another individual, the individual on the department's nurse aide registry may perform the delegated medication administration only if the licensed nurse has established in writing the process for providing the supervision in order to provide safeguards for the individual receiving the medication.

4. Individuals on the department's nurse aide registry may not be delegated to or perform medication administration in acute care settings or for individuals with unstable or changing nursing care needs.

5. The medication assistant requirements in this chapter do not apply to an individual who provides medication administration that is not registered under this chapter and is:

   a. Within a correctional facility, in compliance with North Dakota Century Code section 12-44.1-29;

b. Within a psychiatric residential treatment facility for children licensed under North Dakota Century Code chapter 25-03.2 and North Dakota Administrative Code chapter 75-03-17;

c. Within a treatment or care center for intellectual or developmentally disabled persons licensed under North Dakota Century Code chapter 25-16;

d. Within a group home, a residential child care facility, or an adult foster care facility licensed under North Dakota Century Code section 50-11-01 or North Dakota Administrative Code chapter 75-03-16;

e. Within the development center at Westwood Park, Grafton, to the extent the individual who provides medications is a direct training technician or a vocational training technician as approved by the department of human services; or

f. Within a human service center licensed under North Dakota Century Code chapter 50-06.

History: Effective July 1, 2011.
General Authority: NDCC 23-44-02, 43-12.1-16
Law Implemented: NDCC 23-44-02, 43-12.1-16

33-43-01-14. Medication assistant I training and competency evaluation program requirements.

The medication assistant I program requirements are applicable to settings in which a licensed nurse is not regularly scheduled and provides direct or indirect supervision. The medication assistant I program consists of the theoretical concepts of medication administration and supervised clinical administration of medication. The curriculum must meet the requirements established by the department and include at a minimum:

1. Instructor. A registered nurse is responsible for the development of the theory, the laboratory or clinical component, and supervision of the medication assistant training program.

2. Course objectives. Described in terms of student outcome competencies, including the following:

   a. Utilize the principles of safety in the administration of medication;

   b. Define terms related to the administration of medications;

   c. Correctly interpret abbreviations commonly used in administration of medication;

   d. Know and apply laws related to medication administration;

   e. Keep accurate records; and

   f. Identify legal parameters of the medication assistant role.

3. Curriculum. The medication assistant program I curriculum for delegated medication administration must include:

   a. Medication concepts:

      (1) Terminology and standardization abbreviations;

      (2) Classification of medication;

      (3) Generic and trade names;

(4) Dosage, range, and action;

(5) Side effects;

(6) Medication routes; and

(7) References and sources of information.

b. Roles, responsibilities, legal aspects, and limitations of medication assistant I and licensed nurse:

(1) Scope of duties for medication assistant I;

(2) Licensed nurse responsibilities in relationship to a medication assistant I;

(3) Client rights, including the right to refuse medication; and

(4) Knowledge of organization policy related to medication administration.

c. Methods for medication packaging.

d. Storage and disposal of medication.

e. Administering and charting medication:

(1) Preparation and administration of medication;

(2) Safety and six rights of medication administration;

(3) Use of medication administration record to:

(a) Administer medications; and

(b) Document medication administration;

(4) Prevention of medication errors; and

(5) Causes and reporting of medication errors.

f. Standard precautions for infection control.

g. An overview of the major classes of medications related to body systems.

h. Additional instruction must include those categories of medications relevant to the health care setting where the medication assistant will be employed.

i. Clinical instruction for the purpose of demonstration of medication administration and evaluation of individual competence.

4. Medication assistant I program students must complete the clinical portion of the medication assistant program within six months of completion of the theory portion. Failure to do so will render the individual ineligible to administer medications.

5. A passing score of eighty-five percent is required on the theory test with an opportunity to retake the test one time. If a student fails on a retake, additional instruction is required before further testing is allowed.

6. Medication assistant I program students shall demonstrate satisfactory performance of medication administration as evidenced by satisfactory completion of the clinical skills checklist.

7. During the clinical learning experience, the licensed nurse shall:

   a. Provide direct over-the-shoulder supervision with initial medication pass;

   b. Observe and evaluate the student's performance until a ninety percent performance standard on the clinical skills checklist is obtained; and

   c. Decreased the amount of supervision only when the student demonstrates the ninety percent performance standard.

8. The medication assistant I program coordinator is required to submit to the department, which two weeks of completion of the course, a list of students successfully completing the medication assistant I program. The information submitted to the department for initial medication assistant I registration for each student must include:

   a. Name and location of the institution and course title;

   b. Date of completion;

   c. Full name, address, and social security number of the student;

   d. The name and qualifications of the instructors;

   e. The clinical facility or employer and address;

   f. The facility clinical coordinator of each student who successfully completes the course;

   g. Copies of the completed theoretical curriculum and clinical performance testing results for the student;

   h. A copy of a certificate of successful completion, if awarded by the teaching institution;

   i. A completed medication assistant I application; and

   j. A nonrefundable fee of twenty-five dollars.

9. Medication assistant I programs shall maintain records that are available for a period of seven years. Those records must include:

   a. Program records, including curriculum and evaluation tools for student performance, both theory and clinical.

   b. Students records, including course start and completion date, clinical skills checklist, examination scores, and a copy of the certificate of successful completion.

10. The medication assistant I program will submit a renewal application for review by the department for a determination on continued approval at least every four years.

History: Effective July 1, 2011.
General Authority: NDCC 23-44-02
Law Implemented: NDCC 23-44-02

33-43-01-15. Medication assistant II training and competency evaluation program requirements.

The medication assistant II program requirements are applicable to settings in which a licensed nurse may or may not be regularly scheduled. The medication assistant II program consists of a minimal time frame, including forty hours of theory, eight hours of laboratory, and thirty-two hours of

clinical learning experience. The curriculum must meet the requirements in this section, and include at a minimum:

1. Instructor. A registered nurse is responsible for the development of the theory, laboratory component, and supervision of the medication assistant II program. All medication administration as a part of the clinical learning experience must be supervised by a licensed nurse.

2. Course objectives. Described in terms of student outcome competencies, including the following:

    a. Utilize the principles of safety in the administration of medications;

    b. Define terms related to the administration of medications;

    c. Correctly interpret abbreviations commonly used in administration of medications;

    d. Know and apply laws related to medication administration;

    e. Keep accurate records; and

    f. Identify legal parameters of the medication assistant role.

3. Curriculum. The medication assistant program II curriculum for delegated medication administration must include:

    a. Medication concepts:

        (1) Terminology and standardized abbreviation;

        (2) Classification of medication;

        (3) Generic and trade names;

        (4) Dosage, range, and action;

        (5) Side effects;

        (6) Medication routes; and

        (7) References and sources of information.

    b. Roles, responsibilities, legal aspects, and limitations of medication assistant II and licensed nurse:

        (1) Scope of duties for a medication assistant II;

        (2) Licensed nurse responsibilities in relationship to a medication assistant II;

        (3) Client rights, including the right to refuse medication;

        (4) Laws related to medication administration; and

        (5) Knowledge of organization policy related to medication administration.

    c. Methods for medication packaging.

    d. Storage and disposal of medication.

    e. Administering and charting medications:

(1) Preparation and administration of medications;

(2) Safety and six rights of medication administration;

(3) Use of medication administration record to:

(a) Administer medications; and

(b) Document medication administration;

(4) Prevention of medication errors; and

(5) Causes and reporting of medication errors.

f. Standard precautions for infection control.

g. Major classes of medications related to body systems, including:

(1) Cardiovascular;

(2) Endocrine;

(3) Gastrointestinal;

(4) Integumentary;

(5) Musculoskeletal;

(6) Nervous;

(7) Reproductive;

(8) Respiratory;

(9) Sensory; and

(10) Urinary.

h. Additional instruction must include those categories of medications relevant to the heath care setting where the medication assistant will be employed.

i. Laboratory and clinical instruction for the purpose of demonstration of medication administered and evaluation of individual competence.

4. Medication assistant program II students who complete the classroom portion of the medication assistant program have six months from the completion of classroom instruction to successfully complete the clinical portion of the program. Failure to do so will render the individual ineligible to complete the clinical portion of the program.

5. Tests are developed for each unit in the curriculum, including a final test. A passing score of eighty-five percent is required on each unit test with an opportunity to retake each test one time. If a student fails on retake, additional instruction is required before further testing is allowed. The theory portion of the course must be successfully completed before beginning the clinical portion.

6. Medication assistant students shall demonstrate satisfactory performance of medication administration as evidenced by satisfactory completion of the laboratory skills and clinical skills checklist.

7. During the clinical learning experience, the licensed nurse shall:

   a. Provide direct over-the-shoulder supervision with initial medication pass;

   b. Observe and evaluate the student's performance until a ninety percent performance standard on the clinical checklist is obtained; and

   c. Decrease the amount of supervision only when the student demonstrates the ninety percent performance standard.

8. The medication assistant II program coordinator is required to submit to the department, within two weeks of completion of the course, a list of students successfully completing the medication assistant II program. The information submitted to the department for initial medication assistant II registration for each student must include:

   a. Name and location of the institution and course title;

   b. Date of completion;

   c. Full name, address, and social security number of the student;

   d. The name and qualifications of the instructors;

   e. The clinical facility or employer and address;

   f. The facility clinical coordinator of each student who successfully completes the course;

   g. Copies of the completed theoretical curriculum and clinical performance testing results for the student;

   h. A copy of a certificate of successful completion;

   i. A completed medication assistant II application; and

   j. A nonrefundable fee of twenty-five dollars.

9. Medication assistant II programs shall maintain records that are available for a period of seven years. Those records must include:

   a. Program records, including curriculum and evaluation tools for student performance, both theory and clinical; and

   b. Student records, including course start and completion date, laboratory and clinical skills checklist, examination scores, and a copy of the certificate of successful completion.

10. The medication assistant II program will submit a renewal application for review by the department for a determination on continued approval at least every four years.

History: Effective July 1, 2011.
General Authority: NDCC 23-44-02
Law Implemented: NDCC 23-44-02

33-43-01-16. Specific delegation of medication administration.

An individual on the department's nurse aide registry may accept the delegation of the delivery of specific medication for a specific client by a licensed nurse if the following steps are followed:

1. The individual on the department's nurse aide registry must receive the organization procedural guidelines for the certified nurse aide, home health aide, nurse aide, or medication assistant I or II to follow in the administration of medication by specific delegation.

2. The individual on the department's nurse aide is taught by a licensed nurse for each specific client's medication administration which includes verbal and written instruction for the specific client's individual medications, including:

   a. The medication trade name and generic name;

   b. The purpose of the medication;

   c. Signs and symptoms of common side effects, warnings, and precautions;

   d. Route and frequency of administration; and

   e. Instructions under which circumstances to contact the licensed nurse or licensed health care practitioner.

3. The individual on the department's nurse aide registry is observed by a licensed nurse administering the medication to the specific client until competency is demonstrated.

4. The individual on the department's nurse aide registry has been verified as competent by a licensed nurse through a variety of methods, including oral quizzes, written tests, and observation. The individual on the department's nurse aide registry must be verified as competent in the following areas:

   a. Knows the six rights for each medication for the specific client, which include right client, right medication, right dosage, right route, right time, and right documentation;

   b. Knows the name of the medication and common dosage;

   c. Knows the signs and symptoms of side effects for each medication;

   d. Knows when to contact the licensed nurse;

   e. Can administer the medication properly to the client; and

   f. Documents medication administration according to organization policy.

5. Documentation that the individual on the department's nurse aide registry has received the training related to the receipt of specific delegation of medication administration for each client must be maintained and updated when further instruction is received as necessary to implement a change.

History: Effective July 1, 2011.
General Authority: NDCC 23-44-02, 43-12.1-16
Law Implemented: NDCC 23-44-02, 43-12.1-16

33-43-01-17. Routes or types of medication administration.

1. Administration of the initial dose of a medication that has not been previously administered to the client must be administered according to the organization policy.

2. Medication assistant students and medication assistants may administer medications by the following routes to individuals or groups of individuals with stable, predictable conditions according to the organization policy:

   a. Oral, sublingual, and buccal medications;

b. Eye medications;

c. Ear medications;

d. Nasal medications;

e. Rectal medications and enemas;

f. Vaginal medications;

g. Skins ointments, topical medications, including patches and transdermal medications;

h. Metered hand-held inhalants; and

i. Unit dose nebulizers.

3. Medication assistants I and II may administer medications by the following routes only when specifically delegated by a licensed nurse for a specific client:

a. Gastrostomy;

b. Jejunostomy;

c. Subcutaneous; and

d. Premeasured injectable medication for allergic reactions.

4. Medication assistant students and medication assistants I and II may not administer medications by the following routes:

a. Central lines;

b. Colostomy;

c. Intramuscular injection;

d. Intravenous;

e. Intravenous lock;

f. Intrathecal;

g. Nasogastric tube;

h. Nonmetered inhaler;

i. Intradermal;

j. Nonunit dose aerosol or nebulizer; or

k. Urethral catheter.

5. Medication assistant students and medication assistants I and II may not administer the following kinds of medications:

a. Barium and other diagnostic contrast media;

b. Chemotherapeutic agents except oral maintenance chemotherapy; or

c. Through any medication pumps, or assume responsibility for medication pumps, including client-controlled analgesia.

History: Effective July 1, 2011.
General Authority: NDCC 23-44-02
Law Implemented: NDCC 23-44-02

33-43-01-18. Pro re nata medications.

1. The decision to administer pro re nata medications cannot be delegated in situations where an onsite assessment of the client is required prior to administration.

2. Some situations allow the administering of pro re nata medications without directly involving the licensed nurse prior to each administration.

   a. The decision regarding whether an onsite assessment is required is at the discretion of the licensed nurse.

   b. Written parameters specific to an individual client's care must be written by the licensed nurse for use by the medication assistant when an onsite assessment is not required prior to administration of a medication. The written parameters:

      (1) Supplement the physician's pro re nata order; and

      (2) Provide the medication assistant with guidelines that are specific regarding the pro re nata medication.

History: Effective July 1, 2011.
General Authority: NDCC 23-44-02, 43-12.1-16
Law Implemented: NDCC 23-44-02, 43-12.1-16

33-43-01-19. Medication interventions that may not be delegated.

The medication assistant I or medication assistant II, or other individual listed on the department's nurse aide registry, may not perform the following acts even if delegated by a licensed nurse:

1. Conversion or calculation to medication dosage;

2. Assessment of client need for or response to medications; and

3. Nursing judgement regarding the administration of pro re nata medications.

History: Effective July 1, 2011.
General Authority: NDCC 23-44-02, 43-12.1-16
Law Implemented: NDCC 23-44-02, 43-12.1-16

33-43-01-20. Medication assistant I and II initial registration and renewal.

Individuals may not be employed as a medication assistant I or medication assistant II or hold themselves out to be a medication assistant I or medication assistant II unless the individual holds a registration as a medication assistant I or medication assistant II on the department's nurse aide registry. Individuals with delegated responsibility for administration of medication to a client as a medication assistant I must hold a current status on the department's registry as a certified nurse aide or nurse aide. Individuals with delegated responsibility for administration of medication to a client as a medication assistant II must hold a current status on the department's registry as a certified nurse aide.

1. An application for registration as a medication assistant I or II and a nonrefundable twenty-five dollar fee must be submitted to the department. Upon receipt of the required information, the

department shall issue a medication assistant I or II registration consistent with the type of training and competency program completed.

a. A medication assistant I may work in settings where the licensed nurse is not regularly scheduled, however, may not work in a nursing facility or acute care setting, including clinics.

b. A medication assistant II may work in the same settings as the medication assistant I and nursing facilities, however, may not work in acute care settings, including clinics.

2. Individuals may obtain initial medication assistant I registration by successfully completing a department-approved medication assistant I program.

3. Individuals may obtain initial medication assistant II registration by successfully completing a department-approved medication assistant II program.

4. A certified nurse aide's initial and renewal medication assistant I or II registry listing will be subject to renewal on the same date as the individual's certified nurse aide registration, not to exceed two years. A nurse aide's initial or renewal medication assistant I registry listing will be subject to renewal on the same date as the individual's nurse aide registration status, on or before September thirtieth of the second year and every two years thereafter.

a. The individual must submit a nonrefundable twenty-five dollar renewal fee along with a completed medication assistant renewal application form, including verification of continued competency by a licensed nurse. The medication assistant's registry status will be considered temporary until such time the payment is confirmed, and may be rescinded if payment is not received.

b. Upon receipt and approval of the required information, the department will update the nurse aide registry to reflect current registration status.

History: Effective July 1, 2011.
General Authority: NDCC 23-44-02, 43-12.1-16
Law Implemented: NDCC 23-44-02, 43-12.1-16

33-43-01-21. Complaint investigations.

1. The department will investigate a complaint reported involving individuals registered on the department's nurse aide registry.

2. The complaint investigation will be conducted according to the department's established complaint investigation policies and procedures.

History: Effective July 1, 2011.
General Authority: NDCC 23-44-02
Law Implemented: NDCC 23-44-02

33-43-01-22. Disciplinary actions.

1. The department may deny, suspend, revoke, or encumber the registration status of, or issue a letter of concern against, an individual listed on the department's nurse aide registry who:

a. Has obtained or attempted to obtain registration as a nurse aide by fraud, deceit, or intentional misrepresentation;

b. Has been convicted of a crime substantially related to the qualifications, functions, or duties of a nurse aide;

c. Has impersonated a licensed nurse or other licensed health care provider;

d. Has intentionally or negligently engaged in conduct that has resulted in a significant risk to the health or safety of a client or in injury to a client;

e. Is incapable of working with reasonable skill, competence, and safety for the public; or

f. Has misappropriated the property of, abused, or neglected a client.

2. An individual denied registration or an individual on the department's registry will be notified of the individual's right to request a hearing regarding the department's decision to deny registration, revoke, suspend, or encumber the individual's registry status within thirty days of the notification.

3. If the employer continues to use the individual during the investigation process, the employer must take reasonable steps to prevent further harm to residents or clients.

4. If an individual listed on the department's nurse aide registry is determined to have practiced with an expired registration, the following actions will be taken:

a. If an individual on the department's nurse aide registry is identified as performing nursing-related services for pay with an expired registration status of thirty days or less, the department will notify the individual and the individual's employer, if known, that the individual must immediately cease to work until the renewal application process is completed and the individual's registry status becomes current.

b. If an individual on the department's nurse aide registry is identified as performing nursing-related services for pay with an expired registration of more than thirty days to six months, the department will notify the state survey agency, the employer, and the individual that the individual must immediately cease to work until the renewal application process is completed and the individual's registry status become current.

c. If an individual on the department's nurse aide registry is identified as performing nursing-related services for pay with an expired registration of more than six months, the department will notify the state survey agency, the employer, and the individual that the individual must immediately cease to work. The individual's registry status will no longer be recognized by the department. To obtain current registry status again, the individual must follow the process for initial application for registry status.

History: Effective July 1, 2011.
General Authority: NDCC 23-44-02
Law Implemented: NDCC 23-44-02

33-43-01-23. Hearing process for individuals on the nurse aide registry.

1. Individuals who have been denied registry status will be informed of the reasons why and provided an opportunity for a hearing consistent with this section.

2. Individuals registered on the department's registry against whom allegations of abuse, neglect, misappropriation of resident property, or other misconduct are made will be:

a. Informed by the department of the allegations;

b. Informed of the investigation results; and

c. If the allegations are found valid, notified of their right to request a hearing regarding the department's decision to revoke, suspend, or encumber the individual's registry status within thirty days of the notification.

3. If a hearing is not timely requested, the department's finding will be final and the department will submit information specific to validated allegations to the registry.

4. If a hearing is timely requested, the department will apply to the office of administrative hearings for appointment of an administrative law judge. The office of administrative hearings will notify the accused of the date set for the hearing.

5. The administrative law judge will conduct the hearing and prepare recommended findings of fact and conclusions of law, as well as a recommended order. If through the department's investigation process, there is evidence that abuse, neglect, misappropriation of resident property, or other misconduct has occurred, the department will notify law enforcement officials and other officials as determined appropriate.

6. Allegations of abuse, neglect, misappropriation of resident property, or other misconduct by an individual on the department's nurse aide registry, validated by the department or through the hearing process, shall:

   a. Be identified in the nurse aide registry within ten days of the validation; and

   b. Remain on the registry permanently, unless the validation was made in error, the individual was found not guilty in a court of a law, or the department is notified of the nurse aide's death. After a period of one year, an individual with a finding of neglect placed on the individual's registry listing may petition the state to have the finding removed from the individual's registry listing consistent with the process identified in section 33-43-01-24, if determined eligible by the department.

7. Within thirty days following the addition of information regarding a validation to the registry, the department will provide the individual on the department's nurse aide registry with a copy of all information which will be maintained in the registry.

8. Within thirty days of mailing the notification of a finding adverse to an individual on the department's nurse aide registry, the individual may contact the department and correct any misstatements or inaccuracies in the information regarding the individual maintained by the registry.

9. Any Medicare or Medicaid participating nursing facility, home health agency, hospital, basic care facility, assisted living facility, ombudsman, other representative of an official agency, or other individual with a need to know may receive information contained in the registry by making a written request.

History: Effective July 1, 2011.
General Authority: NDCC 23-44-02, 28-32-02(1)
Law Implemented: NDCC 23-44-02

33-43-01-24. Review process for findings of neglect placed on an individual nurse aide's registry listing.

1. An individual on the department's nurse aide registry with a finding of neglect placed on the individual's nurse aide registry listing may petition the department in writing to have the finding removed from the individual's registry listing. The individual must provide the department with authorization for any releases of information the department deems appropriate in conducting the investigation. The department will consider whether to remove the finding from the registry when:

   a. The employment and personal history of the nurse aide does not reflect a pattern of abusive behavior or neglect. For the purposes of this section, a pattern is defined as two or more occurrences of abusive or neglectful behavior toward another individual which

resulted in the potential for a negative outcome or an actual negative outcome to the other individual;

b. The neglect involved in the original finding was a singular occurrence that resulted in a potential or actual negative resident outcome; and

c. A background check, including a criminal history investigation or report, reveals no history of mistreatment findings, including instances of domestic abuse, the granting of a restraining order which has not been overturned, an adverse finding entered on any child abuse information index, or any conviction of any crime involving violence or the threat of violence.

2. Once a determination has been made by the department that the individual has met the criteria identified in subsection 1 and is eligible for review, the following steps will be taken:

a. The individual requesting the review must submit a written statement to the department, in a format prescribed by the department, which includes:

(1) An explanation of the incident;

(2) Why the individual believes the individual would not repeat the incident;

(3) Why the individual believes the individual is not competent; and

(4) Why the department should remove the finding from the individual's nurse aide registry listing, including any education or rehabilitation efforts that the individual has completed since the finding of neglect was placed on the individual's registry listing.

b. The original incident, the written information submitted to the department under subdivision a, and any other information collected by the department shall be reviewed by a committee consisting of a staff member of the state department of health, a provider representative, and the state ombudsman.

(1) The committee may consult with the department's attorney as deemed necessary.

(2) Information obtained by the department from sources other than the petitioning individual and the department's file regarding the original incident will be provided to the individual, who will have thirty days after mailing to respond to the committee in writing.

c. The petition, all information contained in the department's file regarding the original incident, and information received by the department will be reviewed by the committee with consideration given to the following factors:

(1) The degree of negligence;

(2) The severity of the potential negative resident outcome;

(3) The severity of the actual negative resident outcome;

(4) The forthrightness and cooperation of the individual;

(5) The opinion of the individual's employer at the time of the incident regarding removing the finding from the individual's registry listing, including the employer's willingness to rehire the individual;

(6) The resident's opinion as to willingness to be cared for by this individual again, if available;

(7) Any rehabilitation or education completed by the individual since the incident; and

(8) Any other factors or considerations the committee determines to be pertinent to its decision. The committee may request additional information from the individual if more information is required to make a determination or if the committee deems a matter not addressed by the individual to be relevant.

d. Based on the review by the committee, with consideration given to the factors identified in subdivision c, the committee may:

(1) Remove the finding from the individual's registry listing;

(2) Require the individual demonstrates successful completion of a state-approved training and competency evaluation program prior to the finding being removed from the registry;

(3) Require the individual to complete a rehabilitation or education program as identified by the committee prior to the finding being removed from the registry;

(4) Require the individual to provide the committee with documentation that a nursing facility or health care facility has offered to employ the individual once the finding is removed from the individual's registry listing and that the nursing facility or health care facility is willing to monitor the resident care services provided by the individual;

(5) Identify any additional time frame the finding will remain on the registry. The additional time frame identified by the committee may range anywhere from one month to permanent placement on the registry;

(6) Take other action as identified appropriate by the committee; or

(7) Implement any combination of the above actions.

3. The department must provide the individual and the registry with written results of the review within one hundred twenty days from the time the department has determined the individual is eligible for review and has received the written information submitted by the individual consistent with subdivisions a and b of subsection 1 and any additional information collected by the department.

4. The individual has only one opportunity to request the department to review the permanent placement of the neglect finding on the registry and to request the department remove the finding.

5. The review must be conducted based on written documentation submitted to the department. A face-to-face meeting with the individual may be requested by the committee as determined necessary.

6. The committee shall issue a written statement of fact, conclusions of law, and its order based on upon findings and conclusions. This statement must be mailed to the individual requesting the review. An appeal for reconsideration of the order must be filed with the department within thirty days from the date the order is mailed. The department may allow a petition for reconsideration of the order if the petition is received within fifteen days after the statement is mailed. If the department is petitioned for reconsideration, the department will review and reconsider the determination. Upon completion of the review, the determination will become the final order for purposes of appeal.

7. If a new finding of neglect is placed on the individual's registry listing after the previous finding of neglect has been removed, the new finding will remain on the registry permanently with no opportunity for review.

History: Effective July 1, 2011.
General Authority: NDCC 23-44-02, 28-32-02(1)
Law Implemented: NDCC 23-01-03, 23-44-02, 28-32-05.2

33-43-01-25. Grandfather provisions.

The department will grandfather the approval and current registry status of the nurse aides, home health aides, and medication assistants I and II and related training programs transferred from the state board of nursing to the state department of health July 1, 2011, until the next renewal date consistent with this chapter.

History: Effective July 1, 2011.
General Authority: NDCC 23-44-02
Law Implemented: NDCC 23-44-02

33-43-01-26. Waiver provision.

Any provisions of this chapter may be waived by the department for a specified period in specific instances, provided such a waiver does not adversely affect the health and safety of the clients and would result in unreasonable hardship upon the entity requesting the waiver. A waiver may be granted for a specific period of time not to exceed one year and shall expire on December thirty-first of the year issued.

History: Effective July 1, 2011.
General Authority: NDCC 23-01-03, 23-44-02, 28-32-02
Law Implemented: NDCC 23-16-01, 23-44-02, 28-32-02