



## Long-Term Care Regulatory Provider Letter

<b>Number:</b> PL 20-26
<b>Title:</b> Waiver of Certified Nurse Aide Requirements Granted
<b>Provider Types:</b> Nursing Facility (NF)
<b>Date Issued:</b> April 9, 2020

### 1.0 Subject and Purpose

The Health and Human Services Commission (HHSC) requested the Office of the Governor suspend certain regulatory requirements governing the requirement to employ certified nurse aides (CNAs) to complete nurse aide tasks in response to the state of disaster declared in Texas and America relating to COVID-19. In accordance with section 418.016 of the Texas Government Code, the Office of the Governor granted HHSC's request to suspend these rules and statutes. These suspensions are in effect until terminated by the Office of the Governor or until the March 13, 2020, disaster declaration is lifted or expires.

### 2.0 Suspension Details

The Governor suspended provisions prohibiting a nursing facility from hiring someone to complete nurse aide tasks who is not a CNA for longer than four months. This suspension is intended to provide flexibility in staffing during the pandemic.

The following rules are suspended:

- 40 Texas Administrative Code (TAC) [§19.1001\(a\)\(4\)\(A\)\(ii\)](#)
- 40 TAC [§19.1001\(a\)\(4\)\(B\)](#), (C), (E), (F), and (H)

Additionally, 40 TAC §19.1001(a)(4)(D) is partially suspended, only to the extent necessary to allow the employment as a nurse aide of an individual who is not listed in the Nurse Aide Registry due solely to the individual's having no history of employment as a nurse aide.

Note that this waiver does **not** suspend requirements for supervision or competency. Facilities must still ensure that individuals completing nurse aide tasks are able to demonstrate competency in skills and techniques necessary to care for residents' needs, as identified through resident assessments, and described in the plan of care. Additionally, the facility is responsible for training the individual on the task to be performed, return demonstration of the skill to ensure competency, and documentation of the training/return demonstration.

Likewise, this waiver does **not** suspend the requirement that prior to allowing an individual to complete nurse aide tasks, a facility must receive verification that the individual is not designated in the registry as having a finding concerning abuse, neglect or mistreatment of a resident, or misappropriation of a resident's property, subject to the exceptions specified in §19.1001(a)(4)(D)(i)-(ii). A nursing facility must still comply with Health and Safety Code, Chapter 250, regarding criminal history checks and registry checks.

### **3.0 Background/History**

CMS waived federal requirements that nursing facilities may not employ anyone for longer than four months unless they meet the training and certification requirements under 42 Code of Federal Regulations [§483.35\(d\)](#). The Office of the Governor approved a conforming suspension of state regulations. HHSC will notify providers when suspended provisions of rules become effective again and compliance is required.

### **4.0 Resources**

None.

### **5.0 Contact Information**

If you have any questions about this letter, please contact the Policy, Rules and Training Section by email at [PolicyRulesTraining@hhsc.state.tx.us](mailto:PolicyRulesTraining@hhsc.state.tx.us) or call (512) 438-3161.