



KIM REYNOLDS, GOVERNOR  
ADAM GREGG, LT. GOVERNOR

LARRY JOHNSON, JR., DIRECTOR

August 16, 2021

Brent Willet,  
Iowa Health Care Association  
Via email to: Brent@iowahealthcare.org

Re: Petition for Waiver of 481 I.A.C. r. 58.11(1)(i); 58.11(1)(k); 58.21(6)(e)

Dear Mr. Willet:

The Department is in receipt of your Petition for Waiver of 481 Iowa Administrative Code rules 58.11(1)(i), 58.11(1)(k), and 58.21(6)(e) filed on August 3, 2021. Those rules state:

**481—58.11(1)“j”:**

Those persons employed as nurse’s aides, orderlies, or attendants in a nursing facility who have not completed the state-approved 75-hour nurse’s aide program shall be required to participate in a structured on-the-job training program of 20 hours’ duration to be conducted prior to any resident contact, except that contact required by the training program. This educational program shall be in addition to facility orientation. Each individual shall demonstrate competencies covered by the curriculum. This shall be observed and documented by an R.N. and maintained in the personnel file. No aide shall work independently until this is accomplished, nor shall the aide’s hours count toward meeting the minimum hours of nursing care required by the department. The curriculum shall be approved by the department. An aide who has completed the state-approved 75-hour course may model skills to be learned.

Further, such personnel shall be enrolled in a state-approved 75-hour nurse’s aide program to be completed no later than six months from the date of employment. If the state-approved 75-hour program has been completed prior to employment, the on-the-job training program requirement is waived. The 20-hour course is in addition to the 75-hour course and is not a substitute in whole or in part. The 75-hour program, approved by the department, may be provided by the facility or academic institution.

Newly hired aides who have completed the state-approved 75-hour course shall demonstrate competencies taught in the 20-hour course upon hire. This shall be observed and documented by an R.N. and maintained in the personnel file. All personnel administering medications must have completed the state-approved training program in medication administration. (II)

**481—58.11(1)“k”:**

Nurse aides, orderlies or attendants in a nursing facility who have received training other than the Iowa state-approved program, must pass a challenge examination approved by the department of inspections and appeals. Evidence of prior formal training in a nursing aide, orderly, attendant, or other comparable program must be presented to the facility or institution conducting the challenge examination before the examination is given. The approved facility or institution, following department of inspections and appeals guidelines, shall make the determination of who is qualified to take the examination. Documentation of the challenge examinations administered shall be maintained.

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**481—58.21(6)“e”:**

A person who has written documentation of certification as a medication aide in another state may become a medication aide in Iowa by successfully completing a department-approved nurse aide competency examination and a medication aide challenge examination.

The Iowa Health Care Association (“IHCA”) is requesting, on behalf of its members and licensed health care facilities in Iowa, a temporary waiver of the above-referenced rules as a continuation of regulatory suspensions that have existed pursuant to the State’s Proclamations of Disaster Emergency. The most recent Proclamation, issued on July 23, 2021 and set to expire on August 22, 2021, allows health care facilities to continue to utilize federal waivers issued by the Centers for Medicare and Medicaid Services (“CMS”) related to certified nurse aides. IHCA states that since health care facilities are still battling COVID-19 and variants are becoming more prominent across the country, losing the skills acquired by caregivers who have utilized the waivers would hinder facilities’ ability to continue to deliver care on the front lines. Continuing the requested waivers would not prejudice the substantial legal rights of any person as the care provided by this segment of the workforce has met competency requirements as approved by a registered nurse. IHCA states nursing facility resident care has improved based on the addition of over 2,000 caregivers who would not have been available without the existing federal waivers and Proclamations.

The current Proclamation suspends “the regulatory provisions of any statute or administrative rule that impedes the implementation of a federal waiver issued by the Secretary of the Department of Health and Human Services and Centers for Medicare and Medicaid Services pursuant to section 1135 of the Social Security Act. Iowans should not expect this suspension to be extended beyond August 22, 2021.”

The Secretary of the Department of Health and Human Services and Centers for Medicare and Medicaid Services pursuant to section 1135 of the Social Security Act have issued the following pertinent federal waivers:

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

**In-Service Training:** CMS is modifying the nurse aide training requirements at §483.95(g)(1) for SNFs and NFs, which requires the nursing assistant to receive at least 12 hours of in-service training annually. In accordance with section 1135(b)(5) of the Act, we are postponing the deadline for completing this requirement throughout the COVID-19 PHE until the end of the first full quarter after the declaration of the PHE concludes.

Notably, IHCA has submitted a Petition for Exception to Policy to the Iowa Department of Human Services (“DHS”) seeking a waiver of rules administered by DHS that significantly overlap with the rules at issue under this Petition for Waiver. 2021 Iowa Acts House File 891, a bill relating to appropriations for health and human services, expressly states that “[f]or the time period beginning on the effective date of this division of this

Act, and ending June 30, 2022, notwithstanding state administrative rules to the contrary, to the extent federal regulations relating to the COVID-19 pandemic differ from state administrative rules, including applicable federal waivers, the federal regulations are controlling during the pendency of the federally declared state of emergency and for such period of time following the end of the federally declared state of emergency applicable to the respective federal regulations.”

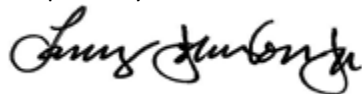
The Department hereby grants IHCA’s request for temporary waiver to licensed health care facilities in Iowa, effective immediately and until the cessation of the federally declared state of emergency and for such period of time following the end of the federally declared state of emergency applicable to the respective 1135 blanket waivers issued by CMS, pursuant to the following conditions:

- 481-58.11(1)“i,” requiring a nurse aide who has not completed the state-approved 75-hour nurse's aide program be required to participate in a structured on-the-job training program of 20 hours’ duration, is waived to the extent that the individual has completed a comparable training course approved by the department of inspections and appeals or has completed at least 20 hours of the state-approved 75-hour nurse's aide program and the facility has documentation that it has implemented training and supervision measures to ensure the individual's competency in any tasks performed.
- 481-58.11(1)“k,” requiring that certified nurse aides who have received training other than the Iowa state-approved program must pass a challenge examination, is waived to the extent that the individual is able to demonstrate competency in skills and techniques necessary to care for residents’ needs as required by 42 CFR § 483.35(c) and (d)(l)(i).
- 481-58.21(6)“e,” requiring a person who has written documentation of certification as a medication aide in another state complete a department-approved nurse aide competency examination and medication aide challenge examination, is waived to the extent the individual is able to demonstrate competency in safe medication administration.

The Department finds that under the circumstances at issue, application of these rule would pose an undue hardship on licensed health care facilities; waiver from the requirements of these rules under the particular circumstances described would not prejudice the substantial legal rights of any person; the provisions of these rules are not specifically mandated by statute; and substantially equal protection of public health, safety, and welfare will continue to be afforded.

If you have any questions related to this waiver, please contact Ashleigh Hackel, General Counsel for the Department, at [Ashleigh.Hackel@dia.iowa.gov](mailto:Ashleigh.Hackel@dia.iowa.gov) or (515) 250-3746.

Respectfully,



Larry Johnson, Jr.,  
Director

cc: Ken Watkins  
Via email to: [kenwatkinslaw@gmail.com](mailto:kenwatkinslaw@gmail.com)