Clarification on Training & Certification of Nurse Aides

On March 31, 2020, CMS provided a blanket waiver for Training and Certification of Nurse Aides. This action allows nursing facilities to hire staff to provide care as long as a nursing facility can “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.” To do this, nursing facilities must have a process to assess the skills and demonstrated competency of the individual.

This action allows nursing facilities to recruit more broadly and hire existing health care workers who may have been furloughed, as well as temporarily employ individuals who have completed alternative training paths that would ensure such individuals are competent to provide relevant nursing and nursing-related services.

Specifically, the waiver states the following:

“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. CMS is 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.”

For background, in waiving most of 483.35(d), CMS has waived all the nurse aide requirements for specific training and competency as specified in current regulations, registry verification, and retraining including regulatory in-service training. The only section of the regulation that CMS has not waived is that “the individual has to be competent to provide nursing and nursing related services”, but CMS has waived the specific regulatory detail on method and extent of competency evaluation in 483.154.

The Department of Public Health notes that to the extent there is a state facility regulatory requirement that corresponds to the federal requirements waived by CMS, such state requirement is also waived to the same extent such requirement is waived by CMS.