AUG 17 1990

The Honorable Joe T. San Agustin
Speaker, Twentieth Guam Legislature
155 Herman Cortez Street
Agana, Guam 96910

Dear Mr. Speaker:

Transmitted herewith is Bill No. 1416, which I have signed
into law this date as Public Law 20-195.

Sincerely,

JOSEPH P. ADA
Governor

Attachment
This is to certify that Substitute Bill No. 1416 (LS), "AN ACT TO ADD A NEW §12316.1 TO TITLE 10, GUAM CODE ANNOTATED, TO EMPOWER THE BOARD OF NURSE EXAMINERS TO ESTABLISH MINIMUM PROFESSIONAL QUALIFICATIONS FOR NURSE ASSISTANTS, AND TO AMEND PUBLIC LAW 20-41 ON EXTERNS," was on the 1st day of August, 1990, duly and regularly passed.

Attested:

JOE T. SAN AGUSTIN
Speaker

This Act was received by the Governor this 10th day of August, 1990, at 11:25 o'clock A.m.

APPROVED:

JOSEPH F. ADA
Governor of Guam

Date: August 17, 1990

Public Law No. 20-195
AN ACT TO ADD A NEW §12316.1 TO TITLE 10, GUAM CODE ANNOTATED, TO EMPOWER THE BOARD OF NURSE EXAMINERS TO ESTABLISH MINIMUM PROFESSIONAL QUALIFICATIONS FOR NURSE ASSISTANTS, AND TO AMEND PUBLIC LAW 20-41 ON EXTERNALS.

1 BE IT ENACTED BY THE PEOPLE OF THE TERRITORY OF GUAM:
2 Section 1. Legislative Intent. The health care system relies heavily on
3 nurse assistants, also known as nurse aides, to perform a wide variety of
basic services under supervision in a hospital or clinical setting. Recent federal legislation requires minimum certification standards for nurse assistants to be maintained by providers which receive reimbursement by Medicaid and Medicare. In order to foster consistency in standards applied to the practice of nurse assistants on Guam, whether by public or private health care providers, the Guam Board of Nurse Examiners should be empowered to establish by regulation minimum qualifications, to administer and enforce such regulations, and to set standards for certified nurse assistant education programs.

Section 2. A new §12316.1 is added to Title 10, Guam Code Annotated, to read:

"§12316.1. Minimum Qualifications for and Certification of Nurse Assistants and Education Programs. The Board shall establish by regulation minimum qualifications for nurse assistants and criteria for evaluating such qualifications. The Board may also establish and administer such procedures as may be necessary to certify that an applicant meets duly established minimum qualifications. Such procedures shall include a provisional period for remedial training of nurse aides who are employed as of the effective date of such regulations and do not meet minimum qualifications. Disciplinary procedures for decertification of incompetent nurse assistants may be established by the Board. The Board shall maintain a registry of certified nurse assistants.

The Board may approve and reapprove nurse assistant education programs and competency evaluation programs."

Section 3. Public Law 20-41, Chapter IV, Section 6 is hereby amended to read:

"Section 6. No permanent authorized position, as funded by the provisions of this Act, shall be filled by temporary employees; provided, however, that the initial probationary period of a permanent authorized position shall not be considered a temporary position as used herein. Notwithstanding the provisions of this section, the Guam Memorial Hospital Authority may fill "extern" positions in its Medical Staff Division."
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July 26, 1990

The Honorable Joe T. San Agustin
Speaker, Twentieth Guam Legislature
163 Chalan Santo Papa
Agana, Guam 96910

Dear Mr. Speaker:

The Committee on Health, Welfare and Ecology, to which was referred Bill No. 1416: "AN ACT TO ADD A NEW SECTION 12316.1 TO TITLE 10 GUAM CODE ANNOTATED, RELATIVE TO EMPOWERING THE GUAM BOARD OF NURSE EXAMINERS TO ESTABLISH MINIMUM PROFESSIONAL QUALIFICATIONS FOR NURSE AIDES", does recommend that the Bill be passed by the Twentieth Guam Legislature.

Votes of committee members are as follows:

To Pass 11
To Not Pass 0
To Report Out Only 0
To The Inactive File 0
Abstained 0
Off-Island 1
Not Available 0

Respectfully submitted,

MADELINE Z. BORDALLO

Enclosures
COMMITTEE ON HEALTH, WELFARE AND ECOLOGY

REPORT ON SUBSTITUTE BILL NO. 1416

"AN ACT TO ADD A NEW SECTION 12316.1 TO TITLE 10 GUAM CODE ANNOTATED, RELATIVE TO EMPOWERING THE GUAM BOARD OF NURSE EXAMINERS TO ESTABLISH MINIMUM PROFESSIONAL QUALIFICATIONS FOR NURSE AIDES"

PREFACE

A Public Hearing on Bill No. 1416 was conducted by the Committee on Health, Welfare and Ecology on May 16, 1990 at 9:00 a.m. in the Public Hearing Room, Pacific Arcade Building.

Members Present: Chairperson Madeleine Z. Bordallo and Senator Martha C. Ruth.

Witnesses Heard: Teofila P. Cruz, Administrator, Health Professional Licensing Office, DPHSS; Karen Cruz, DPHSS; Trinidad Santa Ana, R.N., Administrator, GMH Nursing Services; and Gregory J. Miller, D.C., Chairman, Guam Board of Allied Health Examiners.

Written Testimony: Leticia V. Espaldon, M.D., DPHSS Director; Teofila P. Cruz, DPHSS; and Trinidad Santa Ana, R.N., Administrator of GMH Nursing Services.

SUMMARY OF TESTIMONY

Public Health supports placing the responsibility of establishing credentialing standards for nurse aides with the Board of Nurse Examiners. Standards are required by the federal Omnibus Budget Reconciliation Act of 1987, as amended, to go into effect on October 1, 1990. It will be difficult to implement regulations to meet the deadline.

The GMH nursing administrator supports Bill 1416, but states that most aides would not meet minimum standards. A "grandfathering" provision would allow current employees to be trained to meet standards.

COMMITTEE FINDINGS/RECOMMENDATIONS

Certification is required by HCFA for Medicaid/Medicare reimbursement eligibility. If standards are not established by a licensing board, the hospital may establish their own. Public Health and private sector nurse aides, however, would not be covered. The Board of Allied Health Examiners is currently authorized by law to regulate health professionals which do not have their own board. The nursing board is the appropriate board to regulate nursing assistants. The bill has been amended to include recommendations of witnesses, except mandating lead educational agency. The board is to be empowered to certify training programs.

The Committee on Health, Welfare and Ecology recommends that the Bill, as Substituted, be Passed by the Twentieth Guam Legislature.

ATTACHMENTS

1. Voting Sheet on Substitute Bill No. 1416.
2. Substitute Bill No. 1416.
3. Bill No. 1416, as referred to Committee.
4. Testimony by Dr. Leticia V. Espaldon, Director of DPHSS.
5. Testimony by Teofila P. Cruz, Administrator, Health Professional Licensing Office, DPHSS.
6. Testimony by Trinidad Santa Ana, R.N., Administrator of GMH Nursing Services.
8. Request for Waiver by BBMR.
10. Committee Attendance Sheet.
COMMITTEE ON HEALTH, WELFARE AND ECOLOGY

VOTING SHEET

ON

SUBSTITUTE BILL NO. 1416

"AN ACT TO ADD A NEW SECTION 12316.1 TO TITLE 10 GUAM CODE ANNOTATED, RELATIVE TO EMPOWERING THE GUAM BOARD OF NURSE EXAMINERS TO ESTABLISH MINIMUM PROFESSIONAL QUALIFICATIONS FOR NURSE AIDES"

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AN ACT TO ADD A NEW SECTION 12316.1 TO TITLE 10 GUAM CODE ANNOTATED, RELATIVE TO EMPOWERING THE GUAM BOARD OF NURSE EXAMINERS TO ESTABLISH MINIMUM PROFESSIONAL QUALIFICATIONS FOR NURSE ASSISTANTS

BE IT ENACTED BY THE PEOPLE OF THE TERRITORY OF GUAM:

Section 1. Legislative Intent. The health care system relies heavily on nurse assistants, also known as nurse aides, to perform a wide variety of basic services under supervision in a hospital or clinical setting. Recent federal legislation requires minimum certification standards for nurse assistants to be maintained by providers which receive reimbursement by Medicaid and Medicare. In order to foster consistency in standards applied to the practice of nurse assistants on Guam, whether by public or private health care providers, the Guam Board of Nurse Examiners is empowered to establish by regulation minimum qualifications, to administer and enforce such regulations, and to set standards for certified nurse assistant education programs.

Section 2. A new Section 12316.1 is added to Title 10 Guam Code Annotated to read:

§12316.1. Minimum Qualifications for and Certification of Nurse Assistants and Education Programs. The Board shall establish by regulation minimum qualifications for nurse assistants and criteria for evaluating such qualifications. The Board may also establish and administer such procedures as may be necessary to certify that an applicant meets duly established minimum qualifications. Such procedures shall include a
provisional period for remedial training of nurse aides who are employed as of the effective date of such regulations and do not meet minimum qualifications. Disciplinary procedures for decertification of incompetent nurse assistants may be established by the Board. The Board shall maintain a registry of certified nurse assistants.

The Board may approve and reapprove nurse assistant education programs and competency evaluation programs."
AN ACT TO ADD A NEW SECTION 12316.1 TO TITLE 10 GUAM CODE ANNOTATED, RELATIVE TO EMPOWERING THE GUAM BOARD OF NURSE EXAMINERS TO ESTABLISH MINIMUM PROFESSIONAL QUALIFICATIONS FOR NURSES AIDES

BE IT ENACTED BY THE PEOPLE OF THE TERRITORY OF GUAM:

Section 1. Legislative Intent. The health care system relies heavily on nurses aides to perform a wide variety of basic services under supervision in a hospital or clinical setting. Recent federal legislation requires certification standards for nurses aides to be set by local health care providers which receive reimbursement for services rendered to persons covered by Medicaid and Medicare. In order to foster consistency in standards applied to the profession of nurses aide on Guam, whether by public or private health care providers, the Guam Board of Nurse Examiners is empowered to establish by regulation minimum professional qualifications, and to certify nurses aides who have met such qualifications.

Section 2. A new Section 12316.1 is added to Title 10 Guam Code Annotated to read:

"§12316.1. Qualifications for and Registration of Nurses Aides. The Board may establish by regulation minimum qualifications for nurses aides and criteria for evaluating such qualifications. The Board may also by regulation establish and administer such procedures as may be necessary to ensure that an applicant meets minimum qualifications established by the Board. The Board shall maintain a registry of nurses aides who meet all duly established qualifications, and certify to any authorized employer or authorized prospective employer upon request the inclusion of any name listed therein."
Comments on Bill 1416 An act to Add a New Section 12316.1 to Title 10 GCA Relative to Empowering the Guam Board of Nurse Examiners to Establish Qualifications for Nurses Aides.

The Department is in support of Bill 1416. The passage of this bill will provide the necessary enabling legislation for implementation of the Omnibus Budget Reconciliation Act (OBRA) 1987 Nurse Aide Program which establishes national standards for credentialing nurse aides.

In early 1989 it was estimated that there were 118 nurse aides employed on Guam with a projected annual increase of 10.

At present no agency on Guam is mandated to establish and provide the training necessary for credentialing nurse aides.

The Guam Community College (GCC) has had a nurse aide training program at JFK High School for several years. It is recommended that GCC be designated as the agency to provide nurse aide training and that this training meet the minimum national standards for nurse aide competency and credentialing.

LETICIA V. ESPALDON, M.D.
Director
Date: 5/10/80
Madam Chair and members of the Committee on Health, Ecology and Welfare.

My name is Teofila P. Cruz, the administrator for the Health Professional Licensure Office. On behalf of the Guam Board of Nurse Examiners, we would like to thank you for the opportunity to speak on behalf of Bill 1416. The Board has supported since 1987 the concept to oversee nurses aides. It is our understanding that the federal Omnibus Reconciliation Act of 1987 requirement for nurse aide training and competency testing has existed since then however, implementation dates keep being extended and now will take effect on October 1, 1990. If this bill is passed, the Guam Board of Nurse Examiners has a tremendous challenge to meet this deadline.

Bill 1416 is welcomed by the Guam Board of Nurse Examiners. The Board is aware that the "nurse" aide is an individual who provides nursing or nursing related services. In most instances, in a health agency, within an organizational chart and or functional chart, the nurse aide is under the direct supervision of a registered professional nurse. With this bill, the nurse aide will have more nursing guidance and support: This will also facilitate nurturing towards being a registered professional nurse.

In the February 1, 1990 "Directory of Nurse Aide Registries" from the National Council of State Boards of Nursing, INC., fifty (50) states have determined what entity will maintain the Nurse Aides registry and who is authorized to investigate complaints. These two concepts do not necessarily go hand in hand. Of the 50 states and territories, twelve (12) states identified the Board of Nursing to maintain the registry. However, of these twelve (12) only six (6) nursing boards are authorized to investigate complaints. In most states, the Department of Health maintains the registry. The National Council of State Boards of Nursing, INC. supports the Boards of Nursing to maintain registries and investigate complaints.

Madam Chair and members of the committee, Bill 1416 in its form is satisfactory but recommend the following:
- Delete "profession" on line 9 and add "practice";
- Delete "professional" on line 12;
- Delete "and certify to any _ _ _ therein." on lines 23-25.
It is the Board's understanding and policy that verification of certification, or of any license shall be upon the request of the applicant to the Board.

In addition to establishment by regulation of minimum qualifications, criteria for evaluating qualifications, maintaining a registry for nurses aides and certifying qualification of Nurses Aides, it is recommended that the Guam Board of Nurse Examiners be given the power to approve and reapprove nurse aide education programs, competency evaluation programs, and establishing disciplinary procedures for decertification of incompetent nurse aides. The Guam Board of Nurse Examiners will be glad to work with the committee to incorporate these recommendations.
My name is Trini Santa Ana, Administrator of Nursing Services, Guam Memorial Hospital.

I am here to testify in favor of Bill 1416 to empower the Board of Nurse Examiners to establish minimum professional qualifications for nurses aides.

Because of rapid technology changes and the focus on wellness, these changes have affected the delivery of nursing services. Nurses take care of patients who have multiple medical problems requiring more comprehensive and intense nursing care.

In order for the nurses to be able to provide quality care, they rely on the nurses aides in assisting them. It is therefore of utmost importance that these group of health care givers be properly trained. In order to safeguard the delivery of quality patient care, it is incumbent for the Guam Board of Nurse Examiners to establish appropriate minimum qualifications for the nurses aides. It is no longer adequate for nurses aides to just undergo on-the-job training. They need to have knowledge on caring of the sick with different medical problems.

These established minimum qualifications for nurses aides will provide uniformity in all health care settings. It should be pointed out though that majority of the present staff of nurses aides at Guam Memorial Hospital do not meet certification requirements. As Administrator of Nursing Services, I would like to recommend that a provision be made to "grandfather" the present nurses aides already employed at GMH, with the understanding that we will take responsibility in getting them certified eventually through the provision of a certification program to these employees.

Bill 1416 will ensure that the welfare of the patients is foremost.

Thank you for this opportunity to testify for a very important bill that will protect the welfare of the clients we serve.

Trinidad Santa Ana, R.N.
Administrator, Nursing Services
Friday
March 23, 1990

Nurse Aide Training and Competency Evaluation Programs

DATES: To assure consideration, comments must be submitted to the appropriate address, as provided below, and should be received no later than 5:00 p.m. on May 22, 1990.

ADDRESSES: Mail comments to the following address: Health Care Financing Administration, Department of Health and Human Services, Attention: BPD-662-P, P.O. Box 26676, Baltimore, Maryland 21207.

Part V

Department of Health and Human Services

Health Care Financing Administration

42 CFR Part 405 et al. Medicare and Medicaid Programs; Nurse Aide Training and Competency Evaluation Programs and Preadmission Screening and Annual Resident Review; Proposed Rules

Provided by:

National Citizens' Coalition for Nursing Home Reform
1424 Sixteenth Street N.W. Ste. L-2
Washington, DC 20036
Telephone: (202)797-0657
Index to Proposed Regulation (3-90)

Based on NCCNHR numbered copy

Note: The first portion of the FR is an explanation of the proposal. The specific language proposed is in the last 4 pages 10948 - 51. We list the specific language first.

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Summary

Addresses for Response

Background/Overview

Requirements for LTC Facilities

Proposed Rule (Discussion)

PART 431 - STATE ORGANIZATION AND GENERAL ADMINISTRATION 10947 (10)

State Plan Requirements 10947 (10)

Basis and Scope of Requirements 10947 (10)

PART 433 - STATE FISCAL ADMINISTRATION (10)

PART 483 - REQUIREMENTS FOR STATES AND LONG TERM CARE FACILITIES 10947 (10)

Subpart B - Requirements for Facilities

483.75 Placing of Training Requirement under "Administration" 10948 (11)

Comp Eval for current employees 10948 (11) 10939 (2)

Competency (exceptions) 10948 (11) 10939 (2-3)

Required Retraining 10948 (11)

Regular In-service Education 10948 (11)

Definition of Nurse Aide 10948 (11)

Subpart D - Requirements of States and State Agencies

483.750 Deemed meeting of require./waivers 10948 (11)
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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

42 CFR Parts 431, 433 and 483

RIN 0938-AE50

(BPD-642-P)

Medicare and Medicaid Programs; Nursing Home Quality Improvement and Competency Evaluation Programs

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Proposed rule.

SUMMARY: This rule proposes Federal requirements that States have competency evaluation programs and training and competency evaluation programs for nursing aides employed by Medicare and Medicaid participating nursing facilities and also have a nurse aide registry.

The purpose of these provisions is to enhance the quality of care in nursing facilities. These requirements would implement, in part, sections 2401(a) and 4211(a) of the Omnibus Budget Reconciliation Act of 1987 (OBRA '87) and section 6901(b) of the Omnibus Budget Reconciliation Act of 1989 (OBRA '90).

DATES: To assure consideration, comments must be submitted to the appropriate address, as provided below, and should be received no later than 5 p.m. on May 22, 1990.

ADDRESSES: Mail comments to the following address: Health Care Financing Administration, Department of Health and Human Services, 1101 Sixteenth Street, N.W., Washington, DC 20201. Baltimore, Maryland 21207.

If you prefer, you may deliver your comments to one of the following addresses:


Room 132, East High Rise Building, 6335 Security Boulevard, Baltimore, Maryland.

Due to staffing and resource limitations, we cannot accept facsimile (FAX) copies of comments.

In commenting, please refer to file code BPD-642-P.

Comments received timely will be available for public inspection as they are received, generally beginning approximately three weeks after publication of a document, in Room 309-G of the Department's offices at 200 Independence Avenue S.W., Washington, DC, on Monday through Friday of each week from 8:30 a.m. to 5 p.m. (phone: 202-245-7260).

FOR FURTHER INFORMATION CONTACT: Samuel W. Kidder. (301) 995-4060.

SUPPLEMENTARY INFORMATION:

1. Background

Overview

Facilities under the Medicare and Medicaid programs can be any of several different facilities providing a wide variation of patient care services. A nursing facility that is a Medicare skilled nursing facility (SNF) is primarily engaged in providing skilled nursing care and related services or rehabilitation services for the rehabilitation of injured, disabled, or sick persons.

A nursing facility under the Medicaid program is an institution or distinct part of an institution that is primarily engaged in providing skilled nursing care and related services or rehabilitation services for the rehabilitation of injured, disabled, or sick persons.

A nursing facility under the Medicare and Medicaid programs agrees to comply with the requirements included in our regulations at 42 CFR parts 405 and 440. Extensive revisions to these rules at 42 CFR part 483 become effective October 1, 1990, as discussed below.

Compliance with the requirements is assessed by means of a point survey, usually performed by a State survey agency, that measures adherence to Federally established guidelines.

Requirements for Long Term Care Facilities

On February 3, 1989, we published in the Federal Register (54 FR 3210) final regulations with a comment period which specified new and revised requirements that long-term care facilities (SNFs and intermediate care facilities (ICFs)), both of which effective October 1, 1990, will be considered nursing facilities (NFs) under Medicaid and SNFs under Medicare) must meet in order to receive Federal funds for the care of residents who are Medicare beneficiaries or Medicaid recipients. We issued the regulations following a notice of proposed rulemaking (NPRM) to refocus the requirements for participation in both programs to actual facility performance in meeting residents' needs in a safe and healthful environment. The previous set of requirements had focused on the capacity of the facility to provide appropriate care. In addition, we needed to simplify Federal enforcement procedures by using such requirements that apply to all activities common to SNFs, ICFs, and NFs.

Many of the requirements in the February 3, 1989, NPRM were developed to address current and future needs, including the development of self- implementing provisions that are necessary to achieve our ultimate goal of enhancing the quality of care in nursing facilities. The new and revised regulations included several changes to existing regulations that would require States to conduct inspections and surveys of nursing facilities to determine facility compliance with Federal requirements.

On October 19, 1989, we published a rule in the Federal Register (54 FR 27771) announcing that we believed it would be beneficial to all affected parties, including groups and individuals who conduct the inspections for the determination of facility compliance with Federal requirements, to delay the effective date of the regulations until January 1, 1990. This delay was intended to allow opportunity for further improvement of surveyor skills and allow facilities additional lead time to become more familiar with these requirements and to make needed changes. In the long run, the delay was expected to enhance the quality of care provided to residents of the facilities and our ability to measure uniformly and accurately that quality among participating facilities.

Therefore, we changed the effective date of the February 3 regulations to January 1, 1990. Those parts of the regulations that are to be effective on October 1, 1990, were unaffected by this change.

On December 19, 1989, the Omnibus Budget Reconciliation Act of 1989 (OBRA '89) (Pub. L. 101-239) was enacted. Section 6901(a) of OBRA '90 delayed the effective date of the February 3, 1989 regulations to October 1, 1990, and we confirmed this in a final rule on December 29, 1989, 54 FR 33611. The statutory delay in the effective date of our substantial revision of nursing home requirements presents us with a paradox: the legislation and the provisions of this proposal concern, in part, proposed modifications to...
regulations that presently are not in effect. We intend to deal with these regulations by proposing, where necessary, to modify the text of the February 2, 1989 rule. We are doing this because the OBRA '87 requirements concerning nurse aide training and registry were codified by the February 2, 1989 rule and are not otherwise a part of the Code of Federal Regulations. Second, we anticipate that the effective date of this proposal would not be before October 1, 1990, the effective date of the February 2, 1989 rule.

I. Proposed Rule

Nurse Aide Training and Competency Evaluation

Prior to the enactment of OBRA '87, there were no federal requirements concerning training and competency evaluation of nurse aides. Rather, conditions for Medicare at $405.112(h) and for Medicaid at $442.11 required all staff to be suitable and appropriately trained. New sections 1919(e)(1), 1919(f)(1), and 1919(f)(2) of the Social Security Act added by OBRA '87 require the Secretary to establish standards for training and competency of nurse aides and authorizes States to grant approvals of competency evaluation programs and training and competency evaluation programs only in accordance with those standards. Sections 1919(e)(1) and 1919(f)(1) of the Act require that the State review and approve nurse aide competency evaluation programs and training and competency evaluation programs only in accordance with those standards. Some of the provisions of OBRA '87 have been modified by OBRA '89. These proposed regulations reflect the modifications.

To implement the OBRA '87 provisions, we would amend Part 431, State Organization and General Administration, to add a new §431.120. State requirements with respect to nursing facilities. We would require that the State plan provide that the requirements under a new subpart D of part 483 (discussed below) are met. That subpart would contain requirements for States and State agencies concerning nurse aide training and competency evaluation. The State plan must specify the rules and procedures the State follows in carrying out the requirements, including review and approval of State-approved programs and interagency agreements where the State delegates responsibilities to other agencies. We would delete section 1919(e)(1) and (e)(2) as the basis of these requirements.

Section 6001(b)(5) of OBRA '89 amended section 431.120(c)(3) of the Act to clarify that temporary enhanced funding is available for nurse aide competency evaluation programs and training and competency evaluation programs. We would implement this section in new §431.120(b) which indicates that Federal financial participation (FFP) for nurse aide competency evaluation programs and training and competency evaluation programs is available in the following amounts: for calendar quarters beginning on or after July 1, 1988 and before that, the lesser of 25 percent or the Federal medical assistance percentage (FMAP) plus 25 percentage points; for calendar quarters beginning after July 1, 1990: 90 percent. In our February 2, 1989 rule we established a new §463.72 for covered persons to reflect the statutory changes. We would implement this provision in §463.150, as discussed below, but would incorporate it by reference in §463.75(g).

We also would amend Part 403, Requirements for States and Long Term Care Facilities, by adding a new subpart D entitled, Requirements That Must Be Met by States and State Agencies: Nurse Aide Training and Competency Evaluation. The subpart would include requirements that must be met by States in addition to those that must be met by the State Medicaid agency. The subpart provides for review and approval requirements, including curriculum requirements, and provides for a State registry of nurse aides.

Following is an explanation of our proposed requirements.

In new §403.350. Role of States in nurse aide training, we would propose three exceptions to the requirement that all aides complete a training and competency evaluation program or competency evaluation program approved by the State. Specifically, we would incorporate the requirements of sections 6001(b)(4), (5), (D), (C), and (D) of OBRA '89. Sections 6001(b)(4) and (C) allow an individual to be considered to meet the requirements of sections 1919(b)(5)(A) and 1919(b)(5)(A) of the Act by completing a training and competency evaluation program approved by the State under sections 1919(e)(1)(A) or 1919(e)(1)(A) of the Act if: The aide would have satisfied the requirement as of July 1, 1989, if a number of hours (not less than 75 hours) were substituted for "75 hours" in
sections 1919(e)(1) and 1919(e)(2) of the Act, respectively, and if the aide had been received, before July 1, 1989, at least the difference in the number of hours in the course and 75 hours in supervised practical nurse aide training or in regular in-service nurse aide education; or

• The aide was found competent (whether by a facility in the State), before July 1, 1990, after the completion of a course of nurse aide training of at least 100 hours duration.

Section 6301(b)(4)(D) of OBRA '89 indicates that a State may waive the requirement for an individual to complete a competency evaluation program approved by the State if that individual can prove to the satisfaction of the State that he or she has served as a nurse aide at one or more facilities of the same employer in the State for at least 24 consecutive months before December 19, 1989.

New § 483.155. State review and approval of nurse aide training and competency evaluation programs. Contains in § 483.155(a) for State review and administration: approval of programs not offered by the State; timely action on requests for approval; length of the approval period; and withdrawal of approval, in § 483.155(a), we propose to require that the State do either or both of the following: (a) Specify nurse aide training and competency evaluation programs that meets the requirements of new § 483.152 (discussed below) and/or a competency evaluation program that meets the requirements of new § 483.154 (discussed below); or

• Specify nurse aide training and competency evaluation programs not offered by the State that the State approves as meeting the requirements of § 483.152 and/or a competency evaluation program not approved by the State that the State approves as meeting the requirements of § 483.154.

These requirements are necessary to implement sections 1919(e)(1) and 1919(e)(2) of the Act, which require States to specify nurse aide training and competency evaluation programs and competency evaluation programs that comply with requirements established by the Secretary. We would specify that a State may offer a nurse aide training and competency evaluation program or a competency evaluation program, or both, to clarify that the State may choose either option to meet the statutory requirement that it specify programs it approves as meeting the standards.

Under our proposal a State may...
have no other governmental oversight, we believe review at least every 2 years to determine if they can be reappraised is reasonable. We welcome comments on the frequency of these reviews.

In § 483.151(e), we address the State requirements for withdrawing approval of a nurse aide training and competency evaluation program or competency evaluation program. We are proposing that the State must withdraw approval of a facility-based nurse aide training and competency evaluation program when it makes a determination that the facility is out of compliance with a requirement for participation, as specified in part 483, subpart B, as a skilled nursing facility or as a nursing facility. (We note that the effective date for longer than one year has been delayed until October 1, 1990 by section 609(a) of OBRA '89. We expect that our final revision of § 483.151(e)(1) would not be effective until that date.) As indicated earlier, we are prohibited by sections 1310(f)(2)(B)(ii)(I) and 1919(f)(2)(B)(ii)(II) of the Act from permitting a State to approve a nurse aide training and competency evaluation program if the State determines that the programs fail to meet any one of the applicable requirements of §§ 483.152 or 483.154. We do not believe that it is appropriate for a State to continue operating if the State knows it has ceased to comply with the requirements for approval.

We propose to require that the State withdraw approval of a nurse aide training and competency evaluation program or nurse aide competency evaluation program if the entity providing the program does not agree to permit unannounced visits by the State to review the program. We believe that unannounced visits to review and assess programs as they operate would enable States to ensure that the requirements for approval are met. It has been our policy to make unannounced visits to nursing homes to verify ongoing compliance with certification requirements, and this policy has a proven record of allowing accurate assessments.

In § 483.152 we propose to specify the requirements that must be met by a nurse aide training and competency evaluation program that is offered by or approved by a State. To be approved, a nurse aide training and competency evaluation program must meet the course structure, format, content, and fee requirements discussed below. Exceptions are also provided to reflect requirements added by section 6090(b)(3)(D) of OBRA '89.

In § 483.152(a), as specifically required by sections 1919(f)(2)(A)(I) and 1919(f)(2)(A)(II) of the Act, we require a training and competency evaluation program to consist of a minimum of 72 hours of initial training and to contain as a minimum the subjects specified in § 483.152(d).

We would require that the nurse aide training and competency evaluation program provide for at least 16 hours of supervised practical training, which we propose to define as training in a clinical setting in which the trainee demonstrates knowledge while performing tasks on an individual under the direct supervision of a registered nurse (RN) or a licensed practical nurse (LPN). This requirement can only be met by hands-on training directly supervised by an individual qualified to perform the tasks as discussed below. We believe that at least 16 hours of training is essential for an individual to learn the range of techniques necessary to care for a resident properly, and we encourage comment on the suitability of this time frame. Although we would require that the program contain at least 16 hours of such training to be approved, States would be able to require more than 16 hours of training if they choose to do so.

As noted above, we propose to require that nurse aide training and competency evaluation programs must specify requirements for qualified personnel. We propose in § 483.152(a)(4)(i) and (ii) that the training of nurse aides be performed by or under the general supervision of an RN who has a minimum of 2 years of nursing experience. At least 1 year of which must be in the provision of long-term care services. We believe that this level of education and experience is necessary to ensure that the training and competency evaluation program meets its objectives of providing the education and knowledge needed for individuals to function competently as nurse aides in nursing facilities.

In a nursing facility-based program, the training of nurses aids may be performed by or under the supervision of the director of nursing for the facility. We recognize that in facility-based programs the director of nursing may be the most competent person to manage the training and competency evaluation program and that there is no reason that he or she should not be permitted to supervise the program.

We consider other personnel from the health administration and other related fields to be used to supplement the instructor. These individuals may include, but are not limited to, facility nurses, licensed practical/vocational nurses, pharmacists, dietitians, social workers, and fire safety experts. Nursing home administrators, gerontologists, psychologists, physical and occupational therapists, activities specialists, speech, language/hearing therapists, and resident rights experts.

We believe that individuals from these varied fields can make significant contributions to the education of nurse aides. Nurse aides have the most significant impact on the quality of life of residents of nursing facilities and therefore need a broad range of knowledge beyond the ability to perform specific tasks properly. We believe that instruction supplemental to nursing instruction would be beneficial to them.

We are considering whether to permit an LPN with long term-care experience to conduct or supervise the training of nurse aides in a facility-based program, while requiring that an RN with long term-care facility experience conduct or supervise the training in a facility-based program. Although this provision is not contained in these proposed regulations, it was in the State Operations Manual guidelines issued to State survey agencies and HCFA, regional offices in April 1989, and has generated many comments. Commenters objected to the restrictions, pointing out that an LPN is as capable of running a non-facility-based program as of running a facility-based program. Therefore, we are soliciting public comments on the issue of whether an LPN may conduct or supervise the training in facility-based and/or non-facility-based programs.

We propose in § 483.152(a)(5) to require that a nurse aide training and competency evaluation program contain competency evaluation procedures that are specific in § 483.124. We believe that it is appropriate for the competency evaluation requirements that must be met for a nurse aide competency evaluation program to be approved by the State also to be required for a nurse aide training and competency evaluation program to be approved by the State.

In § 483.152(l), we propose the minimum curriculum that the nurse aide training and competency evaluation program must be approved by.
the State. The minimum curriculum is an expansion upon the minimum content requirement of sections 1919(f)(2)(A)(i) and 1919(f)(3)(A)(i) of the Act. In developing our proposed minimum curriculum, we considered the content requirements of pre-existing nurse aide training programs such as the Job Corps program curriculum of the Department of Labor and the curriculum of the American Red Cross, and we are interested in comments on the content of the curriculum.

To be approved by the State, we would require that the curriculum of the nurse aide training program include at least the following subjects:

- Communication and interpersonal skills;
- Infection control;
- Safety/emergency procedures;
- Promoting residents' independence; and
- Respecting residents' rights.

The remainder of the 75 hours of training must include:

- Basic nursing skills;
- Taking and recording vital signs;
- Measuring and recording height and weight;
- Caring for the residents' environment;
- Recognizing abnormal signs and symptoms of common diseases and conditions; and
- Caring for residents when death is imminent.

Personal care skills, including, but not limited to:

- Personal hygiene;
- Grooming, including mouth care;
- Dressing;
- Toileting;
- Assisting with eating and hydration;
- Proper feeding techniques;
- Skin care; and
- Transfers, positioning, and turning.

Mental health and social service needs:

- Modifying a resident's behavior in response to a resident's behavior;
- Identifying developmental tasks associated with the aging process;
- Behavior management by reinforcing appropriate behavior and reducing or eliminating inappropriate behavior;
- Allowing the resident to make personal choices, providing and reinforcing other behavior consistent with the resident's dignity; and
- Using the resident's family as a source of emotional support.

- Care of cognitively impaired residents;
- Techniques for addressing the unique needs and behaviors of individuals with dementia (Alzheimer's and others);
- Communicating with cognitively impaired residents;
- Understanding the behavior of cognitively impaired residents;
- Appropriate responses to the behavior of cognitively impaired residents; and
- Methods of reducing the effects of cognitive impairments.

- Basic restorative services;
- Training the resident in self-care, including personal hygiene;
- Use of assistive devices in transferring, ambulation, eating, and dressing;
- Maintenance of range of motion;
- Proper turning and positioning in bed and chair;
- Bowel and bladder training; and
- Care and use of prosthetic and orthotic devices.

- Residents' Rights

- Providing privacy and maintenance of confidentiality;
- Promoting the residents' right to make personal choices to accommodate their needs;
- Giving assistance in resolving grievances and disputes;
- Providing needed assistance in getting involved in resident and family groups and other activities;
- Maintaining care and security of residents' possessions;
- Providing care which maintains the resident free from abuse, mistreatment, and neglect, and the need to report any such instance to appropriate facility staff; and
- Maintaining the resident's environment and care to avoid the need for restraints.

We propose to require that each of these subject areas be covered because we believe that they are necessary to ensure the health and safety of residents, since most of the care that is provided to residents of skilled nursing facilities and nursing facilities is provided by nurse aides. They are essentially the same as the guidelines specified in the State Operations Manual at section 412.1, which we issued in April 1989.

We considered whether or not to require, under course content requirements in § 483.152(b)(1)(iii), that safety and emergency procedures include cardio-pulmonary resuscitation (CPR). In the guidance we provided to States in the Medicare State Operations Manual (rev. 225, April 1989) and the Medicaid State Manual (rev. 02, April 1989), we did include CPR in the minimum curriculum, and since then, we have received numerous objections from nurse aides, and facilities. Their objections focused on the cost of such a requirement and the advisability of devoting so many hours of training to a seldom used skill. The manual instructions were intended as guidance to States, and in the absence of Federal regulations, such items as CPR that are not specifically identified in sections 1919(f)(2) and 1919(f)(3) of the Act are not required to be included in a training program in order for the State to approve.

In our proposed regulations, we are not specifically requiring that CPR be included in nurse aide training of safety and emergency procedures, but we are interested in receiving further public comment on this issue.

In § 483.154(b), we propose that no nurse aide may be charged for any portion of a nurse aide training and competency evaluation program including any fees for textbooks or other required course materials. This provision is mandated by section 6001(b)(3)(D) of OBRA '89.

We propose to include at § 483.154 the requirement for nurse aide competency evaluation programs to be offered or approved by the State. In this section, we would add the content of the competency evaluation program, administration of the competency evaluation, nurse aide proctoring of the competency evaluation programs to be offered or approved, and the individuals that follow both successful and unsuccessful completion of the program.

We would require that the State inform any individual who takes the competency evaluation that a record of the successful completion of the evaluation will be included in the State's nurse aide registry established under § 483.156. We propose to include this requirement because we believe that the individual should be advised that successful completion of the program will result in his or her name being entered in a State registry.

In § 483.154(b), we propose that the competency evaluation must:

- Allow an aide, at his or her option, to establish competency through methods other than passing a written examination;
- Address each course requirement specified in § 483.152(b)(3)(iii) that safety and emergency procedures include cardio-pulmonary resuscitation (CPR);
- Be developed from a pool of test questions, only a portion of which is used in any one examination; and
- Be tested in a system that maintains the integrity of both the pool of questions and the individual examinations.

We are proposing, as required by section 6001(b)(3)(D) of OBRA '89, that...
the competency evaluation must allow an aide, at his or her option, to establish competency through methods other than passing a written examination.

We would require that the competency evaluation address each topic in § 483.152(h), the minimum curriculum for nurse aide training and competency evaluation programs to be approved by the State. We chose to make the areas of evaluation identical to the minimum areas for training because the Act specifies identical areas for training and competency evaluation programs in sections 1919(f)(2)(A)(i) and 1919(f)(2)(A)(ii) and for competency evaluation programs in sections 1919(f)(2)(A)(ii) and for competency evaluation programs in sections 1919(f)(2)(A)(i) and 1919(f)(2)(A)(ii) of the Act.

The examination must be developed from a pool of test questions, only a portion of which is to be used in any one examination. Also, the examination must use a system that prevents disclosure of both the pool of questions and the individual examinations. We are proposing these requirements because we believe that they are necessary to preserve the integrity of the examination. Preservation of the integrity of the examinations is necessary to ensure that the individuals who are found competent on the basis of test results to function as nurse aides have been accurately evaluated in all areas of concern.

In § 483.154(b)(2), we propose to require that the competency evaluation include a demonstration of the tasks that the individual will be expected to perform as part of his or her function as a nurse aide. We believe that a demonstration of skills is essential to any determination of whether an individual is competent to function as a nurse aide since the proper performance of these tasks has such a great bearing on the health and welfare of the resident. The demonstration would have to include any task that the individual would be permitted to perform as a nurse aide.

In § 483.154(c), we propose requirements that govern the administration of the competency evaluation. Specifically, we propose to require that the competency evaluation be administered and supervised only by the State directly or by a State approved entity which is either a skilled nursing facility that participates in Medicare or a nursing facility that participates in Medicaid. The State maintains responsibility for ensuring that individuals meet the competency evaluation requirements. This restriction on who may perform competency evaluation programs is based upon sections 1919(f)(2)(B)(ii)(i) and 1919(f)(2)(B)(ii)(ii) of the Act, which require that the regulations prohibit States from delegating the State responsibility for competency evaluations to facilities. We also propose that no charges for the competency evaluation may be imposed on any nurse aide. This implements section 600(b)(3)(D) of OBRA '90.

We would require that the skills demonstration part of the evaluation be performed in a facility or laboratory setting comparable to the setting in which the individual will function as a nurse aide and that the skills demonstration part be administered and evaluated by a registered nurse with at least one year’s experience in providing care at the facility or the chronic care level of any age. We believe that observation of an individual in a facility-like setting by a registered nurse who has experienced in the care of the nursing home population is necessary to determine if an individual is competent to provide care to residents. The tasks that will be evaluated are essential to the health and welfare of the residents, who have physical and medical problems that require proper care to prevent deterioration in their health status or to enable them to achieve the most improvement possible. We believe that requiring a registered nurse with this level and type of experience increases the likelihood that aides will be able to provide care that approaches these goals.

In § 483.154(d), we address State authority to permit nursing facility personnel to proctor competency evaluation programs. We propose that nurse aides may be permitted to have the competency evaluation performed at the facility in which they are or will be employed unless the facility is out of compliance with any of the requirements of participation within any of the 24 months prior to the evaluation. This is required by section 600(b)(3)(D) of OBRA '90. We would authorize the State to permit the examination to be proctored by facility personnel if the State finds that the procedure adopted by the facility ensures that the competency evaluation program is secure from tampering, is standardized and approved by a testing, educational, or other organization approved by the State, and requires no scoring by the facility personnel. We believe that a properly secured standardized examination could be administered by the facility without conflict and that proctoring presents a practical and efficient way of performing competency evaluations for many individuals.

We are considering whether to allow facility personnel to read objective or multiple choice questions to an aide as part of an oral examination. We request public comment on this potential requirement.

We propose that the State must not permit facility personnel to proctor the skills demonstration portion of the evaluation. We considered allowing facility personnel to proctor the skills demonstration, but were unable to think of a method for documenting individual performance that would be a suitable performance by the facility. We welcome public comment on this requirement.

We would require the State to retest the right to proctor nurse aide competency evaluations from facilities in which the State finds any evidence of incompetency to be unfulfilled since tampering by facility staff clearly, in such circumstances, the facility’s proctoring of the competency evaluation cannot be considered a valid representation of an individual’s competency to function as a nurse aide.

In § 483.154(e), we propose requirements regarding what can be considered successful completion of the competency evaluation program. The State must establish the overall standard for satisfactory completion of its approved competency evaluation program. However, we require that at a minimum, the State would permit the individual to complete successfully all of the personal care skills specified in § 483.152(b)(3) and any others that would be permitted to perform in the facility. We propose this minimum standard for satisfactory completion of a competency evaluation program because we believe that the personal care skills identified in that section are the most important aspect of competency to be demonstrated since improper performance of any one of them could result in deterioration of a resident’s health status. Of course, the State would be permitted to add additional skills that the individual would have to demonstrate properly and would also be able to add other minimal requirements.

We would require that a record of successful completion of the competency evaluation be included in the nurse aide registry established under § 483.156 within 30 days of the date the individual is found to be competent. We are imposing a time frame upon States because we believe that a time frame is necessary to prevent unreasonable delays in the inclusion of the date in the registry. We propose the 30 day time frame because we believe that it is a reasonable standard.

In § 483.154(f), we propose that if the individual fails to complete facility personnel to read objective or
must be advised of the areas of inadequacy and that he or she has at least 90 opportunities to take the test and complete the competency evaluation successfully. We are proposing these requirements to ensure that individuals who do not function as nurse aides will have a reasonable opportunity to complete the competency evaluation program successfully. We do not believe it would be reasonable for the evaluation process required by the statute to have the undesirable effect of reducing the numbers of persons who will choose to work as nurse aides. By advising individuals who have not successfully completed the competency evaluation program of the areas of weakness and that they have several attempts to complete it successfully, we hope that they will be able to complete it successfully on a subsequent attempt. We have proposed that States permit prospective aides to take the test a minimum of three times. However, we wish to balance the interest of States that operate the testing programs. Therefore, we are especially interested in comments on the issue of how many times a test must be permitted.

Although not addressed in the proposed rule, we wish to solicit public comments on the question of whether private duty nurse aides (also called "sitters") who are hired by residents or their families to provide care to residents of nursing facilities should be required to complete a State approved nurse aide training and competency evaluation program or a State approved competency evaluation program (or meet the OBRA '89 requirements for waiver of that requirement) and placed on the registry as a condition of being used to provide care in participating skilled nursing facilities and other facilities. Under sections 1819(b)(5)(F) and 1919(b)(5)(F), nurse aides (or "sitters") who provide nurse aide services on a voluntary basis without monetary compensation are not required to complete a nurse aide training and competency evaluation program or competency evaluation program. Specifically, we believe that the law does not necessarily preclude our taking either of the two following positions on the issue:

- We could revise the requirements for participation for skilled nursing facilities and nursing facilities to require that facilities only permit private duty nurse aides to provide care to residents in the facility if they have successfully completed a State approved nurse aide training and competency evaluation program or a State approved competency evaluation program (or meet the OBRA '89 requirements for waiver of that requirement) and have been added to the registry. Sections 1819(b)(5)(C) and 1919(b)(5)(C) of the Act would support this requirement because these sections require that a facility "... must not permit an individual other than in a training and competency evaluation program approved by the State, to serve as a nurse aide ..." Moreover, the definition of a "nurse aide" at sections 1819(b)(5)(F) and 1919(b)(5)(F) of the Act defines a "nurse aide" as meaning "... any individual providing nursing or nursing-related services to residents ..." Hence, these sections could be read together to prohibit a facility from permitting an individual who has not successfully completed a nurse aide training and competency evaluation program or a competency evaluation program to provide services in the facility unless he or she is a volunteer.

- Alternatively, sections 1819(b)(5)(A) and 1919(b)(5)(A) of the Act state that the facility "... must not use ... any individual as a nurse aide unless he or she has met the training and competency evaluation requirements of that section. Since the private duty nurse is neither "used by the facility," nor paid by the facility (either directly or through a contract for services), the law does not appear to require that these private duty aides meet the requirements that a nurse aide used by the facility would have to meet. Because we believe that we are not necessarily precluded from taking either position, we are requesting public comment and discussion of this issue. We have received a significant number of inquiries from residents, facilities, and States on this issue, and we expect to address it in the final regulation.

In § 463.130(a), we would require that the State registry include all of the information contained in paragraph (c) of this section, registry confidentiality requirements above (as provided under paragraph (a)(5)). The inclusion of the a.e.'s statement is required by sections...
In § 483.156(b) we propose that the State may contract the daily operation and maintenance of the registry to a non-State entity. However, the State must maintain accountability for overall operation of the registry and compliance with these regulations. Moreover, we propose to require in this section that only the State survey and certification agency may place on the registry findings of abuse, neglect, or misappropriation of property.

We recognize that a State may determine that the most efficient means of managing a registry of this size would be for the State to subcontract it to a private entity. We also recognize that States may find it efficient to delegate the maintenance and operation of a registry to another entity in the State, for example, the component of the State that maintains the registry of licensed nurses. Should the State delegate or subcontract the registry outside the State government, the State continues to be responsible to the Secretary for compliance with all applicable requirements of these regulations.

We would provide that the only registry related function that cannot be subcontracted to a private entity or delegated to another entity of the State is the placement of findings of complaints of abuse, neglect, or misappropriation of property on the registry. The State survey and certification agency must, but other agencies may perform these investigations and enter that agency of the State can place these findings on the registry. These investigations are performed under the authority of sections 1819(g)(1)(C) and 1919(g)(1)(C) of the Act, which clearly specify that they will be performed through the agency responsible for surveys and certification of nursing facilities under this subsection.

We believe that it is appropriate to make one agency responsible for placing adverse findings on the registry.

In § 483.156(b)(3), we propose to require that the State renew a nurse aide's registration at least once every 2 years on a schedule set by the State. We are proposing this requirement because we believe that permitting longer periods of registration would make it virtually impossible for the State to detect and act upon findings that have not functioned as a nurse aide for compensation for 24 consecutive months. As indicated above, sections 1819(b)(3)(D) and 1919(b)(3)(D) of the Act preclude such individuals from functioning as nurse aides unless they have successfully completed another training and competency evaluation program. Therefore, if the State becomes aware that an individual who is renewing his or her registration has not functioned as a nurse aide for compensation for 24 consecutive months, or longer, the State must deny registration until he or she successfully completes or demonstrates that he or she completed another training and competency evaluation program.

We propose that the State may charge registration fees from individuals listed in the registry. We recognize that registration fees are commonly charged for registered or licensed individuals outside of the health professions as well as in them (e.g., licensed nurses, barbers, steam engineers), and we have no authority to prohibit States from charging registration fees to nurse aides. We acknowledge that section 5901(c)(1)(D) prohibits charging nurse aides for training and competency evaluation programs. However, registration is not a part of those programs. Therefore, registration fees may be charged.

Proposed § 483.156(c) would contain the minimum content of the registry. We would require that the State include the individual's full name, maiden name and any other surnames used, last known home address, and date of birth. Maiden names and previously used surnames and birth dates would enable the registry to differentiate more easily between individuals with the same name. The address is necessary so that the State can mail the notice of reregistration to the individual when reregistration is appropriate. We are requiring the individual's last employer, date of hire, and date of termination because we believe it is impossible for States to determine if an individual has not worked as a nurse aide for 24 consecutive months without this information.

We would require that the State include the date that the individual passed the competency evaluation and the date of the expiration of the individual's current registration. The date of successful completion is necessary evidence of completion, and it may be useful to a facility that is deciding whether to hire an individual. We also believe that the date of the expiration of the current registration is necessary so that the State can send the reregistration application timely. In addition, the State would be required to include the individual's last known employer and the date of hiring by that employer. This information is essential to ensure that the nurse aide has not had 24 consecutive months during which he or she has not functioned as a nurse aide.

We believe that this information is necessary to be able to determine if the individual's registration would have to be revoked, pending successful completion of another training and competency evaluation.

We would require that the State assign a registration number to an individual who successfully completes the competency evaluation program, or is determined exempt from that requirement based on section 6001 of ORCA 98. We also propose that the registration number must include a modifier which indicates the type of registration. We propose to require the use of a registration number as a means of ensuring that the individual is qualified to function as a nurse aide and of safeguarding the registry from misuse.

We would also require that a State include the name and address of the entity that administered the competency evaluation and any control or identification number if the State chooses to assign such a number. This information is necessary to ensure that the competency evaluation, if not performed by the State, was performed by an entity that was approved by the State, or was waived. Moreover, the information may be useful to facilities who are deciding whether to employ an individual. We are not requiring that the State assign control or identification numbers to entities that it has approved to perform competency evaluations. However, if the State chooses to do so, the number should be part of the identification in the registry.

In accordance with sections 1819(e)(2)(B) and 1919(e)(2)(B) of the Act, we also propose to require in § 483.156(c)(3)(x) that the State include the following information on any finding by the State of abuse, neglect, or misappropriation of property by an individual nurse aide:

- Documentation of the State's investigation, including the nature of the allegation and the evidence that led the State to conclude that the allegation was valid:
  - The date of the hearing, if the individual chose to have one, and its outcome; and
  - A statement by the individual disputing the allegation, if he or she chooses to make one.

Although not explicitly stated in the regulation, we would expect States to determine if adverse findings from other States exist before adding an individual to the registry. We welcome public comment on this issue.

In § 483.156(e)(2), we propose that the State may exclude registry entries for
individuals whose registrations have been expired for 24 consecutive months for individuals who have ceased to function as nurse aides for compensation for a period of 24 consecutive months when the individual ceases to be qualified to function as a nurse aide unless the individual's registry entry includes documented findings of abuse, neglect, or misappropriation of property as specified in paragraph (c)(1)(v) of this section. We recognize the need to keep the registry a marketable asset by deleting the entries for individuals who no longer qualify as nurse aides.

However, we also believe that entries should be retained for individuals who have been found by the State survey and certification agency to have abused or neglected residents or to have misappropriated property since these individuals may otherwise use their registrations to lapse and register at a later date. We propose in 483.156(d)(1) to require that adverse findings by the State survey agency be retained on the registry for at least 5 years. We recognize that there is a question about whether we should permit findings by the State survey and certification agency to be deleted at some point, and we request public comment on the maximum period we should require for retention of these records.

We propose in §483.159(b) to address disclosure of the information contained in the registry. Sections 1919(e)(2)(B) and 1919(e)(1)(C) of the Act require that "if the State survey and certification agency of a State determines that a nurse aide is subject to an investigation into the quality of care provided to a resident, the State shall make available to the public infor- mation in the registry." This requirement was added to the law by section 1122 of the Medicare Catastrophic Coverage Act (Pub. L. 100-360), effective as if included in the enactment of Pub. L. 100-360. However, there was no explanatory Conference Committee language to explain if the intent of Congress was to require that all information in the registry be disclosed or if in some nature of the information be disclosed to the public can be limited.

We propose in §483.159(b)(1) to require that the State disclose within 10 working days to any requester whether the name of an individual specified by the requester is included on the registry and, if so, the date of the individual's competency evaluation and the name of the entity that performed the competency evaluation. The State could, at its option, disclose any other information on the registry to any requester. However, the State would not be required by these regulations to disclose any other information to any requester. We propose the time limit of 10 days because we think it is reasonable. We propose this requirement because we believe that the public has a right to know if an individual who represents himself or herself as a registered nurse aide has, in fact, been registered by the State as providing a State-approved copy side training and competency evaluation program or a State-approved competency evaluation program. However, much of the other information contained on the registry (date of birth, home address, maiden name or any other personal data, etc.) does not appear to be appropriate for public disclosure.

We request public comment on this requirement and on what other information contained in the inquiry should be required to be disclosed to any requester by the registry.

On the other hand, we would require that the State disclose all information on the registry within 10 working days to certain enumerated health care providers to the State's long term care ombudsman, and to an official agency determined by the State as having a need to know. We believe these entities, which have the greatest need to know all of the information on the registry, should have it available to them.

We also would require that the State survey agency make available to the public in the registry on he registry. The State must also provide the nurse aide with a copy of all information contained in the registry on him or her contained in the registry. The nurse aide must be permitted at least 30 days within which to correct any inaccuracies or inaccuracies contained in the information maintained on the registry. We are proposing these requirements because we believe that since the livelihood of a nurse aide now depends, in part, on the registry entry to be maintained by the State, the nurse aide must be provided with a copy of the information initially and whenever it is changed, and must be provided a reasonable period of time to correct any errors in it. We recognize that this imposes a burden upon the States, but because the registry information is now a key factor in whether an individual can be hired or can continue to function as a nurse aide. It is important that the safeguard be in place to assure that the information in the registry is correct. Section 1003(a)(2)(B) of the Act establishes that nurse aide training and competency evaluation are State administrative costs. New §483.158 would implement this section of the statute. It also would clarify that FFP is only available for nurse aides who are employed by a facility or who have a current must be employed by a facility. We are proposing this requirement because we do not believe that there is any indication that Federal, State, or local government agencies; or geographic regions; or 

35 Significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States-based
enterprises to compete with foreign-based enterprises in domestic or export markets.

In addition, we generally prepare a final regulatory flexibility analysis that is consistent with the Regulatory Flexibility Act (RFA) [5 U.S.C. 601 through 612], unless the Secretary certifies that a final regulation will not have a significant economic impact on a substantial number of small entities. For purposes of the RFA, we consider all SNFs and NFs to be small entities. Individuals and States are not included in the definition of a small entity.

In addition, section 1102(b) of the Act requires the Secretary to prepare a regulatory impact analysis for any final rule that may have a significant impact on the operations of a substantial number of small rural hospitals. Such an analysis must conform to the provisions of section 603 of the RFA. For purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital which is located outside a metropolitan statistical area and has fewer than 50 beds.

These proposed changes primarily would conform the regulation to the legislative provisions of sections 4201(a) [for Medicare] and 4211(a) [for Medicaid of OBRA '87 and section 6901(b)(5) of OBRA '90. The provision requiring States to use an exam to qualify nurses aides for competency could be considered discretionary and may cause some States to incur additional costs.

We expect that a State survey agency or a State approved entity would encounter some incremental costs associated with the development and issuance of an exam. These costs may fall upon either the State or outside entities, depending on each State's decision. However, we believe that these initial costs are likely to produce long-term benefits that cannot be estimated. For example, we expect improvement in the quality of health care in SNFs and NFs as a result of better qualified nurses aides.

Although we believe that this discretionary provision would result in incremental costs, we believe that the costs would be insignificant when compared to the resulting increased quality of care. In that, this discussion of costs is not conclusive, we encourage comments and any applicable data concerning the discretionary provision if there is a perception that it may result in significant increased costs.

For these reasons, we have determined that the threshold criteria of E.O. 12291 would not be met, and a regulatory impact analysis is not required. Further, we have determined, and the Secretary certifies, that these proposed regulations would not have a significant economic impact on a substantial number of small entities and would not have a significant impact on the operations of a substantial number of small rural hospitals.

VI. Information Collection Requirements

Ordinarily, we would be required to estimate the public reporting burden for information collection requirements for these regulations in accordance with Chapter 35 of Title 44, United States Code. However, sections 4204(b) and 4214(d) of OBRA '87 provide for a waiver of Paperwork Reduction Act requirements for these regulations.

List of Subjects
42 CFR Part 471
Grant programs—health, Health facilities, Medicaid, Privacy, Reporting and recordkeeping requirements.

42 CFR Part 472
Administrative practice and procedure, Child support, Claims, Grant programs—health, Medicaid, Reporting and recordkeeping requirements.

42 CFR Part 463
Grant programs—health, Health facilities, Health professions, Health records, Medicaid, Nursing homes, Nutrition, Reporting and recordkeeping requirements.

Chapter IV of title 42 would be amended as set forth below:

PART 431—STATE ORGANIZATION AND GENERAL ADMINISTRATION

A. Part 431 is amended as follows:
1. The authority citation for part 431 continues to read as follows:

Authority: Sec. 1102 of the Social Security Act (42 U.S.C. 1320).

2. A new § 431.120 is added to subpart C to read as follows:

§ 431.120 State requirements with respect to nursing facilities.

(a) State plan requirements. A State plan must:

(1) Provide that the requirements of subpart D of part 463 of this chapter are met; and

(2) Specify the procedures and rules that the State follows in carrying out the specified requirements, including review and approval of State-operated programs.

(b) Basis and scope of requirements. The requirements set forth in part 463 of this chapter pertain to the following aspects of nursing facility services and are required by the indicated sections of the Act:

(1) Nurse aide training and competency programs and evaluation of nurse aide competency (1919(e)(1) of the Act).

(2) Nurse aide registry (1919(e)(2) of the Act).

PART 433—STATE FISCAL ADMINISTRATION

B. Part 433 is amended as follows:
1. The authority citation for part 433 is revised to read as follows:

Authority: Secs. 1102, 1137, 1900(a)(4), 1900(a)(25), 1900(e)(45), 1903(e)(3), 1903(d)(2), 1903(d)(5), 1903(j), 1905(b), 1905(p), 1903(c), 1912 and 1919(e) of the Social Security Act; 42 U.S.C. 1320, 1320a-7, 1320a-4(d), 1320a-6(k), 1320a-6(I), 1320a-6(j) and 1320k, unless otherwise noted.

2. Section 433.15 is amended by adding a new paragraph (b)(6) to read as follows:

§ 433.15 Rates of FFP for administration.

(b)...

(6) Nurse aide training and competency evaluation programs and competency evaluation programs described in 1919(e)(1) of the Act for calendar quarters beginning on or after 7/1/90 and before 7/1/91; the letter of 90% of the Federal medical assistance percentage plus 25 percentage points: for calendar quarters beginning after 7/1/91: 90-50%.

(Section 1902(a)(2)(B) of the Act).

PART 483—REQUIREMENTS FOR STATES AND LONG TERM CARE FACILITIES

C. Part 483 is amended as follows:
1. The heading of part 483 is revised to read as set forth above.

a. The authority citation for part 483 is revised to read as follows:

Authority: Secs. 1102, 1819(a)(10), 1900(c) and (d), and 1919(a)(2) of the Social Security Act (42 U.S.C. 1320, 1320a-6(k), 1320a-6(j), 1326d(c) and (d), and 1396a-e)(4).

2. The table of contents for part 483 is amended by redesignating existing subpart D, Conditions of Participation for Intermediate Care Facilities for the Mentally Retarded, as subpart I, and adding a new subpart D containing §§ 483.150 through 483.156 to read as follows:
Subpart D—Requirements That Must Be Met by States and State Agencies: Nurse Aide Training and Competency Evaluation

Sec. 483.150: Deemed meeting of requirements, waiver of requirements.

Sec. 483.151: State review and approval of nurse aide training and competency evaluation programs.

Sec. 483.152: Requirements for approval of a nurse aide training and competency evaluation program.

Sec. 483.154: Nurse aide competency evaluation.

Sec. 483.156: Registry of nurse aides.

Sec. 483.158: FTP for nurse aide training and competency evaluation.

Subpart E—Requirements for Long Term Care Facilities

3. In subpart E, the undesignated text of § 483.75 is reprinted and paragraph (a) is revised as follows:

§ 483.75 Level A requirement: Administration.

A facility must be administered in a manner that enables it to use its resources effectively and efficiently to attain or maintain the highest practicable physical, mental, and psychosocial well-being of each resident.

Subpart F—Requirements for Long Term Care Facilities

1. Level B requirement: Required training of nurse aides—(1) General rules.

Effective October 1, 1990, a facility must not use any individual working in the facility as a nurse aide for more than 4 months on a full-time, temporary, per diem, or other basis, unless:

(i) The individual is competent to provide nursing and nursing-related services; and

(ii) The individual has completed a training and competency evaluation program, or a competency evaluation program approved by the State at meeting the requirements of § 483.151-483.154 of this part; or

(iii) The individual has been deemed competent as provided in § 83.15(a) and (b).

2. Competency evaluation programs for current employees—Effective January 1, 1990, a facility must provide, for individuals used as nurse aides, a competency evaluation program approved by the State, and preparation necessary for the individual to complete the program by October 1, 1990.

3. Competency, Effective October 1, 1990, a facility must permit an individual to serve as a nurse aide or provide services of a type for which the individual has not demonstrated competence only when—

(a) The individual is in a training and competency evaluation program or a competency evaluation program approved by the State; and

(b) The facility has asked and not yet evaluated a reply from the State registry for information concerning the individual.

4. Required residing. Effective October 1, 1990, when an individual has not performed paid nursing or nursing-related services for a continuous period of 24 consecutive months since the most recent completion of a training and competency evaluation program, the facility must require the individual to complete a new training and competency evaluation program.

5. Regular in-service education.

Effective October 1, 1993, the facility must provide regular performance review and regular in-service education to ensure that individuals used as nurse aides are competent to perform services as nurse aides. In-service education must include training for individuals performing nursing and nursing-related services to residents with cognitive impairments.

6. Definition of nurse aide. For purposes of this section, the term "nurse aide" means any individual providing nursing or nursing-related services to residents in a facility. This definition does not include an individual who volunteers to provide such services without pay.

7. Subpart D of part 483 is redesignated as subpart E and a new subpart D (§§ 483.150 through 483.156) is added to read as follows:

Subpart D—Requirements That Must Be Met by States and State Agencies: Nurse Aide Training and Competency Evaluation

Sec. 483.150: Deemed meeting of requirements, waiver of requirements.

(a) A nurse aide is deemed to satisfy the requirement of completing a training and competency evaluation program approved by the State if he or she successfully completed a training and competency evaluation program before July 1, 1989 if—

(i) The aide would have satisfied this requirement if—

(A) At least 60 hours were substituted for 24 hours in sections 1910(12) and 1910(12) of the Act; and

(B) The individual had made up at least the difference in the number of hours in the program before the 72 hours in supervised practical nurse aide training or in regular in-service nurse aide education;

(ii) The individual was found to be competent (whether or not by the State) after the completion of nurse aide training of at least 100 hours duration.

(b) A State may waive the requirement for an individual to complete a competency evaluation program approved by the State for any individual who can demonstrate to the satisfaction of the State that he or she has served as a nurse aide at one or more facilities of the same employer in the State for at least 24 consecutive months before December 19, 1999.

Sec. 483.151 State review and approval of nurse aide training and competency evaluation programs.

(a) State review and administration—(1) The State must—

(i) Offet a nurse aide training and competency evaluation program that meets the requirements of § 483.152 and/or a competency evaluation program that meets the requirements of § 483.154; and/or

(ii) Specify any nurse aide training and competency evaluation programs not offered by the State that the State approves as meeting the requirements of § 483.152 and/or competency evaluation programs not offered by the State that the State approves as meeting the requirements of § 483.154.

(2) The State may delegate or subcontract the approval of these programs to an entity outside of the State government.

(b) If the State does not choose to offer one or both of the programs specified in paragraphs (a)(1)(i) of this section, the State survey agency or another State government entity must review and approve or disapprove nurse aide training and competency evaluation programs and nurse aide competency evaluation programs when requested to do so by any Medicare participating skilled nursing facility or Medicaid participating nursing facility.

(c) The State survey agency must, in the course of all surveys, determine whether the nurse aide training and competency evaluation requirements of § 483.75(a) are met.

Sec. 483.154: Requirements for approval of nurse aide training and competency evaluation programs.

1. Before the State approves a nurse aide training and competency evaluation program or a nurse aide competency evaluation program, the State must, on the basis of at least one onsite visit to the entity providing the training or performing the competency evaluation—

(a) Determine whether the nurse aide training and competency evaluation
program meets the course requirements of § 483.152, and
(1) Determine whether the nurse aide competency evaluation program meets the requirements of § 483.154.
(2) The State may not approve a nurse aide training and competency evaluation program or competency evaluation program conducted by a skilled nursing facility or a nursing facility that has been found out of compliance with any of the requirements for participation in part 483 subpart B within any of the 24 consecutive months prior to the State's review of the facility based program.
(3) Include at least 10 hours of supervised practical training. "Supervised practical training" means training in a laboratory or other setting in which the trainee demonstrates knowledge while performing tasks on an individual under the direct supervision of a registered nurse or a licensed practical nurse.
(4) Meet the following requirements for instructors who train nurse aides:

   (i) The training of nurse aides must be performed by or under the general supervision of a registered nurse who possesses a minimum of 2 years of nursing experience, at least 50 hours of which must be in the provision of long term care facility services.
   (ii) In a nursing facility-based program, the training of nurse aides may be performed by or under the general supervision of the director of nursing for the facility; and
   (iii) Other personnel from the health care professions may supplement the instructor, including, but not limited to, registered nurses, licensed practical vocational nurses, phlebotomists, dieticians, social workers, social workers, professional staff, fire safety experts, nursing home administrators, geriatricians, psychologists, physical and occupational therapists, activities specialists, speech/language/hearing therapists, and resident rights experts.
   (5) Obtain competency evaluation procedures specified in § 483.154.
   (6) The curriculum of the nurse aide training program must include—

   (i) At least 10 hours of training in the following areas prior to any direct contact with a resident:
      (A) Communicating and interpersonal skills;
      (B) Infection control;
      (C) Safety/emergency procedures;
      (D) Promoting residents' independence; and
      (E) Respecting residents' rights.
   (2) Basic nursing skills:
      (i) Taking and recording vital signs;
      (ii) Measuring and recording weight and height;
      (iii) Caring for the residents' environment;
      (iv) Recognizing abnormal signs and symptoms of common diseases and conditions; and
      (v) Caring for residents when death is imminent.
   (3) Proper feeding techniques;
   (4) Transfers, positioning, and lifting.
   (5) Proper feeding techniques;
   (6) Skin care; and
   (7) Secondary prevention of communicable diseases.
   (8) Preventing and reducing or eliminating inappropriate behavior.
   (g) Allowing the resident to make personal choices providing and reinforcing other behavior consistent with the resident's dignity; and
   (h) Using the resident's family as a source of emotional support.
   (i) Techniques for addressing the unique needs and behaviors of residents with dementia (Alzheimer's and others);
   (j) Communicating with cognitively impaired residents.
   (k) Understanding the behavior of cognitively impaired residents;
   (l) Appropriate responses to the behavior of cognitively impaired residents; and
   (m) Methods of reducing the effects of cognitive impairments.
   (2) Basic nursing services:
      (i) Training the resident in self care according to the resident's abilities;
      (ii) Use of assistive devices in transferring, ambulation, eating, and dressing;
      (iii) Maintenance of range of motion;
      (iv) Proper turning and positioning in bed and chair;
      (v) Boviole and bladder training; and
      (vi) Care and use of prophylactic and orthotic devices.
   (b) Residents' rights.
   (c) Providing privacy and maintenance of confidentiality;
   (d) Promoting the residents' rights to make personal choices to accommodate their needs;
   (e) Giving assistance in resolving grievances and disputes;
   (f) Providing needed assistance in getting to and participating in resident and family groups and other activities;
   (g) Maintaining care and security of residents' personal possessions;
   (h) Providing care which maintains the resident free from abuse, mistreatment, and neglect and the need to report any instance of such treatment to appropriate facility staff; and
   (i) Maintaining the resident's environment and care to avoid the need for restraint.
The State must inform the individual in writing of the results of the competency evaluation.

The individual's last known name, including a maiden name and any other surnames used;

(i) The individual's last known home address;

(ii) The registration number assigned by the State to the individual when he or she successfully completes the competency evaluation program.

The registration number must include a modifier which indicates the type of registration:

(iv) The individual's date of birth;

(v) The individual's last known employer and the date of hiring and termination by that employer;
(vi) For an individual who qualifies under § 432.150, an explanation of how the individual met the criteria of that section.

(vii) The date that the individual passed the competency evaluation and the date of the expiration of the individual's current registration.

(viii) The name and address of the State approved entity which administered the competency evaluation and any control or identification number if the State chooses to assign such a number.

(ix) The following information on any finding by the State survey agency of abuse, neglect, or misappropriation of property by the individual:

[A] Documentation of the State’s investigation, including the nature of the allegation and the evidence that led the State to conclude that the allegation was valid.

[B] The date of the hearing if the individual chose to have one, and its outcome.

[C] A statement by the individual disputing the allegation, if he or she chose to make one.

[x] The registry may exclude entries for individuals whose registrations have been expired for 24 consecutive months or for individuals who have ceased to function as a nurse aide for compensation for a period of 24 consecutive months when the individual ceased to be qualified to function as a nurse aide unless the individual’s registry entry includes documented findings of abuse, neglect, or misappropriation of patient property.

Disclosure of information. (1) The State must disclose to any requester within 10 working days a minimum of whether an individual specified by the requester is included on the registry and, if so, the date of the individual’s competency evaluation and the name of the entity that performed the competency evaluation. The State may disclose other information it deems appropriate.

(2) The State must disclose all information contained in the registry within 10 working days to any Medicare or Medicaid participating skilled nursing facility, nursing facility, home health agency, hospice, ombudsman, or any other representative of an official agency with a need to know, upon receipt of a written request for such information, which must include the reason for the request.

(3) The State must provide the nurse aide with a copy of all information contained in the registry on him or her within 30 days of the date the individual is placed on the registry. The State must also provide the nurse aide with a copy of all information contained in the registry on him or her within 30 days of any changes or additions to this information. The nurse aide must be permitted at least 30 days within which to correct any misstatements or inaccuracies contained in the information maintained by the registry on that individual.
The Bureau requests that Bill Nos. 1416 be granted a waiver pursuant to Public Law 12-229 for the following reason(s):

Bill No. 1416 is an act to add a new Section 12316.1 to Title 10 of the Guam Code Annotated relative to empowering the Guam Board of Nurse Examiners to establish the minimum professional qualifications for nurses aides and the criteria for evaluating such qualifications.

The proposed legislation is administrative in nature and poses no fiscal impact on the General Fund.

MICHAEL J. REIDY

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**Bill No. 1416**

**Committee on Health, Welfare and Ecology**

**Date:** May 14, 1990

**Attendance Sheet**

**Written:**

**Oral:**

**FAVOR:**

**AGAINST:**
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An Act to Add a New Section 12316.1 to Title 10 Guam Code Annotated, Relative to Empowering the Guam Board of Nurse Examiners To Establish Minimum Professional Qualifications for Nurses Aides

1 BE IT ENACTED BY THE PEOPLE OF THE TERRITORY OF GUAM:

2 Section 1. Legislative Intent. The health care system relies heavily on nurses aides to perform a wide variety of basic services under supervision in a hospital or clinical setting. Recent federal legislation requires certification standards for nurses aides to be set by local health care providers which receive reimbursement for services rendered to persons covered by Medicaid and Medicare. In order to foster consistency in standards applied to the profession of nurses aide on Guam, whether by public or private health care providers, the Guam Board of Nurse Examiners is empowered to establish by regulation minimum professional qualifications, and to certify nurses aides who have met such qualifications.

3 Section 2. A new Section 12316.1 is added to Title 10 Guam Code Annotated to read:

4 "§12316.1. Qualifications for and Registration of Nurses Aides. The Board may establish by regulation minimum qualifications for nurses aides and criteria for evaluating such qualifications. The Board may also by regulation establish and administer such procedures as may be necessary to ensure that an applicant meets minimum qualifications established by the Board. The Board shall maintain a registry of nurses aides who meet all duly established qualifications, and certify to any authorized employer or authorized prospective employer upon request the inclusion of any name listed therein."