

# **Rhode Island Department of Health**

## **Cost-Benefit Analysis**

### **Nursing Assistants, Medication Aides, and the Approval of Nursing Assistant and Medication Aide Training Programs**

**216-RICR-40-05-22**

#### **Background**

There is currently a shortage of licensed nursing assistants in Rhode Island. Per Rhode Island Department of Health (The Department) Regulations (Nursing Assistants, Medication Aides, and the Approval of Nursing Assistant and Medication Aide Training Programs, 216-RICR-40-05-22), in order to become licensed in the state of Rhode Island as a nursing assistant one must successfully complete a nursing assistant training program and upon the completion of the program demonstrate competency by successfully passing the nursing assistant test.

The Department has identified a lack of nursing assistant testing operators in the state has been preventing numerous potential nursing assistants from entering the market.

The proposed regulations would allow additional nursing assistant test administrators, as the current contracted vendor is unable to meet testing demand from the recent graduates of nursing assistant training programs; and has thus created a bottleneck limiting potential nursing assistant entry into the industry.

These factors come into play:

The US Centers for Medicare and Medicaid Services (CMS) sets the standards for nursing assistant training, testing, and licensing. CMS requires that nursing assistants in facilities receiving Medicaid and/or Medicare be licensed or certified. The CMS regulations do allow a “grace period” of 120 days between completion of a nursing assistant training program and successfully passing a written and practical examination, during which time the applicant may continue working in a facility. The Department had granted a temporary permit to cover this “grace period”, but under the current regulations (the Department’s and CMS’) no extension beyond the 120-day grace period is allowed. If the applicant cannot take the examination within the four months after training, they cannot be licensed and cannot work in a CMS facility (nor in any capacity requiring licensure).

For a number of years, the State has contracted with an outside vendor (the current vendor), in a zero-dollar contract that essentially grants the current vendor the exclusive license to administer both the written and practical skills parts of the nursing assistant examination. The agreement between the Department and the current vendor is not exclusive by its own terms – it is exclusive because the current vendor is the sole testing entity authorized by the National Council of State Boards of Nursing (NCSBN) to administer the National Nursing Assistant Assessment Program (NNAAP) examination. Because the Department’s regulations refer specifically to this test (see 216-RICR-40-05-22.5.4(D) below), applicants have no choice but to test through the current vendor.

The statute, R.I. Gen. Laws §§ 23-17.9-3 and 23-17.9-5, and the regulations (216-RICR-40-05-22.5.4(A), below), refer more generically to an examination that is approved by the Department's Director, which would allow us to adopt an equivalent examination that could be administered by a vendor other than the current vendor. This approach is taken by thirty-three other States.

### **Proposed Regulation**

The proposed regulation proposes the following changes:

#### **§ 22.5.4 (D)**

- Adds "or a nursing assistant written and practical examination selected and approved by the Director or his/her designee" to change the following sentence to: Applicants for initial licensure as a nursing assistant by examination who have completed a nursing assistant training program in accordance with this Part, may be issued a one hundred twenty (120) day Temporary Permit authorizing the applicant to work under direct supervision of a licensed nurse or physician until the applicant has passed all required portions of the National Nursing Assistant Assessment Program or a nursing assistant written and practical examination selected and approved by the Director or his/her designee.

#### **§ 22.5.4(E)**

- Deletes the following sentence: ~~No extensions of the one hundred twenty (120) day Temporary Permit shall be allowed.~~ Adds the following three sentences: The training program shall provide ongoing assistance to candidates, as necessary and upon the candidate's request, to assure that testing date(s) are scheduled, and to facilitate the candidate's attendance and successful performance of necessary tests. The availability of this assistance shall be communicated to all candidates prior to the conclusion of the training course. These efforts shall be documented and made available to the Department upon request.

These changes will allow the Department to add additional testing sites and remove the grace period. While the Department cannot allow licensure in contravention of the CMS rule that imposes the 120-day limit, the Department recently received an 1135 Waiver from CMS to suspend that rule; however, such suspension is only temporary and therefore to avoid any future confusion, the Department has removed such language.

### **Cost and Benefits**

This regulation, if adopted, would have no cost to the State of Rhode Island as the Department's contract with the current vendor is a zero-dollar contract and will remain as such. The benefits of the proposed rule would be significant. With additional nursing assistant testing administrators, the bottleneck of untested and unlicensed nursing assistants would decrease allowing them to enter the job market.

More nursing assistants in the Rhode Island health care market would alleviate staffing shortages. While it is difficult for the Department to deduce the amount of nursing assistants needed to meet the needs of Rhode Island, there are currently 1537 nursing assistant job postings for Rhode Island on Indeed (a popular job posting board). A lack of staffing prevents health care facilities, like nursing homes, hospice and hospitals, from admitting more patients and thus preventing patients from getting care they need in a timely manner. By allowing for additional nursing assistant test administrators should improve the

nursing assistant staffing shortage in the state and thus allow more Rhode Island patients to receive timely care.

**Determination**

Based on the above analysis, the Department has determined that the benefit of the current proposed regulation will allow nursing assistant training graduates to gain licensure quickly and thus alleviate the staffing shortage. The Department has determined that the proposed regulations does not increase any costs to the state.

Pursuant to R.I. Gen. Laws § 42-35-2.8, the Department has determined:

1. The benefits of the proposed rule justify the costs of the proposed rule; and
2. The proposed rule will achieve the objectives of the authorizing statute in a more cost-effective manner and with greater net benefits than other regulatory alternatives.