

NATCEP Ban Waiver Tip Sheet: To Assist with Completion of Nurse Aide Training and Competency Evaluation Program Ban Waiver Request

First, review the letter the facility received notifying them of the facility NATCEP/CEP ban or disapproval of program to determine what the reason(s) is for the ban. The reason for the facility ban of program should fit into one of the 3 categories below.

Categories: Is the ban due to-

- **Category #1**-Extended/Partial Extended Survey, CMP, Denial of Payment, Temporary Manager, Waiver of Licensed Nurse.
- **Category #2**-CMP of no less than [\$11,995 as of 2022] – due and payable and the deficiency is not related to Quality of Care for residents – meaning direct hands-on care and treatment that a health care professional or direct care staff furnished to a resident.
- **Category #3**-Extended/Partial Extended Survey Finding of SQC (meaning direct hands-on care and treatment that a health care professional or direct care staff furnished to a resident with one or more deficiencies with s/s levels of F, H, I, J or K).

Once the facility has identified the reason for ban, the facility is now able to determine if a waiver is allowable and who to send the request to.

If the facility reason for ban falls into category #1, #2, or #3 the facility can submit a waiver request to the state, IF the facility is able to demonstrate that there is no other such program offered within a reasonable distance of the facility and can explain how the program will be offered in (but not by) the facility. The state has waiver authority under sections 1819(f)(2)(C) and 1919(f)(2)(C) of the Social Security Act.

If the facility reason for ban falls into category #2 only and the facility is **not attempting** to demonstrate that there is no other such program offered within a reasonable distance, the facility can submit a waiver request to the state and ask the state to send it to the CMS Location (CMS Regional Office) as they have the authority under sections 1819(f)(2)(B)(iii)(c) of the Social Security Act and (D) and 42 CFR §483.151 to approve the waiver.

If the facility reason for ban falls into category #3, the facility can submit a waiver request to the state, IF the facility is able to demonstrate that there is no other such program offered within a reasonable distance of the facility and can explain how the program will be offered in (but not by) the facility. The facility also has the right to request an appeal of the SQC findings. If the facility is a SNF/NF, the request is made to the HHS Department of Appeals Board. If the facility is a NF only, the request is made to the State. If the facility wishes to pursue this option, consider consulting legal advice.

NOTE: If the facility requests a waiver under Category #1, # 2, or #3 the state approval will allow for a NATCEP to be offered in the facility, but not by the facility. If the facility requests a waiver under Category #2 only, the CMS location approval allows for the NATCEP to be offered in and by the facility.

Next, if the facility decides to apply for a waiver, AHCA has created a template to assist: *Nurse Aide Training and Competency Evaluation Program Ban Waiver Request*

- All facilities should complete **Section I** of the form.
- If the facility reason for ban is due to category **#1, #2, or #3**, and the facility is seeking state approval based on demonstration that there is no other such program offered within a reasonable distance of the facility, explained above, the facility will complete **Section II** of the form.
- If the facility reason for ban is only due to category **#2** and the facility is **not attempting** to demonstrate that there is no other such program offered within a reasonable distance, , the facility will complete **Section III** of the form, Section II is not necessary to complete unless facility feels it is beneficial to the request.
- If the facility had an active NATCEP program at the time of ban, the facility would need to also complete **Section IV** of the form.
- Add any additional details to support the request and sign.

Finally, once the facility has completed the appropriate sections of the *Nurse Aide Training and Competency Evaluation Program Waiver Request* form, the facility should submit it to the state survey agencies with direction indicating whether it is a request for the state to review based on their authority (Category #1, #2, or #3) under sections 1819(f)(2)(C) and 1919(f)(2)(C) of the Social Security Act or if the facility request is that they send it to the CMS Location (Category #2 only) to review based on their authority under sections 1819(f)(2)(B)(iii)(c) of the Social Security Act and (D) and 42 CFR §483.151.

*Note: Post-submission the facility should follow-up via email if you have not received a notice of approval or denial within 30-days. Attempt to obtain all communication between facility and state survey agency or CMS Location in writing.

For further details see [S&C:18-02-NH](#)