

Thank you for the opportunity to comment on Chapter 3701-18-27, Completion of the state-administered competency evaluation program; reporting of results. The Ohio Health Care Association represents nearly 600 skilled nursing facilities and over 300 residential care facilities in Ohio. Many member organizations employ certified nursing assistants and utilize the Nurse Aide Training and Competency Evaluation program for their certification. We support the changes enacted by Senate Bill 144 in the 135th General Assembly, which we feel will increase access to Certified Nursing Aides obtaining their certification.

Many of our comments reflect the legislative intent in Senate Bill 144 to more closely align the regulation of the nurse aide training and competency evaluation program with federal flexibilities and increase access to certification for certified nurse aides. Our additional recommendations on the draft rule are:

- Draft Rule 3701-18-27 (C) An educational institution that wants to provide its students with a substantially similar test to the state competency evaluation program will: (1) Develop a test consisting of electronic and oral versions of tests and a skills demonstration that will measure the competency of the individual to provide safe, reliable, and competent work activities as a certified nurse aide with a reading comprehension level appropriate for the education and experience provisions of the discipline. A test will include all of the following:

In Senate Bill 144, ORC 3701.28 states” (2) The director shall permit a training and competency evaluation program approved under division (A) of this section that is operated by a career center, community college, or similar educational institution to perform competency evaluations if the director determines that the program complies with federal laws and regulations relating to competency evaluations and the competency evaluation is substantially similar to the competency evaluation conducted by the director.” In subsequent conversations with representatives from the Department of Health, we discussed the possibility of an educational institution utilizing the state-administered test to further allow access to testing locations for CNAs. In the draft rule, requiring educational institutions to “develop a test” would imply that they could not utilize an existing test.

We suggest that this language is amended to “(C)(1) **Utilize the developed state-administered test, as permitted by the director** or develop a test consisting of electronic and oral versions of tests and a skills demonstration that will measure the competency of the individual to provide safe, reliable, and competent work activities as a certified nurse aide with a reading comprehension level appropriate for the education and experience provisions of the discipline. A test will include all of the following:

- Draft Rule 3701-18-27 (E) Each educational institution will provide a testing observer during the administration of the test who is a registered nurse with at least one year of experience in providing care for the elderly or chronically ill of any age, to ensure the test is given appropriately and to deter:

In Senate Bill 144, ORC 3701.28 states: (D) The director may approve or conduct programs to train instructors and coordinators, and evaluators for training and competency evaluation

programs. The director may conduct inspections and examinations of those programs that have been approved by the director or for which an application for approval has been submitted, and the sites at which the programs are or will be conducted. **The director shall not restrict participation in a training program for instructors to individuals who have experience working in a nursing home.**

The legislative intent of this addition to the language was in response to reports from educational training institutions that finding RNs with experience working in nursing home is extremely difficult. Adding this requirement will reduce the intention of expanding testing options for our CNAs and promoting our workforce. We suggest revising this language to “(E) Each educational institution will provide a testing observer during the administration of the test who is a registered nurse **or a licensed practiced nurse** with at least one year of experience in providing care for the elderly or chronically ill of any age, to ensure the test is given appropriately and to deter:” or, alternatively “(E) Each educational institution will provide a testing observer during the administration of the test who is a registered nurse **with at least two years of experience**, to ensure the test is given appropriately and to deter:”

- Draft Rule 3701-18-27.1 (B)(2) Allow the director or the director’s designee to observe the proctoring of the competency evaluation program. (3) Allow the director or the director’s designee to evaluate a candidate’s performance on the skills demonstration of the competency evaluation program.

In Senate Bill 144, ORC 3701.28 (C)(2) reads ...”A nursing home may proctor a competency evaluation **under the circumstances specified in federal laws and regulations.**”

The federal regulation referenced is 42 CFR 483.154 (d)

Facility proctoring of the competency evaluation.

(1) The competency evaluation may, at the nurse aide's option, be conducted at the facility in which the nurse aide is or will be employed unless the facility is described in [§ 483.151\(b\)\(2\)](#).

(2) **The State may permit the competency evaluation to be proctored by facility personnel if the State finds that the procedure adopted by the facility** assures that the competency evaluation program—

(i) Is secure from tampering;

(ii) Is standardized and scored by a testing, educational, or other organization approved by the State; and

(iii) Requires no scoring by facility personnel.

(3) The State must retract the right to proctor nurse aide competency evaluations from facilities in which the State finds any evidence of impropriety, including evidence of tampering by facility staff.

We feel that this draft rule does not adhere to 3701.28 as it does not align with the federal regulation, 42 CFR 483.154(d) as it requires the facility to allow the director to continually monitor the proctoring of competency evaluations, instead of approving the procedure at the time a facility requests to be permitted to perform proctoring of the competency evaluation.

Requiring a director or designee at each occurrence of proctoring would severely limit access for facilities to exercise this flexibility and exceed the circumstances specified in the federal regulation, as written in the statute. We do, however, agree that the federal regulations require the state to ensure requirements are met upon initial approval.

We suggest amending this language as follows: (B)(2) Allow the director or the director's designee to observe the proctoring of the competency evaluation program **and approve the procedures upon initial review** (3) Allow the director or the director's designee to evaluate a candidate's performance on the skills demonstration of the competency evaluation program **upon initial review.** (4) **Allow the director or the director's designee to reevaluate the proctoring of the competency evaluation program procedures annually.**

We would also note that there are rules that we believe require additional amendments to reduce confusion and clarify processes for educational institutions that are pursuing the state-administered competency evaluation program, such as 3701-18-22. We are happy to discuss any of these items in greater detail. Thank you for your consideration.

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