

Center for Medicaid and State Operations/Survey and Certification Group

Ref: S&C-05-05

DATE: November 12, 2004

TO: State Survey Agency Directors

FROM: Director
Survey and Certification Group

SUBJECT: Nurse Aide Registry Requirements – ACTION FOR IMPROVEMENT

Letter Summary

- States are required by statute to maintain Nurse Aide Registries (NAR) as an obligation of the state's Medicaid plan and the 1864 Agreement.
- The maintenance and operation of the NAR in some states fails to meet basic performance requirements.
- Please complete the attached self-assessment review by January 31, 2005.
- CMS Regional Office staff will schedule follow-up with states in the first half of calendar year 2005.

I first wish to thank you for your efforts to make improvements in the tracking and managing of complaint and incident investigations through the recent implementation of the national ASPEN Complaints/Incidents Tracking System (ACTS). For most states, ACTS will significantly improve the ability to track and manage these investigations.

A companion step to improve complaint and incident investigation management is to ensure that substantiated findings of abuse, neglect, or misappropriation of property by certified nurse aides are entered into the nurse aide registry timely. To this end, we have been working with the HHS Office of the Inspector General (OIG) to evaluate the current performance of state nurse aide registries.

The review of states' nurse aide registries (NAR) has found that some states do not fully comply with the Federal requirements related to the maintenance and operation of the NAR. In some states, the substantiated findings of resident abuse, neglect, or misappropriation of property are not included in the NAR within 10 working days; some states failed to remove inactive nurse aides from the registry; and some nurse aides with substantiated findings in one state are actively certified in other states.

I appreciate that each state's resources for survey and certification are quite limited. At the same time, many of the solutions needed are not ones that require funding, or require just one-time investments of either energy or money to develop improved business practices, feedback systems, clearer instructions, and improved management.

Maintenance of the nurse aide registries not only involves state survey and certification agencies but also Medicaid agencies. The NAR is a statutory requirement for the Medicaid State Plan.

To provide structure to our mutual improvement efforts, and to establish a process by which significant barriers are identified, please accomplish the following:

ACTION STEPS

- Complete the attached self-assessment and action plan and send to the CMS regional office electronically by January 31, 2005.
- Take the necessary steps to render the state's nurse aide registry fully compliant with Federal law and regulations.
- Involve companion state agencies involved in the state's nurse aide registry.
- Inform the CMS regional office, via the self-assessment, regarding any significant barriers to attaining full compliance with the requirements.

Effective Date: Please complete the attached self-assessment form and submit it to the CMS regional office by January 31, 2005.

Training: This memorandum should be shared with SA and RO supervisory and training staff.

/s/
Thomas A. Hamilton

Attachment

cc: Survey and Certification Regional Office Management
Medicaid State Agencies
Medicaid Regional Office Management

**State Self-Assessment
Operation and Maintenance of the State Nurse Aide Registry**

<i>Nurse Aide Registry for [enter name of State]</i>	<i>Status¹</i>	<i>State's Action Plan to Attain Compliance</i>
<p>The following items are maintained and retrievable from the nurse aide registry for each individual who has completed a nurse aide training and competency evaluation program (NATCEP) or competency evaluation program (CEP) approved by the State, who has been deemed to have completed a NATCEP, or for whom the state has waived the CEP:</p> <ul style="list-style-type: none"> • The individual's full name; • Information necessary to identify the individual; • The date the individual became eligible for placement in the registry; and • Any finding by the state survey agency of resident abuse or neglect or misappropriation of property by an individual documenting: <ul style="list-style-type: none"> ○ The state's investigation, including the nature of the allegation and the evidence that led to the conclusion 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 the individual chooses to make one. 		

¹ *Enter 1, 2, or 3*

1. *In full compliance with this requirement*
2. *Some problems identified and corrected by 01/31/05*
3. *Not in compliance with this requirement*

**State Self-Assessment
Operation and Maintenance of the State Nurse Aide Registry**

<i>Nurse Aide Registry for [enter name of State]</i>	<i>Status¹</i>	<i>State's Action Plan to Attain Compliance</i>
<p>The nurse aide registry includes required information stated above for:</p> <ul style="list-style-type: none"> • All individuals who have successfully completed a nurse aide training and competency evaluation program (NATCEP) or competency evaluation program (CEP) approved by the state • All individuals who are deemed to have completed a NATCEP • All individuals for whom the requirement to complete a CEP has been waived by the state • All nurse aides who are found by the state to have abused or neglected a resident or misappropriated resident property 		
<p>If the finding is that the individual has neglected, or abused a resident or misappropriated resident property or if the individual waives the right to a hearing, the state must report the findings in writing within 10 working days to the individual, the current administrator of the facility in which the incident occurred, the administrator of the facility that currently employs the individual, if it is not the same facility in which the incident occurred, applicable licensing authorities, and as above, the nurse aide registry for nurse aides.</p>		
<p>The nurse aide registry includes required information timely. Only the state survey agency may report the findings of abuse, neglect or misappropriation of resident property to the nurse aide registry and this must be done within 10 working days of the finding. The information reported must be included in the nurse aide registry within 10 working days of the finding. This information remains in the nurse aide registry permanently, unless the finding was made in error, the individual was found not guilty in a court of law, or the state is notified of the individual's death. The state survey agency may not delegate this responsibility.</p>		
<p>The names of all individuals who have performed no nursing or nursing-related services for monetary compensation for a period of 24 consecutive months, are removed from the registry, except those individuals who are found to have abused or neglected residents or misappropriated resident property.</p>		

**State Self-Assessment
Operation and Maintenance of the State Nurse Aide Registry**

<i>Nurse Aide Registry for [enter name of State]</i>	<i>Status¹</i>	<i>State's Action Plan to Attain Compliance</i>
Information is disclosed to requestors about an individual on the registry, the date of eligibility for placement on the registry, and any information pertaining to a finding of resident abuse or neglect, or misappropriation of resident property including any statement disputing the finding made by the nurse aide. (The state may disclose any additional information it deems necessary.)		
Individuals on the registry are provided with all information in the registry on them when findings of resident abuse or neglect or misappropriation of resident property are made, or upon request.		
All individuals on the registry are permitted sufficient opportunity to correct any misstatements or inaccuracies contained in the registry.		
The nurse aide registry is sufficiently accessible to meet the needs of the public and health care providers.		
The nurse aide registry provides requested information promptly.		
The nurse aide registry does not impose any charges related to registration on individuals listed in the registry.		

**State Self-Assessment
Operation and Maintenance of the State Nurse Aide Registry**

<i>Nurse Aide Registry for [enter name of State]</i>	<i>Status¹</i>	<i>State's Action Plan to Attain Compliance</i>
<p>The state has established a procedure to permit a nurse aide to petition the state to have his or her name removed from the registry if the state determines that the employment and personal history of the nurse aide does not reflect a pattern of abusive behavior or neglect; and the neglect involved in the original finding was a singular occurrence.</p> <p>(The Social Security Act at §1819(g)(1)(D) and 1919(g)(1)(D) includes a provision addressing the removal of the name of a nurse aide from the nurse aide registry in limited circumstances. The law requires that in the case of a finding of <u>neglect</u> during an investigation of allegation(s) of resident neglect and abuse and misappropriation of resident property, the state shall establish a procedure to permit a nurse aide to petition the state to have his or her name removed from the registry if the state determines that the employment and personal history of the nurse aide does not reflect a pattern of abusive behavior or neglect; and the neglect involved in the original finding was a singular occurrence. Regarding the timing of the determination, the law requires that a determination on a petition for removal can not be made prior to the expiration of the one year period beginning on the date on which the name of the petitioner was added to the registry as a result of an investigation. These provisions are not discretionary. States are required to design a process that satisfies the language of the statute.)</p>		