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LONG TERM CARE COMMUNITY COALITION
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# PROTECT NURSING HOME NURSE AIDE TRAINING REQUIREMENTS; PROTECT RESIDENTS' RIGHT TO HIGH QUALITY CARE

Certified nurse aides provide most of the direct hands-on care to the nation's 1.3 million nursing home residents. Aides' central role in caregiving means that the training that aides receive to become certified must be adequate and appropriate to ensure that they are capable of providing high quality of care and quality of life services to residents.

At present, training can be provided by a variety of entities, including vocational schools, unions, and nursing facilities themselves. If a nursing facility wants to provide certification training using its own staff, it is crucial that care practices in the facility meet or exceed federal standards, so that new aides are taught good practices. Equally important, a facility conducting a nurse aide training program must have sufficient numbers of staff so that residents are not put at risk when a facility shifts nurses from the floor to the classroom.

Unfortunately, the nursing home industry is exploiting the current enthusiasm for deregulation to weaken these essential safeguards. As discussed below, two bills introduced in Congress roll back current protections.

**What federal law says about nurse aide training:** Federal law allows nursing facilities to conduct their own nurse aide training programs, except under certain limited circumstances. These circumstances include failure to have sufficient numbers of licensed nurses as otherwise required and serious quality of care deficiencies that led to the imposition of civil money penalties (CMPs) of (at present) at least $10,697.[1] By law, a prohibition on a facility-conducted aide training program continues for two years to assure that a facility demonstrates its ability to provide good care to residents over a sustained period of time.

Federal law allows states to waive the prohibition of a facility-conducted nurse aide training program if the state determines that "there is no other such program offered within a reasonable distance of the facility" and if the facility assures that it provides "an adequate environment" for a program conducted by a third party.[2] Federal law also allows the Secretary to waive the disapproval of a facility-based training program if the civil money penalty was not related to quality of care provided to residents.[3]

If a facility is prohibited from conducting its own training program, a program may be provided in the facility, but it must be conducted by someone other than facility staff.

[1] 42 U.S.C. §1395i-3(f)(2)(B)(iii)(1)(a)-(c).
[2] 42 U.S.C. §1395i-3(f)(2)(C)(i).
[3] 42 U.S.C. §1395i-3(f)(2)(D).

Two related federal bills, S. 2993[4] and H.R. 4468,[5] roll back current law by allowing the Secretary to impose a shorter period for the prohibition of a facility-conducted nurse aide training program and to lift the prohibition before two years.

**Few facilities are barred from conducting nurse aide training programs:** There are no national data on the number of facilities that conduct their own nurse aide training programs, have been prohibited from providing such a program, or have received waivers of nurse staffing requirements. However, federal enforcement data indicate that the combination of undercoded deficiencies and limited penalties means that very few facilities ever face loss of their aide training program, if they even offer one.

Two facts about enforcement explain why bans on aide training programs are likely to be rare. First, civil money penalties are generally imposed only when a facility is cited with a deficiency that is classified as actual harm or immediate jeopardy, classifications that are assigned to less than 4% of all deficiencies nationwide.[6] Second, the default CMP is now a per instance penalty, rather than a per day CMP. In Fiscal Year 2018, the average per instance CMP was $9,281.90, in Fiscal Year 2019, $10,279.22,[7] both lower than the amount that leads to loss of authority to conduct a nurse aide training program. Consequently, even for the small number of facilities that are cited with serious deficiencies, the federal government is unlikely to impose a penalty that would lead to the facility's loss of its ability to conduct a nurse aide training program.

**Facilities barred from conducting a nurse aide training program provide extremely poor care to residents:** Two examples of facilities that had civil money penalties imposed against them illustrate how appropriate, and inappropriately rare, a ban on facility-conducted nurse aide training programs actually is.

Bethlehem Commons Care Center, a New York state nursing facility, was cited on April 20, 2017 with 12 deficiencies,[8] including physical restraints, failure to develop a care plan to address a resident's serious pressure ulcer, infection control (surveyors observed that five of five dressing changes were done incorrectly), and failure to maintain accurate clinical records. Three of the 12 deficiencies reflected immediate jeopardy (the most serious category of deficiencies) for the high temperatures recorded in refrigerators, coolers, and freezers where food and milk for residents were stored. The order for repair of the freezer was dated March 6, 2017, six weeks before the survey. The Centers for Medicare & Medicaid Services (CMS) imposed a per day

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[4] The "Ensuring Seniors' Access to Quality Care Act" (Senators Warner (D-VA), Scott (R-SC)), https://www.congress.gov/bill/116th-congress/senate-bill/2993/text.

[5] The "Nursing Home Workforce Quality Act" (Congressman Evans (D-PA) and 11 cosponsors), https://www.congress.gov/bill/116th-congress/house-bill/4468/text.

[6] CMS, *Nursing Home Data Compendium 2015 Edition*, Figure 2.2.e, Percentage Distribution of Scope and Severity of Health Deficiencies: United States, 2014 (showing 0.9% of deficiencies cited as immediate jeopardy; 2.3% cited as actual harm (total, 3.2% as immediate jeopardy or actual harm), https://www.cms.gov/Medicare/Provider-Enrollment-and-Certification/CertificationandComplianc/Downloads/nursinghomedatacompendium_508-2015.pdf (most recent federal data).

[7] CMS, QCOR, *CMS Civil Money Penalty (CMP) Report*, Fiscal Year 2019, site accessed Dec. 20, 2019.

[8] https://www.medicare.gov/nursinghomecompare/InspectionReportDetail.html?ID=335735&INSPTYPE=STD&SURVEYDATE=04/20/2017.

civil money penalty totaling $29,188. By operation of law, Bethlehem Commons Care Center may not conduct a nurse aide training program.

In contrast, Fresh River Healthcare is not barred from conducting a nurse aide training program even though CMS cited the Connecticut nursing facility with an actual harm quality of care deficiency in 2018. The deficiency, accident hazards/supervision, was based on an incident involving a resident in the secured unit who had a diagnosis of schizophrenia, repeatedly demonstrated bizarre behavior and thought patterns, hoarded items, manifested auditory hallucinations, wandered, and had "a history of self-injurious behavior including a possible suicide attempt in the past by ingesting bleach."[9] The resident ingested hand sanitizer that a nurse or someone else had left unattended in the unit and was hospitalized as a result, suffering from "respiratory failure, severe sepsis, and acute encephalopathy, attributable to ingesting hand sanitizer."[10] Fresh River Healthcare, if it chooses, may conduct a nurse aide training program because the per instance CMP was $10,000.[11]

**Federal law should not be changed:** Nursing facilities providing extremely poor care that harms and injures residents should not be training new aides in how to provide care. Any changes that are made should strengthen the standards for conducting a nurse training program, not further weaken them.

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9 https://www.medicare.gov/nursinghomecompare/InspectionReportDetail.html?ID=075359&SURVEYDATE=07/10/2018&INSPTYPE=CMPL&Inspn=HEALTH&profTab=1&Distn=6663.0&state=CT&lat=0&lng=0&name=FRESH%20RIVER%20HEALTHCARE. (survey report for July 10, 2018 complaint survey).

10 *Fresh River Healthcare v. CMS*, Docket No. C-19-31, Decision No. CR5352, p. 5 (Jun. 19, 2019), https://www.hhs.gov/about/agencies/dab/decisions/alj-decisions/2019/alj-cr5352/index.html.

11 Administrative Law Judge Steven T. Kessel sustained the CMP. *Fresh River Healthcare v. CMS*, Decision No. CR5352 (Jun. 19, 2019), https://www.hhs.gov/about/agencies/dab/decisions/alj-decisions/2019/alj-cr5352/index.html.