



State of Georgia Waiver of the Nurse Aide Training and Competency Evaluation program Prohibition in Certain Nursing Facilities

BACKGROUND:

The NATCEP/CEP is a statutory requirement and is the standardized training program that all nurse aides must meet to work in a Skilled Nursing Facility (SNF), Nursing Facility (NF) or a dually participating SNF/NF. States operate the approval process for the NATCEP/CEP programs.

Sections 1819(f)(2)(B)(iii)(I) and 1919(f)(2)(B)(iii)(I) of the Social Security Act (the Act) prohibit the approval, in certain cases, to operate a NATCEP/CEP program for two years based on survey findings or waivers of minimum requirements for licensed nurse coverage. Specifically, a facility may not operate a NATCEP/CEP program for two years if:

1. It is operating under a waiver for coverage by licensed nurses;
2. It has been subject to an extended survey or partial extended survey;
3. It has been assessed a Civil Money Penalty (CMP) of at least \$10,483 as adjusted by 45 CFR 102; or,
4. Has been subject to imposition of a denial of payment, temporary manager, or termination.

If a facility loses the authority to operate a NATCEP/CEP program, in some cases, they may regain the ability to operate their program prior to end of the 2-year ban through the following authorities or waivers:

State Authority to Waive NATCEP/CEP Disapproval Sections 1819(f)(2)(C) and 1919(f)(2)(C) of the Social Security Act (the Act) provide waiver authority for NATCEP/CEP if the State—

- (i) determines that there is no other such program offered within a reasonable distance of the facility,
- (ii) assures, through an oversight effort, that an adequate environment exists for operating the program in the facility, and,
- (iii) provides notice of such determination and assurances to the State long-term care ombudsman.

The State is responsible for development of policies and procedures to implement this waiver authority. For example, the state may require that the facility submit a specific waiver request to the State.

The State will make the final determination after considering the recommendations and facts of the case as provided by the facility and in accordance with each of the above requirements, as



operationalized by the State. The State's authority to waive the NATCEP/CEP loss can be granted under any of the reasons described above, provided that the statutory requirements and any additional programmatic requirements established by the State are met.

See CMS S&C: 18-02-NH attached hereto as Exhibit 1.

This NATCEP/CEP waiver policy is developed to minimize the impact to communities in which licensed nursing homes are located which have lost their NATCEP/CEP, especially to those facilities located in rural areas where another outside training source is inaccessible to nurse aides.

POLICY:

General rules for the waiver request

- A. Health Care Facility Regulation Division (HFRD) can waive the prohibition on NATCEP only for programs offered **in** a facility. The law does not apply to the prohibition of the NATCEP offered by a facility. The 2-year loss of the NATCEP by these facilities cannot be waived. However, these facilities are allowed to contract with an approved sponsor of nurse aide training to provide the NATCEP in the facility.
- B. The facility must demonstrate that there are no available NATCEP/CEP programs within a 20-mile radius of the facility. Applicable programs must be open for training certified nurse aide candidates other than their own employees and must have the capacity to enroll the average number of students formerly trained per quarter by the facility requesting the waiver. For purposes of this policy, an NATCEP program offered by a high school for its students is inapplicable.
- C. A facility may request a waiver when the loss of the NATCEP poses a special hardship to the students in the class provided in the facility and to the facility to maintain essential services to residents.
- D. The timeframe of the request of the waiver must be three (3) months or longer since loss of nurse aide training program; and
- E. HFR shall verify current compliance status and outstanding complaints at priority II or higher prior to issuing the waiver.
- F. If a facility has a substandard quality of care (SQC) a second time within the original 2-year prohibition period, a granted waiver will be rescinded and no new request for waiver may be submitted until the 2-year prohibition period created by the second SQC ends.
- G. Upon finding that a hardship exists, HFR may waive the NATCEP prohibition.



- H. HFR rescind the waiver if: 1) a second SQC is rendered within the 2-year prohibition period, 2) additional information becomes known which alters the basis for the original decision, 3) the facility fails to meet any conditions attached to the waiver, or 4) the environment for the program becomes inadequate.
- I. HFR may attach conditions to the granting of the waiver in order to ensure an adequate and safe environment.
- J. If the waiver is denied, the prohibition to the NATCEP is enforced until such time as the facility wins an appeal of the prohibition. Appeals are filed through the U.S. Health and Human Services Departmental Appeals Board or the 2-year prohibition period has expired and
- K. The facility submits for approval of their NATCEP program approval.
- L. The nursing facility may at any time withdraw the request for waiver.

Procedure for requesting a NATCEP waiver

- A. The request for waiver must be in writing and submitted through the HFR Applications and Waivers portal at: <https://gahles.dch.georgia.gov/>
- B. The written request shall include, but shall not be limited to:
 - 1. The size of the class affected by the prohibition;
 - 2. The location and distance from the facility to the closest alternative training sites to demonstrate the reasonable distance requirement programs within a reasonable distance; or
 - 3. Reasons why alternative training sites or resources are not appropriate for facility staff participation;
 - 4. The effect of prohibition on the facility to maintain essential services to residents; and
 - 5. Action taken by the facility to ensure an adequate environment is maintained for operating the program.
- C. The decision to grant a waiver will be based solely on the information provided in the waiver request. Therefore, facilities are encouraged to provide detailed information regarding the need for NATCEP waiver.
- C. The facility will be informed in writing if the waiver is granted or denied.

Approved by

Lisa Davies
HFRD Executive Director

On:

4/24/2025

Date



GEORGIA DEPARTMENT
OF COMMUNITY HEALTH

Melanie Simon

Melanie Simon
DCH General Counsel

4/24/2025

Date

Stuart Portman

Stuart Portman
MAP Executive Director

5/1/2025

Date

DEPARTMENT OF HEALTH & HUMAN SERVICES
Centers for Medicare & Medicaid Services
7500 Security Boulevard, Mail Stop C2-21-16
Baltimore, Maryland 21244-1850



Center for Clinical Standards and Quality/Survey & Certification Group

Ref: S&C: 18-02-NH

DATE: October 27, 2017

TO: State Survey Agency Directors

FROM: Director
Survey and Certification Group

SUBJECT: Clarification regarding Nurse Aide Training and Competency Evaluation Program (NATCEP/CEP) Waiver and Appeal Requirements

Memorandum Summary

- **Existing Waiver and Appeal Authorities:** The Centers for Medicare & Medicaid Services (CMS) is providing clarification regarding existing statutory and regulatory authority regarding waivers and appeals of NATCEP/CEP prohibition or loss.

Background

The NATCEP/CEP is a statutory requirement and is the standardized training program that all nurse aides must meet to work in a Skilled Nursing Facility (SNF), Nursing Facility (NF) or a dually participating SNF/NF. States operate the approval process for the NATCEP/CEP programs.

Sections 1819(f)(2)(B)(iii)(I) and 1919(f)(2)(B)(iii)(I) of the Social Security Act (the Act) prohibit the approval, in certain cases, to operate a NATCEP/CEP program for two years based on survey findings or waivers of minimum requirements for licensed nurse coverage.

Specifically, a facility may not operate a NATCEP/CEP program for two years if:

1. It is operating under a waiver for coverage by licensed nurses;
2. It has been subject to an extended survey or partial extended survey;
3. It has been assessed a Civil Money Penalty (CMP) of at least \$10,483 as adjusted by 45 CFR 102*; or,
4. Has been subject to imposition of a denial of payment, temporary manager, or termination.

* The assessed amount is the final CMP amount determined to be owed, e.g., after waiver of right to a hearing, administrative appeals, settlement, dispute resolutions.

Note: Per the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015, adjustments to the civil money penalties are expected to be published annually. These adjustments will be published in the Federal Register and located at 45 CFR Part 102.

If a facility loses the authority to operate a NATCEP/CEP program, in some cases, they may regain the ability to operate their program prior to end of the 2-year ban through the following authorities or waivers:

1. State Authority to Waive NATCEP/CEP Disapproval

Sections 1819(f)(2)(C) and 1919(f)(2)(C) of the Social Security Act (the Act) provide waiver authority for NATCEP/CEP if the State—

- (i) determines that there is no other such program offered within a reasonable distance of the facility,
- (ii) assures, through an oversight effort, that an adequate environment exists for operating the program in the facility, and,
- (iii) provides notice of such determination and assurances to the State long-term care ombudsman.

The State is responsible for development of policies and procedures to implement this waiver authority. For example, the state may require that the facility submit a specific waiver request to the State. The State will make the final determination after considering the recommendations and facts of the case as provided by the facility and in accordance with each of the above requirements, as operationalized by the State.

The State's authority to waive the NATCEP/CEP loss can be granted under any of the reasons described above, provided that the statutory requirements and any additional programmatic requirements established by the State are met.

2. CMS Regional Office authority to waive disapproval of NATCEP/CEP Due to Civil Money Penalties (CMPs) - 1819(f)(2)(B)(iii)(c), (D) and 42 CFR §483.151

Facilities may also request a waiver of NATCEP/CEP loss based on a CMP if the amount imposed is at least \$10,483 as adjusted by 45 CFR 102 and the CMP was **not** related to the quality of care furnished to residents. "Quality of care furnished to residents" means the direct hands-on care and treatment that a health care professional or direct care staff furnished to a resident. This definition is not limited exclusively to Substandard Quality of Care (SQC) deficiencies.

A waiver based on NATCEP/CEP loss due to a CMP must be submitted to the State Survey Agency. The State will refer this request to the CMS Regional Office (RO). While the waivers should be submitted to the State, CMS will make the final determination on a case by case basis after considering the recommendation and facts of the case as provided by the State.

3. Appeal Rights in Cases for NATCEP/CEP Disapproved Due to Extended/Partial Extended Survey - 42 CFR §§498.3(b)(14)(ii) and 498.3(b)(16)

When NATCEP/CEP is lost due to an extended or partial extended survey as a result of Substandard Quality of Care (SQC) findings, the facility has the right to request an appeal of these findings to the HHS Departmental Appeals Board (for SNFs and SNF/NFs) or the state (for NFs).

The loss of NATCEP occurs after the time frame for requesting a hearing has expired, after receipt of a written waiver of appeal, or after the civil money penalty is upheld on administrative appeal.

Other Considerations

In addition to a formal appeal process, facilities are offered dispute resolution processes, which may affect the outcome of the disapproval or loss of the NATCEP/CEP program:

- Regulations at 42 CFR §488.331 require that facilities are offered an informal opportunity to dispute cited deficiencies through an Informal Dispute Resolution (IDR) process.
- In addition, sections 1819(h)(2)(B)(ii)(IV) and 1919(h)(2)(B)(ii)(IV) of the Act and regulations at 42 CFR §488.331 facilities are provided the opportunity to request and participate in an Independent IDR process (IIDR) if CMS imposes CMPs and these penalties are subject to being collected and placed in an escrow account pending a final administrative decision.

An IDR or an IIDR that removes or reduces the findings that required the loss of NATCEP/CEP will result in a restoration of that facility's program.

Contact: If the State has questions above the NATCEP/CEP program, please contact the CMS Regional Office. For other questions, please feel free to send these to the dnh_triageteam@cms.hhs.gov.

Effective Date: Immediately. This reminder of current policy should be communicated with all survey, certification and enforcement staff, their managers, State/Regional Office training coordinators and the State Nurse Aide registry staff within 30 days of this memorandum.

/s/

David R. Wright

Attachment: Waiver and Appeals Authority Chart

cc: Survey and Certification Regional Office Management
State Medicaid Agencies

Attachment 1

WAIVER AND APPEAL AUTHORITIES FOR DISAPPROVAL or LOSS OF NATCEP/CEP PROGRAMS

*Facilities may seek any of the following in pursuing review of their disapproval or loss of their
NATCEP/CEP program.*

Reason for Disapproval	Extended/Partial Extended Survey, CMP, Denial of Payment, Temporary Manager, Waiver of Licensed Nurse	CMP of no less than \$10,483 – due and payable	Extended/Partial Extended Survey Finding of SQC
Waivers Allowable	NATCEP program, may be offered in (but not by) a SNF or NF if the State— (i) determines that there is no other such program offered within a reasonable distance of the facility, (ii) assures, through an oversight effort, that an adequate environment exists for operating the program in the facility, and (iii) provides notice of such determination and assurances to the State long-term care ombudsman.	If 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	
Appeal Rights			Appeal of Level of Non-compliance - 42 CFR §§498.3(b)(14)(i)(ii), (b)(16)
Who Determines	State determines, does not require CMS approval.	State Recommends/CMS Regional Office Determines	SNF only and SNF/NF - Departmental Appeals Board (DAB) determines. NF only – State determines
Authority	Sections 1819(f)(2)(C) and 1919(f)(2)(C) of the Act	1819(f)(2)(B)(iii)(c), 42 CFR §483.151	42 CFR §§498.3(b)(14)(i)(ii),(16)

Facility Name:

Facility Address:

CCN :

Nurse Aide Training and Competency Evaluation Program (NATCEP) Waiver Request

1. Submission of Waiver Request:

- ☐ Submit the written waiver request with required attachments to the Nursing Home Program email box at HFRD.NH@dch.ga.gov

2. Required Information and Documentation for Waiver Request:

a. Eligibility Assessment:

- ☐ The facility is requesting a waiver for NATCEP offered within the facility, not by the facility.

Name of NATCEP Provider: _____

1. Distance and Availability Verification:

- ☐ Attach documentation that no available NATCEP/CEP programs exist within a 20-mile radius of the facility.
- ☐ Confirm that the applicable programs are open to training nurse aide candidates beyond their own employees.
- ☐ Confirm that the programs have the capacity to enroll the average number of students trained per quarter by the requesting facility.

**Exclude NATCEP programs offered exclusively by high schools for their students.*

2. Hardship Justification:

Document how the loss of NATCEP poses a special hardship to students or the facility in maintaining essential services to residents

3. Timeframe Requirements:

☐ Confirm that at least three (3) months have passed since the loss of the nurse aide training program.

Date of Loss of Program:

4. Appeal and Withdrawal:

☐ Understands that if the waiver is denied, the NATCEP prohibition will be enforced until a successful appeal or expiration of the 2-year prohibition period.

☐ Understands the facility can withdraw the waiver request at any time.

Signature:

Title:

Date: