

## Draft FAQs

### 1. What does the proposed legislation do?

The goal of this legislation is to ensure that the current regulatory framework for Certified Nurse Aide's/Assistants is defined in statute and rule while ensuring the credential has meaning outside of nursing homes where it is already used. This legislation does not change which employers are required to hire CNAs. This legislation has four goals.

1. Codifying the state's existing regulatory authority. Doing so will ensure that regulation is done in accordance with state standards for transparency and public input.
2. Expanding the bureau's investigative and disciplinary authority to CNAs employed in settings other than nursing homes, such as home health, assisted livings, and hospitals.
3. Creating a path for new training programs to be approved, including employer-based training programs.
4. Creating a funding source for these increased oversight activities by establishing a renewal fee for those CNAs who do not work at nursing homes.

### 2. Why are we doing this now?

Idaho statute and rule have no reference to regulating nursing assistants. The Department of Health and Welfare's Bureau of Facilities Standards regulates the subset of nursing assistants who work in skilled nursing facilities (i.e. nursing homes). Federal law requires this of states. The bureau's activities are similar to those of state licensing boards, such as aligning training and examination standards with federal law, inspecting and approving training programs, maintaining a registry, and investigating complaints. The lack of a state legal framework leaves the bureau with unilateral authority to implement the federal requirements. Because these decisions are not in administrative rule, no formal legislative or public input is required. In addition, the bureau does not have authority over nursing assistants outside the nursing home context.

The federal regulatory structure for CNAs was created for unlicensed personnel who work in nursing homes. However, nursing assistants in Idaho increasingly work in settings other than nursing homes. Nevertheless, the bureau's activities affect the whole occupation. The state's career-technical education curriculum for nursing assistants is designed to meet the federal law. Many other employers, including hospitals, prefer or require their nursing assistants to be listed on the nurse aide/assistant registry.

Regulating a subset of nursing assistants under the CNA registry process creates the perception that the state regulates the whole occupation. For example, Bureau and CTE staff report that they are frequently contacted regarding the appropriate scope of practice for nursing assistants. However, the state does not define such a scope. Another example comes from a long-time industry veteran with a large employer of certified nursing assistants. He had assumed the state was investigating and recording cases of abuse or neglect by CNAs regardless of setting. However, CNAs will only have adverse findings placed on the registry if they abuse or neglect residents in a nursing home; abusing or neglecting patients at a hospital or residents at an assisted living has no implication for the CNA registry.

3. **What is the benefit to the public; including CNAs and employers?**

The public benefit in creating a statutory framework for the governance of CNAs includes the following:

- Transparency concerning training and examination standards, inspecting and approving training programs, maintaining a registry, and investigating abuse for all CNAs in Idaho.
- Increased options for training CNAs through employer-led efforts and private training providers.
- The investigation and documentation of abuse, neglect, and misappropriation for all CNAs, regardless of the facility they work for.

4. **Why are Skilled Nursing Facilities/Nursing Homes treated differently?**

The Centers for Medicare/Medicaid Services (CMS) require certified facilities, who receive Medicare or Medicaid funding, follow federal regulations which is overseen by the State Survey Agency (in Idaho, the Bureau of Facility Standards under the Idaho Department of Health and Welfare). Under CMS, Skilled Nursing Facilities are the only facility-type required to hire nursing assistants who are certified and active on a state nurse assistant registry. Other providers may prefer to hire CNAs but are not required to.

In addition, nursing homes remain the only employer that can be penalized for failing to report misconduct because federal law requires states to enforce these. Federal law also prohibits the state from collecting fees from CNAs who work at nursing homes for their placement on the registry.

5. **What is changing about the process of establishing and maintaining status on the registry?**

If approved, the State Survey Agency will need to develop rules governing the process to be placed and maintain status on the registry. The current process places any nursing assistant who successfully completes the approved written and clinical skills test on the registry. The test is only available after taking an approved course through the college's workforce training programs and/or approved high schools overseen by Idaho Career Technical Education. The State Survey Agency will have a process, along with the capacity, to approve additional training providers under this proposal.

In addition to completing an approved training program, individuals will be required to submit an application, including attestation that they have not committed any disqualifying crimes, to be placed on the registry. A fee will not be charged for initial placement for any individual. A renewal fee will be assessed to maintain active status on the registry every two years afterwards with an exception for those CNAs working in skilled nursing facilities as they are exempt under CMS laws. The renewal fee will provide funding for the Bureau of Facility Standards to approve additional training providers and investigate reports of abuse, neglect, and misappropriation for all CNAs, rather than just those of skilled nursing facilities.

6. **Does this make getting certified more difficult?**

No. The current process of being placed on the registry doesn't change. Training in a NACTEP approved course and passing a written and clinical skills test will continue to be required. It does increase opportunities for training through employer and private providers. A renewal fee to maintain active status on the registry will be required every 2 years but will not be assessed for initial placement. There are no additional barriers to entry.

**7. How will this impact CNAs?**

Training – Idahoans will have increased access to training through colleges, employers, and private providers.

Fees - There will be a renewal fee for CNAs every 2 years unless they work at a skilled nursing facility. The fee is expected to be in the range of \$25 to \$40 and employers can pay the fee on behalf of their CNA.

Discipline - Adverse findings of abuse, neglect or misappropriation are placed on the registry the CNA is banned from working at a skilled nursing facility. Adverse findings of neglect or misappropriation will have the potential to be removed after 1 year with a petition to the State Survey Agency. (Adverse findings of abuse cannot be removed per federal law.)

**8. Why is the fee for renewal only?**

The fee is for renewals only to prevent creating barriers to entering the profession. Many trainees/test takers are high school students or individuals entering other nursing education programs and we don't want to penalize them.

**9. Why are uncertified NAs not included?**

Nurse Aides/Assistants (NAs) are not subject to requirements under federal law. At this time only CNAs are placed on the registry. Practice parameters for NAs are identified by the Idaho Board of Nursing. The delegation model already provides guidance for technical tasks that they can perform. The committee also does not want to place an undue barrier to employment.

**10. How will this increase access to training?**

This will increase opportunities for statewide access to training programs, especially in rural areas. It provides a clear path for employers/facilities and private institutions to provide training to CNAs.

**11. Is reporting abuse, neglect, and misappropriation a requirement?**

Yes, anyone employing a CNA with an allegation (or reasonable cause to believe) of potential abuse, neglect and/or misappropriation will be required to report.

**12. Is there a penalty for not reporting?**

Skilled nursing facilities currently are assessed penalties for not reporting abuse, neglect, or misappropriation. Penalties will not be extended to other types of providers at this time.

**13. How do I report?**

You would report cases of abuse, neglect, or misappropriation the same as you have been currently reporting these concerns. There is "no wrong door." Reports can be made to the Commission on Aging, Ombudsman, or the DHW Portal.