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# **Handbook for West Virginia Registered Long-Term Care Nurse Aides**

WV Long-Term Care Nurse Aide Program  
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## I. Introduction

Passage of the Nursing Home Reform provisions of the Omnibus Budget Reconciliation Act of 1987 (OBRA), in December 1987, constituted the culmination of congressional awareness that improvements in long term care are needed.

The process for granting Nurse Aide credentials is one of the principal mechanisms established by OBRA for ensuring provision of improved quality of care in nursing homes participating in the Medicare and/or Medicaid reimbursement programs.

42CFR3 Subpart B-Requirements for Long Term Care Facilities Sec. 483.75 Administration defines a Nurse Aide as any individual providing nursing or nursing-related services to residents in a facility who is not a licensed health professional, a registered dietitian, or someone who volunteers to provide such services without pay.

Nurse Aides do not include those individuals who furnish services to residents only as paid feeding assistants.

The West Virginia Nurse Aide Program is listed under the Department of Health and Human Resources, Bureau for Public Health, Office of Health Facility Licensure and Certification (OHFLAC).

**PLEASE NOTE:** The West Virginia Nurse Aide Program does not certify or license Nurse Aides. We maintain a registry listing consisting of all actively registered Nurse Aides with in our State. Therefore, Nurse Aides in the State of West Virginia are referred to as “Registered Long Term Care Nurse Aides” not “Certified Nurse Aides” or “Licensed Nurse Aides”.

You may access our website at <http://www.wvdhhr.org/ohflac>.

## II. Nurse Aide Training / Education

### A. Eligibility Requirements.

The only eligibility requirement for Nurse Aide Training / Education is that the candidate must not be a registered sex offender or have committed a crime involving a child or incapacitated adult, and cannot be listed on an Abuse Registry in any State in the United States.

There are no maximum education requirements (i.e., high school diploma, GED); however, the training / hiring facility may have a policy that includes education requirements. These limits are not set by our office.

### B. Minimum Curriculum Requirements

The West Virginia Nurse Aide Program has set a minimum standard of hours that an individual must complete prior to being eligible to sit for the Competency Evaluation (State Exam).

The minimum hours that a Nurse Aide Training and Competency Evaluation Program (NATCEP) can offer in the State of West Virginia is one hundred twenty (120). This must include classroom / lab hours and hands on clinical hours in a certified nursing facility. The classroom / lab education must consist of at least sixty-five (65) hours, and clinical training must consist of a minimum of fifty-five (55) hours. A NATCEP must last a minimum of four (4) weeks. Any NATCEP may extend their program hours and time frame, with approval from this office, but at no given time can the instructor teach fewer hours than for which the NATCEP is approved.

### C. Conduct

A candidate / student is expected to treat all residents courteously and with respect.

All candidates / students are expected to follow the facility policies and procedures distributed and discussed during the orientation period.

### D. Fees

If a certified nursing facility offers a candidate / student employment on the first day of training / education, the facility may NOT charge the candidate / student for any portion of the program including any fees for textbooks or other required course materials. As well, the facility MUST sponsor the candidate / student for the Competency Evaluation (State Exam) after successful completion of the NATCEP.

If a certified nursing facility offers a candidate / student employment within twelve (12) months after successful completion of the NATCEP, the first certified nursing facility to offer employment must reimburse the candidate / student the cost incurred in completing the program as well as the costs incurred in completing the Competency Evaluation (State Exam), if the

individual has already tested. If this candidate / student, within this same twelve (12) month period, has not yet tested, and is offered employment or gains employment for a certified nursing facility, the certified nursing facility must sponsor the candidate / student for the Competency Evaluation (State Exam).

As well, if a candidate / student is taking or has taken the NATCEP at a non-facility based program, which charges a fee, the first certified nursing facility to offer employment within the first twelve (12) months of completing candidate/student successfully completing the program, must pay or reimburse the candidate/student the costs incurred during that program as well as the Competency Evaluation (State Exam).

If a candidate / student has not tested within that twelve (12) month period, a certified nursing facility may sponsor the candidate/student for the Competency Evaluation (State Exam), however, the facility is not required to sponsor after the twelve (12) month period has expired.

### **III. LPN/RN Challenge / Exemption**

#### **A. Eligibility Requirements**

A candidate / student must have successfully completed the Fundamentals of Nursing with a “C” average or higher, and successfully completed a minimum of thirty-two (32) hours of clinical experience in a certified nursing facility

#### **B. What to Submit for Review**

- i. A certified copy of candidate/student transcripts from the educational institution.
- ii. Letter of recommendation from the instructor, including verification that the candidate / student has completed at least the minimum clinical requirements and the names and addresses of each certified nursing facility of which the clinical experience was obtained.
- iii. Letter from the candidate/student requesting to challenge the Registered Nurse Aide Competency Evaluation (State Exam), including full name (first, middle & last), as well as maiden name-if applicable, complete current mailing address, telephone number, full date of birth (month / day / year), and social security number.

### **IV. Refresher Course**

#### **A. Eligibility Requirements**

Must have been listed on the WV Nurse Aide Registry with an expiration date of less than five (5) years.

**B. Training Requirements**

This program is intended to refresh a Nurse Aide on the skills that the aide has failed to use regularly due to lapse in employment and/or lapse of registration.

Specific topics to be covered within the refresher course program are:

1. The Health Care Delivery System
2. Providing a Secure Environment
3. Communication Skills
4. Special Needs
5. Providing Basic Care
6. Nurse Aide Abuse In-service Outline
7. Abuse Definitions
8. Identifying, Reporting, and Investigating Abuse
9. Skills Performance Record
10. Nurse Aide Refresher Course Completion Form
11. WV Registered Nurse Aide Evaluation Application

**C. Conduct**

The refresher course candidate cannot have direct resident contact, during training or after, until the aide has successfully passed the Competency Evaluation (State Exam) and has been notified of the results.

**D. Who to Contact**

For enrollment in a refresher course program:

You must contact as many facilities (i.e., nursing homes, vocational / technical education centers and hospitals), as far away as you are willing to drive, to inquire on the availability of a refresher course program and how to enroll.

**E. Testing after completion of a Refresher Course Program****i. When to Schedule**

A refresher course candidate must schedule for the Competency Evaluation (State Exam) when the next available exam is administered in their testing area.

**ii. Grace Period**

A refresher course candidate is allotted a six (6) month grace period to successfully complete the Competency Evaluation (State Exam). If a refresher course candidate does not successfully pass the exam within the six (6) month grace period, the individual must take another minimum 120-hour Nurse Aide Training/Education Program before being allowed to test.

**iii. Testing Opportunities**

Each candidate is given three (3) opportunities to pass the Competency Evaluation (State Exam). If a candidate has not successfully passed by the third attempt, the individual must complete another minimum 120-hour Nurse Aide Training/Education Program, before being allowed to attempt the Competency Evaluation again.

**V. Testing****A. When to Schedule**

A test eligible candidate should schedule for the Competency Evaluation (State Exam) when the next available exam is administered in their testing area.

**B. Grace Period**

A test eligible candidate is allotted a two (2) year grace period to successfully complete the Competency Evaluation (State Exam). If a candidate does not successfully pass the exam within the two (2) year grace period, the individual must take another Nurse Aide Training / Education Program again before being allowed to test.

**C. Testing Opportunities**

Each candidate is given three (3) opportunities to pass the Competency Evaluation (State Exam). If a candidate has not successfully passed by the third attempt, the individual must complete another Nurse Aide Training / Education Program, before being allowed to attempt the Competency Evaluation again.

**D. Fees**

Prices for Competency Evaluation (State Exam) may vary. Please contact the contracted testing agent for further detail.

**E. Who to Contact**

If the instructor or facility does not schedule the Competency Evaluation (State Exam) for the candidates, each candidate will need to contact Professional Health Care Development to schedule their own exam. PHD can be contacted as listed below:

**PHD**  
PO Box 399  
Ona WV 25545  
Phone: 304-733-6145  
Fax: 304-733-6146  
Web: [www.profhd.com](http://www.profhd.com)  
E-Mail: [info@profhd.com](mailto:info@profhd.com)

**F. Test Scores**

PHD will mail your exam results approximately fourteen (14) days after the date of your exam. If you have not received your exam results from PHD within thirty (30) days of the exam, call PHD directly. Do not call the WV Nurse Aide Program for inquiries pertaining to test results; you will be referred to PHD.

PHD will not release any scores until all exam fees have been paid. Exam results will not be given over the telephone. You may request your scores in writing, and they will be mailed to your home address. Your instructor will automatically receive your scores.

**PHD IS NOT AUTHORIZED TO RELEASE ANY SCORES TO ANYONE OVER THE PHONE.**

**IF YOU PASS THE EXAM**

Once you have passed both the Written Examination and the Skills Evaluation and have met all other requirements, you will be registered as a Long Term Care Nurse Aide in West Virginia. **You will be issued a certificate from PHD and your name will be placed on the West Virginia Nurse Aide Registry. If you change your address or your name for any reason you must notify the Nurse Aide Registry.**

You may access the Nurse Aide Program On-Line Verification site to obtain registration information (<http://www.wvdhhr.org/ohflac/NA/NAlookup.aspx>). You may print that page from the web site for your records.

## IF YOU FAIL THE EXAM

If you fail all or part of the exam, contact your instructor for instruction on how to re-test. You will need to submit a second application to PHD. Send an original completed application with appropriate fees to PHD to register to re-test. Send in your application for further details. If you need the application form you may access it from the PHD website ([www.profhd.com](http://www.profhd.com)) or by contacting PHD at 304-733-6145.

Please check to make sure your address is current on any resubmitted paperwork. Please call PHD as well as the Nurse Aide Program if your address has changed.

### VI. A. - Reciprocity (to West Virginia from another state)

#### A. Eligibility Requirements

A Nurse Aide applicant must (1) have completed a Nurse Aide Training and Competency Evaluation Program (NATCEP) meeting the minimum OBRA requirements within the United States and successfully passed a Nurse Aide Competency Evaluation Program (NAECEP)/State Exam, (2) not have a 24 month lapse in his/her paid nurse aide employment at any given time since his/her most recent completed training program or competency evaluation, (3) be current/active on the nurse aide registry of the state from which he/she is applying, and (4) not have any substantiated finding of abuse, neglect or misappropriation of residents' property.

#### B. How to Achieve

You must first apply to the West Virginia Nurse Aide Program, by completing the application process. We will verify all information listed on your application, and make a determination of your eligibility.

#### C. Where to Obtain Application

You may download the WV Nurse Aide "Request for RNA Reciprocity" application from our website (1) by going to <http://www.wvdhhr.org/ohflac> and clicking "Nurse Aide", "Registration", Registration Forms", you will then need to select the "Application for Registered Long-Term CNA by Reciprocity" link or (2) by clicking [here](#).

#### D. Instructions for Application

Completion of a WV Nurse Aide "Request for RNA Reciprocity" application is required to obtain placement on the WV Nurse Aide Registry.

The following detailed information is required on the application:

1. First, middle, last name, and maiden name, if applicable.

2. List specific and accurate information pertaining to when and where you completed your nurse aide training
3. Information pertaining to your initial placement on the out-of-state nurse aide registry. (If you are unsure, please contact the out-of-state nurse aide registry and inquire on your accurate information, prior to submitting your application. You may click [here](#) for a contact list of all state nurse aide registries or access them at <http://siq.air.org/PDF/StateNAR.pdf>.)
4. You must provide us with the last three (3) years of nurse aide related employment history. This information must be detailed. We do need the facility/employer's name, the full address, and an accurate telephone number. As well, we must have accurate dates of employment and a brief description of the specific nurse aide related duties that you performed while employed at that facility. (If you are unsure of your dates of employment or duties, please contact your previous employers to inquire on the accurate information, prior to submitting your application). Do not list a job title as a part of the job duties.
5. You must answer all questions honestly. Do not be afraid to answer "Yes", if that is the honest answer. Simply give a detailed description pertaining to your response to that question, or submit any and all legal documentation that may pertain to your response.
6. List all state nurse aide registries that your name has ever been listed on; this does not mean that you have to be current/active on all of them. We are required to verify this information.
7. You must sign and date your completed application.

All incomplete applications will be returned for completion, hence delaying the processing of your reciprocity request.

#### **E. Employment Restrictions**

**At no given time can an individual who is seeking reciprocity, work in a certified nursing facility within the state of West Virginia, until reciprocity has actually been achieved and the aide has successful placement on the West Virginia Nurse Aide Registry.**

#### **F. Time Frame to Process**

Please allow *two (2) weeks* processing time, from the date this office receives the completed document.

#### **G. Notification of Placement on the WV Nurse Aide Registry**

Once an individual has gained placement on the West Virginia Nurse Aide Registry, we will notify him/her by a memorandum. This is the only hard copy verification that exists. We do not issue cards.

The memoranda are generated in a mass report twice a month; therefore, you will receive your notification when your report prints. If you need verification prior to that, you or your employer may access the website at <http://www.wvdhhr.org/ohflac> and select the link for “Online Verification of Nurse Aide” or click [here](#).

## **VII. Out of State Reciprocity (to another State from West Virginia)**

### **A. Who to Contact**

The aide will need to contact the [State Nurse Aide program](#) for which they are seeking reciprocity for inquiries on that State’s reciprocity requirements and process. A listing of State Nurse Aide programs can be accessed at: <http://siq.air.org/PDF/StateNAR.pdf>

## **VII. Re-registration**

### **A. Eligibility Requirement**

42CFR3 Subpart B-Requirements for Long Term Care Facilities Sec. 483.75 Administration (e) Required training of nursing aides-(7) “Required retraining. If, since an individual’s most recent completion of a training and competency evaluation program, there has been a continuous period of 24 consecutive months during none of which the individual provided nursing or nursing-related services for monetary compensation, the individual must complete a new training and competency evaluation program or a new competency evaluation program.”

If a Nurse Aide is in good standing, with no current substantiated finding of abuse, neglect or misappropriation, and has not gone twenty-four (24) consecutive months without working as a paid Nurse Aide, this individual may be eligible for re-registration.

### **B. How Often**

Every West Virginia Nurse Aide is required to apply for re-registration every two (2) years.

### **C. Grace Period**

The WV Nurse Aide Program allows a Nurse Aide to re-register up to twenty-four (24) months beyond their last re-registration date, providing the individual has not had a twenty-four (24) month lapse in paid Nurse Aide employment.

If a Nurse Aide goes beyond the twenty-four (24) month grace period for re-registration, the individual must complete a refresher course program and State Exam, if available and applicable, or full training program and State Exam again.

### **D. Where to Obtain Application or Apply**

This office generates a report once a month for upcoming due re-registrations. If we have a current, accurate mailing address for the Nurse Aide, he/she will receive notification from this office when he/she is due for re-registration. This report is generated and mailed to the aide's most recent reported address in our system, approximately seventy-five (75) days prior to registration expiration. This notification will consist of a hard copy application packet.

A Nurse Aide may also apply for re-registration by accessing our website and completing the [on-line re-registration process](http://www.wvdhhr.org/ohflac/NA/ReRegistration/index.aspx) ([www.wvdhhr.org/ohflac/NA/ReRegistration/index.aspx](http://www.wvdhhr.org/ohflac/NA/ReRegistration/index.aspx)) or by downloading the [application packet](http://www.wvdhhr.org/ohflac/NA/Forms/Re-registration_Application_Packet.pdf) ([http://www.wvdhhr.org/ohflac/NA/Forms/Re-registration\\_Application\\_Packet.pdf](http://www.wvdhhr.org/ohflac/NA/Forms/Re-registration_Application_Packet.pdf)) and submitting a hard copy application.

#### **E. Instruction for Paper Application Process**

The application must be complete and accurate. The Nurse Aide must list his/her full name, address, telephone number, birth date, social security number and WV Eval-Code.

The Nurse Aide must answer all questions pertaining to abuse and/or criminal history honestly. If answered "yes" to any questions pertaining to reported allegations of abuse, neglect and/or misappropriation of resident's property, the Nurse Aide must submit an attached brief description of the incident. If answered "yes" to any questions pertaining to criminal history, the Nurse Aide must submit attached legal documentation (i.e., court / criminal documents) pertaining to the criminal conviction(s). This does not necessarily mean that the Nurse Aide will be denied re-registration; each situation will be reviewed on a case-by-case basis by our legal division to determine eligibility.

The individual must list all Nurse Aide paid employment back three (3) years through the current year. This must include the facility / employer's name, address and telephone number, accurate date of hire, accurate date of termination (if still actively employed, list "Current"), and select specific tasks / responsibilities that the Nurse Aide was assigned and performed while employed. The dates of employment must consist of month, day and year. If the Nurse Aide is unsure of accurate dates of employment, the Nurse Aide should contact the employer(s) or previous employer(s) to verify accurate dates prior to submitting the application for re-registration.

The Nurse Aide must sign and date the application. If this office receives an incomplete application, or application containing inaccurate information, it will not be processed and will be returned to the Nurse Aide, requesting verification and complete information. This will further delay the re-registration process.

#### **F. Instructions for On-line Process**

All Nurse Aides who are *not* submitting Private Duty Employment will be able to complete and submit their [re-registration applications online](http://www.wvdhhr.org/ohflac/NA/ReRegistration/index.aspx). You may access the online re-registration website at: (<http://www.wvdhhr.org/ohflac/NA/ReRegistration/index.aspx>)

The online re-registration process will require authentic log-in identification before you can begin the application process. It will prompt you for your Eval-Code. If you are unsure of your Eval-Code, you will first need to access the [on-line verification](http://www.wvdhhr.org/ohflac/NA/NALookup.aspx). (<http://www.wvdhhr.org/ohflac/NA/NALookup.aspx>)

When you get to [on-line verification site](#), you will need to conduct a search by your name and last four digits of your social security number; this will return a verification page that contains your Eval-Code.

## G. Employment Restrictions

### Lapsed / Inactive Registration

If a Nurse Aide's registration lapses, the individual cannot work in a certified nursing facility, in a Nurse Aide capacity, until the individual has gained successful re-registration.

### Private Duty Employment

**Effective July 1, 2006, Private Duty Employment will no longer be acceptable employment to use for re-registration purposes.**

Any Private Duty employment prior to July 1, 2006, may be acceptable, providing there is appropriate verification. If you are planning on submitting Private Duty as part of your employment history, you must submit a complete and notarized "Private Duty Employment / Income Verification" form, with the completed re-registration application at the time your re-registration is due. If the person you worked for is a relative, a signed letter from that person's physician must also be enclosed, stating the medical need for home-bound care.

Any Private Duty employment worked after July 1, 2006, will not be acceptable employment on your re-registration application. After July 1, 2006, all employment history must be facility-based employment. This includes, but is not limited to, nursing homes, hospitals, home health agencies, hospices, health care related staffing agencies, behavioral health, residential care communities, health care clinical settings, etc.

This office **will not accept** non-Nurse Aide related employment, including but not limited to:

1. Child Care Provider that is not performing Nurse Aide-related duties;  
**Please Note: After-school child care is not Nurse Aide-related.**
2. Homemaker, fast food, retail, cashier, and construction;

3. Cleaning, cooking, laundry, transportation, shopping;
4. Facility-based employment that is a non-Nurse Aide related job, including but not limited to positions such as dietary, housekeeping, cook, activities, feeding assistant or volunteer.

#### **B. Time Frame to Process**

This office is allotted a two (2) week time frame to conduct a review of all re-registration applications from the date they are received. The Nurse Aide will want to submit the completed application in a timely manner in order to prevent delay in the re-registration application process, and the possible lapse of registration.

Anyone may check registration status online by accessing our [on-line verification site](http://www.wvdhhr.org/ohflac/NA/NAlookup.aspx) at <http://www.wvdhhr.org/ohflac/NA/NAlookup.aspx>.

#### **I. Notification of Successful Re-registration on the WV Nurse Aide Registry**

When a Nurse Aide has gained successful re-registration, we will notify the Nurse Aide by a memorandum. This is the only hard copy verification that exists. We do not issue cards.

The memoranda are generated in a mass report twice a month; therefore, the Nurse Aide will receive notification when the report prints. If the Nurse Aide or employer needs verification prior to that, they may access our [on-line verification site](#)

### **VIII. Abuse Issues**

69CSR6 defines abuse as: “The willful infliction of injury, unreasonable confinement, intimidation, or punishment, which results in pain, mental anguish or physical harm, even if the resident is unaware that the physical harm has occurred.”

#### **A. Types of Abuse**

##### **i. Physical**

“Abuse resulting from Nurse Aide to patient contact including but not limited to striking the resident with a part of the body or with an object; shoving, pushing, pulling, tugging or twisting any part of the resident’s body with fingers or nails; burning or sticking the resident with an object; engaging in physical contact that is knowingly, intentionally, recklessly or through carelessness that causes or is likely to cause death, physical injury, pain or psychological harm to the resident; inappropriate or improper use of restraints or isolation; and acts of retaliation even in response to a physical attack.”

##### **ii. Psychological and Emotional**

“Humiliating, harassing, teasing or threatening a resident with punishment or deprivation; not considering a resident’s wishes; restricting a resident’s contact with family, friends or other residents; ignoring a resident’s needs for verbal and emotional contact; or violating a resident’s right to confidentiality.”

**iii. Sexual**

“Sexual harassment, sexual coercion, or sexual assault of a resident; sexual interaction between a Nurse Aide and a resident; or inciting any of this type of activity.”

**iv. Verbal**

“Statements made to, or in the presence of, a resident that result in ridicule or humiliation of the resident or the use of oral, written or gestured language that includes cursing, the use of demeaning, derogatory references to or descriptions of a resident or his or her family.”

**v. Neglect**

“The failure to provide goods and services necessary to avoid physical harm, mental anguish or mental illness unless such actions are beyond the Nurse Aide’s control.”

NOTE: Neglect does not have to be willful or intentional. Even an incident which the individual did not intend to happen could be considered neglect, including the use inappropriate procedures while providing care to residents.

**vi. Misappropriation of Property**

“The deliberate misplacement, exploitation or wrongful use of a resident’s belongings or money without the resident’s consent.”

**B. Allegation Reported**

Any employee of a facility, or anyone who provides services to a resident of a facility on a regular or intermittent basis, who suspects that a resident in a facility has been abused or neglected or that resident’s property has been misappropriated, will immediately report the incident to the facility administration and Adult Protective Services as required by W.Va. Code §9-6-9. This does not preclude other persons from reporting suspected abuse, neglect or misappropriation of residents’ property.

A facility will not discharge, discriminate or retaliate in any manner against any employee who in good faith reports suspected abuse, neglect or misappropriation of residents’ property, or who

testifies or will testify in good faith in any proceeding concerning abuse, neglect, or misappropriation of property of, residents in a facility, except an employee may be suspended, discharged, or restricted in duties if the employee:

1. Reported himself or herself;
2. Is determined by the facility to have committed abuse, neglect, or misappropriation of property, of a resident, until such time as the Nurse Aide Program, the Secretary, or a court determines otherwise.

When allegations involving a registered Nurse Aide have been reported to the facility, the facility will immediately complete and fax an Immediate Fax Report of Allegations to the Nurse Aide Program within twenty-four (24) hours. The facility will also report the allegations to Adult Protective Services in accordance with W.Va. Code §9-6-9 and to a State or regional long-term care ombudsman operating under the authority of W.Va. Code § 16-5L-1, et seq.

Within five (5) working days after the Immediate Report, the facility will fax the Follow-up Report to the Nurse Aide Program.

### **C. Review Process of the Reported Allegation**

The program manager of the Nurse Aide Program or his or her designee will review the facility's Immediate and Follow-up Reports and make a determination of whether or not to conduct an investigation. If he/she determines that the Nurse Aide Program should investigate, these reports are prioritized and assigned to an OHFLAC / Nurse Aide Program surveyor to investigate.

### **D. Investigation process**

The investigation process will include one or more of the following elements:

1. A visit to the facility;
2. A private interview with the resident, if possible;
3. Observation of the resident within the facility environment, if possible;
4. Examination of the resident's medical and other records, and any other relevant documents;
5. Assessment of the resident's physical and mental functioning level;
6. Examination of any documents prepared by the facility that relate to the alleged incident or the facility's investigation of the incident;

7. Evaluation of the nature, extent and cause of the injury or harm suffered by the resident;
8. Interviews with any potential witnesses who may possess information related to the issues;
9. An interview with the alleged perpetrator whenever his or her identity has been determined; and
10. An evaluation of the environment within the facility and the risks of physical or emotional injury or harm to other residents.

After completion of the on-site investigation, the OHFLAC / Nurse Aide Program surveyor will complete a report and submit it to the Nurse Aide Program. The Nurse Aide Program will review the surveyor's investigation report and decide the disposition of the allegations as follows:

1. Additional information or continuation of the investigative process is warranted; or
2. Credible evidence exists to sustain the allegation and to start proceedings for placement of the perpetrator's name on the WV Nurse Aide Abuse Registry; or
3. The evidence is insufficient to warrant further action.

#### **E. Employment while under Investigation**

A Nurse Aide may continue to work in any type of health care facility as he/she chooses, while under investigation.

#### **F. Substantiated Allegations**

##### **i. Notification of Intent to Place**

If the Nurse Aide Program decides to place the name of a Nurse Aide on the WV Nurse Aide Abuse Registry, the Nurse Aide Program will notify the Nurse Aide of the following in writing within ten (10) business days of the determination:

- a. The nature of the offense;
- b. The date and/or time of the occurrence;
- c. The Nurse Aide's right to request a hearing and the procedure for such request;

- d. The Nurse Aide's right to be represented by an attorney at his or her expense;
- e. The Nurse Aide Program's intent to place the Nurse Aide's name on the Nurse Aide Abuse Registry in thirty (30) days, if the Nurse Aide waives his or her right to a hearing or fails to request a hearing;
- f. The consequences to the Nurse Aide if the Nurse Aide Program places the Nurse Aide's name on the Nurse Aide Abuse Registry; and
- g. The Nurse Aide's right to petition the Nurse Aide Program in writing for removal of his or her name from the Nurse Aide Abuse Registry after one (1) year for placement due to neglect and the right to a response within ten (10) business days of receipt of the petition.

The Nurse Aide Program will send notification of this information to the Nurse Aide by certified mail with return receipt required, to his or her last known address. If the postal service returns the notice letter to the Nurse Aide Program as unclaimed or undeliverable, the Nurse Aide Program will send it immediately to the Nurse Aide by regular mail. If the postal service returns the letter a second time, OHFLAC will use personal service for delivery.

If the Nurse Aide fails to send a waiver or to request a hearing within thirty (30) days:

- a. The Nurse Aide Program will place the Nurse Aide's name on the Nurse Aide Abuse Registry; and
- b. The Nurse Aide Program will classify the case as uncontested and within ten (10) business days notify the Nurse Aide of placement of his or her name on the Nurse Aide Abuse Registry.

## ii. How to Request an Appeal/Hearing

The Nurse Aide or his/her attorney must submit a written request to the Nurse Aide Program, requesting a hearing to appeal the Nurse Aide Program's determination, including the Nurse Aide's full name, current address, and social security number and/or WV Eval-Code. This letter should be mailed to:

Office of Health Facility Licensure and Certification  
Nurse Aide Program  
1 Davis Square, Suite 101  
Charleston WV 25301-1799.

## iii. Hearing Process

When the Nurse Aide Program receives a Nurse Aide's written request for a hearing, OHFLAC will schedule the hearing on the next available date. This hearing will be scheduled in proximity to the location where the alleged incident occurred or in the OHFLAC offices on a day and time convenient to the parties.

OHFLAC will mail to the Nurse Aide or his/her attorney, notice of the date, place and time of the hearing by certified mail with return receipt required, within fifteen (15) days of OHFLAC's receipt of the request. The Secretary will appoint a neutral hearing examiner to preside over the hearing.

**iv. Legal Fees**

OHFLAC is responsible for obtaining the services of a court reporter and hearing examiner and bearing those costs.

The Nurse Aide is responsible for bearing the cost of his or her attorney and of a copy of the transcript if requested.

**v. Final Administrative Order**

Upon receipt of the hearing examiner's recommendations, the Secretary will issue a written decision with supporting Findings of Fact and Conclusions of Law.

If the Secretary decides:

1. In favor of the accused Nurse Aide, the Nurse Aide Program will close the case and notify the Nurse Aide in writing; or
2. Against the accused Nurse Aide, and affirms placement on the WV Nurse Aide Abuse Registry, the Nurse Aide Program will place the Nurse Aide's name on the WV Nurse Aide Abuse Registry within ten (10) business days, and except in case of neglect, the name will remain on the WV Nurse Aide Abuse Registry until a court of law reverses the decision or the Nurse Aide Program is notified of the Nurse Aide's death.

**vi. Circuit Court**

The Nurse Aide has the right to appeal the Secretary's decision to the Circuit Court of the county in which the hearing was held in accordance with the W. Va. Code §29-A-5-4 and the West Virginia Rules of Civil Procedure.

**G. Unsubstantiated Allegations**

If the Nurse Aide Program determines that there is insufficient evidence to substantiate the allegation, the Nurse Aide Program will notify the Nurse Aide by certified mail within ten (10) business days.

#### **H. Court Determination**

A determination in any court of law of any abuse, neglect, or misappropriation of property, by a Nurse Aide in any case involving a minor or an incapacitated adult will result in placement of the Nurse Aide's name on the WV Nurse Aide Abuse Registry.

#### **I. Employment Restrictions due to Substantiated Abuse**

If on the WV Nurse Aide Abuse Registry, a Nurse Aide cannot work, in any capacity, in a certified nursing facility within the United States. As well, the individual cannot work in any capacity in an Assisted Living type residence or a Behavioral Health type facility, including contract employment, within the State of West Virginia. Any other types of health care related facilities may base their determination from their facility / company policy.

#### **J. Eligibility for removal from the WV Nurse Aide Abuse Registry**

If a Nurse Aide was placed on the WV Nurse Aide Abuse Registry for neglect and only neglect, the Nurse Aide may have the opportunity for removal after one (1) year.

After serving one (1) consecutive year on the WV Nurse Aide Abuse Registry, and not working in any of the restricted health care facilities, the Nurse Aide may petition for removal from the abuse registry.

If a Nurse Aide gained employment in a restricted health care facility during placement on the WV Nurse Aide Abuse Registry, their request will immediately be denied, and placement extended until they have served one (1) full year.

#### **K. Requesting for Removal from the WV Nurse Aide Abuse Registry due to Neglect**

The Nurse Aide must submit a written request to the OHFLAC / Nurse Aide Program requesting removal from the WV Nurse Aide Abuse Registry. This written request must include the Nurse Aide's full name, current mailing address, telephone number, as well as social security number and/or Eval-Code.

This request must be mailed to the Nurse Aide Program Manager at:

Office of Health Facility Licensure and Certification  
Nurse Aide Program  
1 Davis Square, Suite 101  
Charleston WV 25301-1799.

When the request is received, the program manager will re-evaluate the Nurse Aide's record and make a determination. At that time, the Nurse Aide will be notified of the final outcome.