

**MEDICAL CARE COMMISSION CONFERENCE CALL MEETING  
DIVISION OF HEALTH SERVICE REGULATION  
809 RUGGLES DRIVE RALEIGH, NC 27603  
CONFERENCE ROOM #026A – EDGERTON BUILDING  
TUESDAY, JUNE 9, 2020 @ 9:00 A.M.**

**AGENDA**

**I. Meeting Opens – Roll Call**

**II. Chairman’s Comments**.....Dr. John Meier

**III. Public Meeting Statement**.....Dr. John Meier

This meeting of the Medical Care Commission is open to the public but is not a public hearing. Therefore, any discussion will be limited to members of the Commission and staff unless questions are specifically directed by the Commission to someone in the audience.

**IV. Ethics Statement**.....Dr. John Meier

The State Government Ethics Act requires members to act in the best interest of the public and adhere to the ethical standards and rules of conduct in the State Government Ethics Act, including the duty to continually monitor, evaluate, and manage personal, financial, and professional affairs to ensure the absence of conflicts of interest.

**V. Old Business**

**A. Rule for Initiating Rulemaking Approval (Discuss rule)**

1. Healthcare Personnel Registry Rule.....Nadine Pfeiffer & Jana Busick

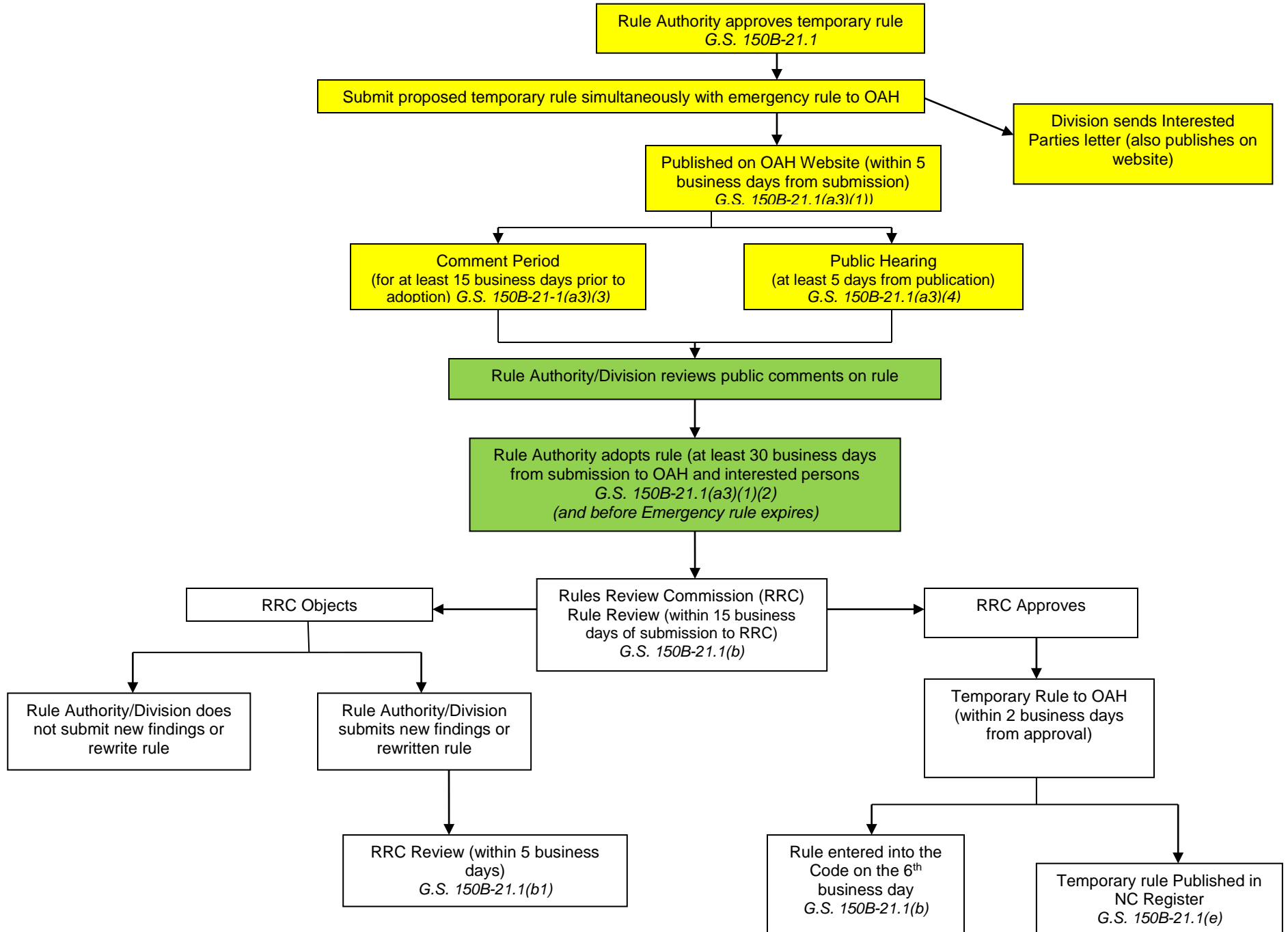
Temporary rulemaking for nurse aid certification or registration reciprocity due to COVID-19

- Rule: 10A NCAC 130.0301 (See Exhibits A thru A/2)

**VI. Meeting Adjournment**

# Temporary Rulemaking Process

# Exhibit A



1 10A NCAC 130 .0301 is amended under temporary procedures with changes as follows:

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**SECTION .0300 - NURSE AIDE I REGISTRY**

**10A NCAC 130 .0301 NURSE AIDE I TRAINING AND COMPETENCY EVALUATION**

(a) To be eligible to be listed on the NC Nurse Aide I Registry by the Health Care Personnel Education and Credentialing Section, a person ~~shall~~ shall:

- (1) pass a Nurse Aide I training program approved by the Department in accordance with 42 CFR Part 483.151 through Part 483.152 and the State of North Carolina's Nurse Aide I competency ~~exam~~ exam; or
- (2) apply to the Department for approval to be listed on the NC Nurse Aide I Registry by reciprocity transfer of a nurse aide certification or registration from another State to North Carolina.

(b) In applying for reciprocity transfer of a nurse aide certification or registration to be listed on the NC Nurse Aide I Registry pursuant to Subparagraph (a)(2) of this Rule, the applicant shall meet the following criteria:

- (1) submit a completed application to the Department that includes the following:
  - (A) first, middle, and last name;
  - (B) the applicant's prior name(s), if any;
  - (C) mother's maiden name;
  - (D) gender;
  - (E) social security number;
  - (F) date of birth;
  - (G) mailing address;
  - (H) email address;
  - (I) home telephone number;
  - (J) any other State registries of nurse aides upon which the applicant is listed;
  - (K) certification or registration numbers for any State nurse aide registries identified in Part (b)(1)(J) of this Rule;
  - (L) original issue dates for any certifications or registrations identified in Part (b)(1)(K) of this Rule;
  - (M) expiration dates for any certifications or registrations identified in Part (b)(1)(K) of this Rule; and
  - ~~(N) training program name(s);~~
  - ~~(O) training program locations(s);~~
  - ~~(P) training program completion date(s) with a passing score; and~~
  - (Q) employment history;

- 1           (2)     provide documentation verifying that his or her registry listing is active and in good standing in the  
2                     State(s) of transfer, dated no older than 30 calendar days prior to the date the application is received  
3                     by the Department; and
- 4           (3)     provide a copy of his or her Social Security card and a ~~valid~~ government-issued identification  
5                     containing a photograph and ~~signature;~~ signature that is not expired.

6     (c) For the applicant to be approved for reciprocity transfer of a nurse aide certification or registration to be listed on  
7     the NC Nurse Aide I Registry, the Department shall verify the following:

- 8           (1)     the applicant has completed an application in accordance with Subparagraph (b)(1) of this Rule;  
9           (2)     the applicant is listed on another State's registry of nurse aides with an active ~~status and good~~  
10                    standing status;
- 11          (3)     the applicant has no pending or substantiated findings of abuse, neglect, exploitation, or  
12                    misappropriation of resident or patient property recorded on another State's registry of nurse aides;
- 13          (4)     if the applicant has been employed as a nurse aide for monetary compensation consisting of at least  
14                    a total of eight hours of time worked performing nursing or nursing-related tasks delegated and  
15                    supervised by a Registered ~~Nurse~~ Nurse, then the applicant shall provide the employer name,  
16                    employer address, and dates of employment for the previous 24 consecutive months;
- 17          (5)     the name listed on the Social Security card and government-issued identification containing a  
18                    photograph and signature submitted with the application matches the name listed on another State's  
19                    registry of nurse aides or that the applicant has submitted additional documentation verifying any  
20                    name changes; and
- 21          (6)     ~~that~~ the applicant completed a State-approved nurse aide training and competency evaluation  
22                    program that meets the requirements of 42 CFR 483 Part 152 or a State-approved competency  
23                    evaluation program that meets the requirements of 42 CFR 483 Part 154.

24     (d) The Department shall within 10 business days of receipt of an application for reciprocity transfer of a nurse aide  
25     certification or registration or receipt of additional information from the applicant:

- 26           (1)     inform the applicant by letter whether he or she has been approved; or  
27           (2)     request additional information from the applicant.

28     The applicant shall be added to the NC Nurse Aide I Registry within three business days of Department approval.

29     ~~(b)~~ (e) This Rule incorporates 42 CFR Part 483 Subpart D by reference, including all subsequent amendments and  
30     editions. Copies of the Code of Federal Regulations may be accessed electronically free of charge from  
31     www.gpo.gov/fdsys/browse/collectionCfr.action?collectionCode=CFR.

32     ~~(c)~~ (f) The State of North Carolina's Nurse Aide I competency exam shall include each course requirement specified  
33     in the Department-approved Nurse Aide I training program as provided for in 42 CFR Part 483.152.

34     ~~(d)~~ (g) The State of North Carolina's Nurse Aide I competency exam shall be administered and evaluated only by the  
35     Department or its contracted testing agent as provided for in 42 CFR Part 483.154.

1 ~~(e)~~ (h) The Department shall include a record of completion of the State of North Carolina's Nurse Aide I competency  
2 exam in the NC Nurse Aide I Registry within 30 business days of passing the written or oral exam and the skills  
3 demonstration as provided for in 42 CFR Part 483.154.

4 ~~(f)~~ (i) If the State of North Carolina's Nurse Aide I competency exam candidate does not pass the written or oral exam  
5 and the skills demonstration as provided for in 42 CFR Part 483.154, the candidate shall be advised by the Department  
6 of the areas that the individual did not pass.

7 ~~(g)~~ (j) Every North Carolina's Nurse Aide I competency exam candidate shall have, as provided for in 42 CFR Part  
8 483.154, the opportunity to take the exam three times before being required to retake and pass a Nurse Aide I training  
9 program.

10 ~~(h)~~ (k) A person who is currently listed on any state's Nurse Aide I Registry shall not be required to take the  
11 Department-approved Nurse Aide I training program to be listed or, if his or her 24-month listing period has expired,  
12 relisted on the NC Nurse Aide I Registry, unless the person fails to pass the State of North Carolina's Nurse Aide I  
13 competency exam after three attempts.

14 ~~(i)~~ (l) U.S. military personnel who have completed medical corpsman training and retired or non-practicing nurses  
15 shall not be required to take the Department-approved Nurse Aide I training program to be listed or relisted on the  
16 Nurse Aide I Registry, unless the person fails to pass the State of North Carolina's Nurse Aide I competency exam  
17 after three attempts.

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19 *History Note: Authority G.S. 131E-255; 42 CFR Part 483;*  
20 *Eff. January 1, 2016;*  
21 *Emergency Amendment Eff. April 20, ~~2020~~ 2020;*  
22 *Temporary Amendment Eff. June 26, 2020.*

Healthcare Personnel Registry Temporary Rule  
 10A NCAC 130 .0301 – Public Comments  
 Comment Period 4/20/20 – 5/11/20

Introduction:

Three individuals submitted comments during the public comment period on the temporary amendment rule 10A NCAC 130 .0301. Of these comments, one person made statements during the public hearing conducted on May 5, 2020. The comments were submitted by representatives from the following: Lower Care Fear LifeCare, and the N.C. Health Care Facilities Association. A summary of all comments received on this rule is below:

1) Listing of Comments Received and Agency’s Consideration of Comments for Amendment Rule 130 .0301 – Nurse Aide I Training and Competency

Evaluation:

<b>Commenter</b>	<b>Comment Summary</b>
1) Lower Cape Fear LifeCare (written comments)	Due to our service location and SC being a reciprocity state, we are allowed to utilize our NC nurse aides who have applied and qualify when there is a need in SC. Reciprocity for NC would allow our agency’s SC nurse aide team members in turn to provide personal care to patients in NC when our patients and team members need the extra help. This would be advantageous for our patients during this pandemic when there are shortages in our work force. It will be advantageous to our agency and nurse aides in utilization of our work force and provide the opportunity to not deplete staff PDO banks to meet FTE hours.
2) N.C. Health Care Facilities Association (written comments)	<p>Suggest changes to the temporary rule, and/or the permanent rule that will follow. Remove Paragraph (b)(1) Parts (J)-(P) and Subparagraph (c)(6) because another State’s registry has evidence of these items if the Nurse Aide is listed on that registry so that should be sufficient evidence of those items. Paragraph (b)(2) should provide adequate evidence of the aide’s good standing on the other state’s registry, reflecting satisfactory completion of an adequate training program. If certain states do not meet the basic requirements, suggest listing those states whose NA registry NC will not accept reciprocity listing.</p> <p>Suggest removal of Paragraph (b)(1) Part Q and Subparagraph (c)(4) regarding employment history and earned income performing NA tasks under RN supervision within the previous two years. This prevents NA’s registered less than two years in another state from being registered in NC. There is no valid policy reason for this. The questions go beyond the regulatory function of the NA registry to determine whether the person meets the criteria for listing on the registry. A similar work history is not required for listing by training/testing in NC and should not be required for those trained and tested in another state. Efforts to gather this information will lead to delays in the process of applications for NA’s by reciprocity.</p> <p>Suggest adding a provision streamlining the process of listing by reciprocity during a declared State of Emergency by the federal or state government. The need for faster process is essential during a state of emergency. Suggest a process like that used by the Board of Nursing: <i>Nurses must hold an active unrestricted multi-state license in any Nurse Licensure Compact state can practice in NC at any time; Nurses holding an active, unrestricted single state license in a non-compact state can practice in NC during periods of official disaster designation; Prior to</i></p>

Commenter	Comment Summary
	<p><i>allowing practice, employing system/facility must verify active, unrestricted licensure of all nurses, from all states (compact or non-compact). Licensure information can be verified easily through NURSYS available at: www.nursys.com; Employing system/facility must maintain a record of the names and verified license number for a period of 1 yr. and provide this information to the Board if requested. Recommend similar process requiring prospective employers to verify an out-of-state NA's listing in good standing and retain documentation for 1 yr. The information could be shared with the NC NA Registry for temporary listing without examination during an emergency. After the emergency, then resume normal operations and NA's listed through this provision would no longer be able to work in NC unless going through reciprocity process.</i></p>
<p>3) N.C. Health Care Facilities Association, Adam Sholar (public hearing comments)</p>	<p>Asking for comments to be considered for temporary or permanent rule. Are a number of subsections in (b)(1) and (c) that might create an overly burdensome process for NA's registered in other states who already complied with process in another State and some information could be determined from information available in other State's registry. The rule should not ask for the same information that is produced in another State. The criteria in the process in (c) would all not be available to those being registered &lt;2 years in another State and would prohibit some applicants, criteria would need to be available to all listed in another State. Ask that a provision be added, dormant in normal times, for a more streamlined process in emergency times to allow work in NC, ie. Hurricanes especially in border counties, for SC and VA to temporarily work in NC for those qualified to work. Adopt a process used by the Board of Nursing for this.</p>

DHSR Response to Comments Above:

**1) Paragraph (b)(1) Parts (J) through (M) will remain in the rule for the following reasons:**

- This information is needed for DHSR to verify an applicant's listing on another state's registry of nurse aides.
- Each state has their own Nurse Aide I Registry and the information provided to the public varies by state.
- Each state has their own application and many states request this information to be listed on the Nurse Aide I Registry.
- Supports North Carolina in the identification and validation of each applicant per 42 CFR 483.156 – (c)(1)(ii) Information necessary to identify each individual.
- Supports North Carolina to ensure compliance with 42 CFR 483.156 – (c)(1)(iii) The date the individual became eligible for placement in the registry through successfully completing a nurse aide training and competency evaluation program or competency evaluation program or by meeting the requirements of 42 CFR 483.150.
- Supports North Carolina to ensure compliance with 42 CFR 483.156 – (c)(2) The registry must remove entries for individuals who have performed no nursing or nursing-related services for a period of 24 consecutive months, unless the individual's registry entry includes documented findings of abuse, neglect, or misappropriation of property.
- Supports North Carolina to ensure applicants are not added to the North Carolina Nurse Aide I Registry with substantiated findings per the report from the DHHS Office of Inspector General (<https://oig.hhs.gov/oei/reports/oei-07-03-00380.pdf>).
- Supports North Carolina to ensure applicants with expired listings are not added to the North Carolina Nurse Aide I Registry per the report from the DHHS Office of Inspector General (<https://oig.hhs.gov/oei/reports/oei-07-03-00380.pdf>).

**2) Paragraph (b)(1) Parts (N), (O), and (P) will be deleted in the rule based on the public comment.**

- It is not the intent for DHSR to validate the state-approved training programs listed within each application.

**3) Paragraph (b)(1) Part (Q) and Subparagraph (c)(4) will remain in the rule for the following reasons listed below. However, based on the public comment, the language in the rule should be revised to not exclude applicants that trained and tested in another State in the previous 24 consecutive months but have no work history as a nurse aide.**

- Each state has their own Nurse Aide I Registry and the information provided to the public varies by state. For example, in Alabama, information regarding an individual's certification status (active or inactive) can only be obtained from a former or current employer.
- Each state has their own application and many states request this information to be listed on the Nurse Aide I Registry.
- Supports North Carolina to ensure compliance with 42 CFR 483.156 – (c)(2) The registry must remove entries for individuals who have performed no nursing or nursing-related services for a period of 24 consecutive months, unless the individual's registry entry includes documented findings of abuse, neglect, or misappropriation of property.
- In a report from the DHHS Office of Inspector General, most states verify nursing activity by requiring nurse aides to attest or provide information indicating that they have worked at least 8 hours in nursing care during the past 24 months (<https://oig.hhs.gov/oei/reports/oei-05-01-00031.pdf>).

**4) Subparagraph (c)(6) will remain in the rule for the following reasons:**

- Each state has their own requirements that align to the federal laws for listing on the Nurse Aide I registry. For example, in Maryland, an individual's registry listing must indicate that they completed the Nursing Assistant Certification and the Geriatric Nursing Assistant Certification.
- Per 42 CFR 483.156 – (b)(3) The State must determine which individuals who (i) have successfully completed a nurse aide training and competency evaluation program or nurse aide competency evaluation program; (ii) have been deemed as meeting these requirements; or (iii) have had these requirements waived by the State do not qualify to remain on the registry because they have performed no nursing or nursing-related services for a period of 24 consecutive months.

**After a review of the public comments and of the current process for reciprocity that was implemented on April 20, 2020, it has been determined that there is no need for additional processes or provisions during a state of emergency for the following reasons:**

- From April 20, 2020 to May 25, 2020:
  - DHSR received applications from 263 individuals
    - 170 applications were approved
    - 4 applications were denied
    - 89 applications were deemed incomplete or had a pending status
  - DHSR average processing time is 3 business days
- The average number of days for DHSR staff to review and process a reciprocity application is in alignment with other states.
  - Georgia: 14 business days
  - Missouri: 7-10 days
  - Montana: 5-7 days
  - Nebraska: 30 days
  - Rhode Island: a minimum of 8 weeks for the entire licensure process to be completed



- Tennessee: 1 week
- Virginia: 30-45 business days
- NURSYS is a national database for verification of nurse licensure, discipline and practice privileges for RNs, LPN/VNs and APRNs licensed in participating jurisdictions, including all states in the Nurse Licensure Compact (NLC). There is no equivalent national database for nurse aides. Each state has their own public Nurse Aide I registry.
- Employers may not be knowledgeable of the state requirements and specifics for each Nurse Aide I Registry.
- Per 42 CFR 483.12 (a)(3)(ii) – long term care facilities must not employ or otherwise engage individuals who have had a finding entered into the State nurse aide registry concerning abuse, neglect, exploitation, mistreatment of residents or misappropriation of their property. Potential risk has been documented by the following two reports from the DHHS Office of Inspector General.
  - <https://oig.hhs.gov/oei/reports/oei-07-03-00380.pdf>: Over half of State survey respondents reported failure to remove records of inactive nurse aides from registries. In addition, some nurse aides with substantiated findings had certifications in at least one other State, and were, therefore, potentially employable in that other State.
  - <https://www.oig.hhs.gov/oei/reports/oei-07-10-00422.asp>: Nineteen percent of nurse aides with substantiated findings had at least one conviction in their criminal history records prior to their substantiated finding. In addition, nurse aides with substantiated findings of either abuse or neglect were 3.2 times more likely to have a conviction of crime against persons than nurse aides with substantiated findings of misappropriation.
- Per North Carolina General Statute 131E-265 – Criminal history record checks are required for certain applicants for employment in a nursing home or home care agency.
- The North Carolina Nurse Aide I Registry system does not have the capability to track temporary nurse aides.