

MEMORANDUM



JOINT
BUDGET
COMMITTEE

TO Joint Budget Committee Members
FROM JBC Staff
DATE February 21, 2024
SUBJECT Potential Legislation Packet 6

This packet includes bill drafts and related memos for the Committee’s consideration. Each individual item has page numbers but also a packet page number to help navigate the whole document. The page numbers below refer to the packet page number.

POTENTIAL LEGISLATION

Consideration of a Letter to the National Council of State Boards of Nursing Memo (Shen)..... 1

MEMORANDUM



JOINT BUDGET COMMITTEE

TO Members of the Joint Budget Committee
FROM Kelly Shen, JBC Staff (303-866-5434)
DATE February 20, 2024
SUBJECT Consideration of a Letter to the National Council of State Boards of Nursing (NCSBN)

Per Committee request, staff has been working with advocates and the Department of Regulatory Agencies to brainstorm solutions to address significant challenges and delays with the certified nurse aide (CNA) testing process. While some potential solutions may be implemented through a bill, there are a number of changes that cannot be made without third-party or federal action.

One solution that is changeable through statute is to broaden the types of facilities that may employ a CNA training program graduate prior to their certification. This is currently in the bill draft. However, as discussed below, the types of facilities that may receive federal reimbursement for these services is more restrictive as defined by federal law.

In addition to a bill draft, the Committee may consider drafting a letter to the National Council of State Boards of Nursing (NCSBN) in order to highlight challenges with the current CNA certification process and encourage NCSBN to include exam availability in languages besides English.

These challenges include:

1. Lack of language accessibility for the national exam;
2. Frequent exam cancellations and poor communication pertaining to exam availability, cancellation, and rescheduling; and
3. Difficulty aligning federal and state law to ensure that agencies may employ CNA training program graduates while they are waiting to take their certification exam, and also receive federal reimbursement for the provided services.

While there are a number of barriers to CNA certification and testing, this memo focuses on the above three challenges that were discussed in previous Committee meetings.

LANGUAGE ACCESSIBILITY

Currently, candidates must take two exams to receive a nurse aide license. The knowledge-based exam may be taken written or orally, and there is an option to take the oral exam in Spanish. The clinical exam is only offered in English.

Language is an important consideration when trying to improve access to care and grow the CNA workforce. In Colorado, approximately 11.4 percent of the population speak a language other than English at home, with the majority (65.8 percent) of this population speaking Spanish.¹ Additionally, the 2021 Colorado Health Access Survey (CHAS) indicated that 7 percent of Coloradans said they needed healthcare that was responsive to specific characteristics, including language. Of these

¹ U.S. Census Bureau, 2022 American Community Survey 1-year estimates ([S1601](#)).

individuals, about one in four (24.3 percent) highlighted language as a factor that changed the kind of care they needed.²

Offering the certification exam in languages other than English is one potential solution to reduce the barriers that potential candidates face when training to become a CNA, and ensure that Coloradans can receive the care that is most appropriate for them. NCSBN dictates the language and format for the current CNA certification exam, and has indicated that changes to the exam language or allowing interpreters would fundamentally change the exam.

TEST CANCELLATIONS

In 2023, almost one-third of scheduled exams were ultimately cancelled. Out of 381 cancellations, the four most common reasons for test cancellations include:

1. Site request or facility issue (32.5 percent of cancellations)
2. Evaluator cancellation or unavailability (32.3 percent)
3. Alternate date requested (20.7 percent)
4. Lack of minimum number of candidates (14.4 percent)

First, the majority of facility-initiated cancellations were requested by the community college system. The Department is actively meeting with the system to better understand the reason for these cancellations. Second, in order to reduce cancellations due to the lack of an evaluator, Credentia is exploring remote proctoring options for evaluators and less restrictive geographic requirements for evaluators. Finally, the Department's new contract with Credentia has decreased the minimum number of candidates for an exam from ten to five, so as to reduce the number of exams that are cancelled due to a lack of registrants. The Department is also working with Credentia to improve proactive communications about when and why cancellations occur.

While test cancellations and communications are not directly controlled by the National Council of State Boards of Nursing, this is a significant barrier to CNA certification and NCSBN may benefit from additional awareness of this challenge.

ALIGNMENT WITH FEDERAL LAW

Pursuant to Section 12-255-214, C.R.S., Colorado allows the graduates of facility-based training programs to work as CNAs at the facility that trained them for up to four months without having passed the CNA certification examination. This complies with the Medicare and Medicaid requirements for such facilities.

According to federal law (42 CFR § 483.35), graduates of a facility-based training program may work at *any* facility, regardless of whether or not the facility is where the graduate was trained. However, according to definitions that pertain to Medicare and Medicaid law (42 CFR § 483.5), these facilities

² Colorado Health Institute, "Language and Culturally Responsive Care in Colorado", (2022): <https://www.coloradohealthinstitute.org/sites/default/files/2023-04/CHAS%20Brief%20Language%20and%20Culturally%20Responsive%20Care.pdf>.

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are limited to “skilled nursing facilities” and “nursing facilities” whose primary function is to provide skilled nursing care or rehabilitation services to multiple residents.

If Colorado law were broadened to allow facilities other than those deemed “skilled nursing facilities” and “nursing facilities” to employ CNA candidates prior to their certification exam, it is possible that these agencies may not receive federal reimbursement for the CNA services provided. Some advocates have indicated that the need for nurse aides is so great that agencies are willing to employ candidates without federal reimbursement, but this may not be the case across-the-board.

In order to allow more facilities to employ CNA candidates prior to their certification and also receive Medicaid or Medicare reimbursement for services provided, federal law would need to be broadened. NCSBN does not dictate federal law, but may benefit from awareness of the challenges faced when trying to align state and federal law with the types of facilities that commonly employ nurse aides today.

COMPOUNDING CHALLENGES

These challenges are compounded by recent increases in demand for examinations due to the expiration of temporary nurse aide licenses and the need for all licensed CNAs to now obtain full certification. The Division stopped issuing temporary licenses in May 2023.

The demand for both written and skills exams increased by over 20 percent from 2022 to 2023 (Table 1). This increased demand overwhelmed the existing testing infrastructure, which is administered by a third-party vendor, Credentia.

TABLE 1. INCREASED DEMAND FOR CNA EXAMINATIONS FROM 2022 TO 2023		
YEAR	WRITTEN EXAMS TAKEN	SKILLS EXAMS TAKEN
2022	5,145	6,713
2023	6,419	8,173
PERCENTAGE CHANGE	24.80%	21.70%

In an effort to better anticipate testing demand, all active and approved nurse aide training programs now send enrollment data to Credentia to better plan for exam events. However, they still face challenges pertaining to language accessibility, test cancellations, and differences with federal law that will require broader solutions between multiple parties.