19 CSR 30-81.010 General Certification Requirements

PURPOSE: This rule sets forth application procedures and general certification requirements for nursing facilities certified under the Title XIX (Medicaid) program and skilled nursing facilities under Title XVIII (Medicare), and procedures to be followed by nursing facilities when requesting a nurse staffing waiver.

(14) An NF may request a waiver of nurse staffing requirements to the extent the facility is unable to meet the requirements including the areas of twenty-four (24)-hour licensed nurse coverage, the use of a registered nurse for eight (8) consecutive hours seven (7) days per week and the use of a registered nurse as director of nursing.

(A) Requests for waivers shall be made in writing to the director of the Section for Long Term Care.

(B) Requests for waivers will be considered only from facilities licensed under Chapter 198, RSMo as ICFs which do not have a nursing pool agency that is within fifty (50) miles, within state boundaries, and which can supply the needed nursing personnel.

(C) The department shall consider each request for a waiver and shall approve or disapprove the request in writing postmarked within thirty (30) working days of receipt or, if additional information is needed, shall request from the facility the additional information or documentation within ten (10) working days of receipt of the request.

(D) Approval of a nurse waiver request shall be based on an evaluation of whether the facility has been unable, despite diligent efforts—including offering wages at the community prevailing rate for nursing facilities—to recruit the necessary personnel. Diligent effort shall mean prominently advertising for the necessary nursing personnel in a variety of local and out-of-the-area publications, including newspapers and journals within a fifty (50)-mile radius, and which are within state boundaries; contacts with nursing schools in the area; and participation in job fairs. The operator shall submit evidence of the diligent effort including:

1. Copies of newspapers and journal advertisements, correspondence with nursing schools and vocational programs, and any other relevant material;
2. If there is a nursing pool agency within fifty (50) miles which is within state boundaries and the agency cannot consistently supply the necessary personnel on a per diem basis to the facility, the operator shall submit a letter from the agency so stating;
3. Copies of current staffing patterns including the number and type of nursing staff on each shift and the qualifications of licensed nurses;
4. A current Resident Census and Condition of Residents, Form CMS-672 (10/98), incorporated by reference in this rule and available through the Centers for Medicare and Medicaid Services.
and Medicaid website: http://www.cms.hhs.gov/forms/, or by mail at: Centers for Medicare and Medicaid Services, 7500 Security Boulevard, Baltimore, MD 21244-1850. This rule does not incorporate any subsequent amendments or additions;

5. Evidence that the facility has a registered nurse consultant required under 19 CSR 30-85.042 and evidence that the facility has made arrangements to assure registered nurse involvement in the coordination of the assessment process as required under 42 CFR 483.20(3);

6. Location of the nurses’ stations and any other pertinent physical feature information the facility chooses to provide;

7. Any other information deemed important by the facility including personnel procedures, promotions, staff orientation and evaluation, scheduling practices, benefit programs, utilization of supplemental agency personnel, physician-nurse collaboration, support services to nursing personnel and the like; and

8. For renewal requests, the information supplied shall show diligent efforts to recruit appropriate personnel throughout the prior waiver period. Updates of prior submitted information in other areas are acceptable.

(E) In order to meet the conditions specified in federal regulation 42 CFR 483.30, the following shall be considered in granting approval:

1. There is assurance that a registered nurse or physician is available to respond immediately to telephone calls from the facility for periods of time in which licensed nursing services are not available;

2. There is assurance that if a facility requesting a waiver has or admits after receiving a waiver any acutely ill or unstable residents requiring skilled nursing care, the skilled care shall be provided in accordance with state licensure rule 19 CSR 30-85.042; and

3. The facility has not received a Class I notice of noncompliance in resident care within one hundred twenty (120) days of the waiver request or the department has not conducted an extended survey in the facility within one (1) year of the waiver request. Any facility which receives a Class I notice of noncompliance in resident care or an extended survey while under waiver status will not have the waiver renewed unless the problem has been corrected and steps have been taken to prevent recurrence. If a facility received more than one (1) Class I notice of noncompliance in resident care during a waiver period, the department will consider revocation of the waiver.

(F) The facility shall cooperate with the department in providing the proper documentation. For renewal requests, the request and proper documentation shall be submitted to the department at least forty-five (45) days prior to the ending date of the current waiver period. If any changes occur during a waiver period that affect the status of the waiver, a letter shall be submitted to the deputy director of institutional services within ten (10) days of the changes. The request for a waiver or renewal of a waiver shall be denied if the facility fails to abide by these previously mentioned time frames.

(G) If a waiver request is denied, the department shall notify the facility in writing and within twenty (20) days, the facility shall submit to the department a written plan for how the facility will recruit the required personnel. If appropriate personnel are not hired within two (2) months, the department shall initiate enforcement proceedings.

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(C) The department shall only grant exceptions to licensure requirements set out in rules imposed by the department and cannot grant exceptions to requirements established by state statute or federal regulations. Operators wishing to obtain waivers of regulations
under Title XVIII or Title XIX of the Social Security Act shall follow procedures established by the Centers for Medicare and Medicaid (CMS).

19 CSR 30-82.060 Hiring Restrictions— Good Cause Waiver

PURPOSE: This rule is being promulgated to establish the procedure by which persons with criminal convictions may seek a waiver allowing them to be employed by health care and mental health providers despite the hiring restrictions found in section 660.317, RSMo. The waivers are to be for “good cause” as defined by that statute. This rule sets forth both the procedure for seeking waivers and the facts and circumstances to be considered by the Department of Social Services in determining “good cause.”

(1) Definitions.
(A) Applicant means a person who has been or would be rejected for employment by a provider due to the hiring restrictions found in section 660.317, RSMo.
(B) Department means the Department of Health and Senior Services.
(C) Determination means the decision issued by the director of the Department of Health and Senior Services or the director’s designee based on the factual, procedural or causal issues of the request for waiver.
(D) Director means the director of the Department of Health and Senior Services.
(E) Good Cause Waiver means a finding that it is reasonable to believe that the restrictions imposed by section 660.317, RSMo, on the employment of an applicant may be waived after an examination of the applicant’s prior work history and other relevant factors is conducted and demonstrates that such applicant does not present a risk to the health or safety of residents, patients or clients if employed by a provider.
(F) Provider means any person, corporation or association who—

1. Is licensed as an operator pursuant to Chapter 198, RSMo;
2. Provides in-home services under contract with the Department of Health and Senior Services;
3. Employs nurses or nursing assistants for temporary or intermittent placement in health care facilities;

1. Is an entity licensed pursuant to Chapter 197, RSMo;
2. Is a public or private facility, day program, residential facility or specialized service operated, funded or licensed by the Department of Mental Health; or

6. Is a licensed adult day care provider.
(G) Reference means a written statement of character, qualification or ability issued on behalf of the applicant by a person who is not related to or residing with the applicant requesting a good cause waiver.
(H) Sponsor means the current or potential employer of the applicant, or a training program, agency or school in which the applicant is or was a student enrolled for the purpose of earning a professional license, certification or otherwise becoming qualified to perform the duties of an occupation.

(2) Any person who is not eligible for employment by a provider due to the hiring restrictions found in section 660.317, RSMo, may apply to the director for a good cause waiver. If the director, or the director’s designee, determines that the applicant has demonstrated good cause, such restrictions prohibiting such persons from being hired by a provider shall be waived and such persons may be so employed unless rejected for
employment on other grounds. Hiring restrictions based on the Department of Health and Senior Services’ employee disqualification list established pursuant to section 660.315, RSMo, are not subject to a waiver.

(3) The director, or the director’s designee, shall accept an application for a good cause waiver only if the application—

(A) Is submitted in writing by the applicant on the form provided by the department;
(B) Is legible;
(C) Is signed by the applicant;
(D) Includes an indication of the type of waiver that is being requested;
(E) Includes a complete history of residency since the earliest disqualifying offense or incident;
(F) Includes a complete employment history since the age of eighteen (18) years;
(G) Includes an attached explanation written by the applicant as to why the applicant believes he or she no longer poses a risk to the health, safety or welfare of residents, patients or clients;
(H) Includes an attached description written by the applicant of the events that resulted in each disqualifying offense or incident;
(I) Includes attached documentation on the applicant’s professional, vocational or occupational licensure, certification or registration history and current status, if any, in this state and any other state;
(J) Includes at least one (1) reference letter from a sponsor. If the applicant is not able to obtain a sponsor, the applicant shall so state, shall identify those potential sponsors who have been approached by the applicant, and shall submit three (3) reference letters from individuals knowledgeable of the applicant’s character or work history who are not related to or residing with the applicant;
(K) Includes a criminal history record from the Missouri State Highway Patrol if requesting a waiver of disqualifying criminal offenses;
(L) Includes a certified court document for each disqualifying criminal offense. If such document is not obtainable, a written and signed statement from the court indicating that no such record exists must be submitted;
(M) Includes certified investigative reports from the Department of Social Services if requesting a waiver of child abuse or neglect findings or a waiver of foster parent license denial, revocation, or involuntary suspension;
(N) Includes certified investigative reports or other documentation of the incident(s) which resulted in the applicant’s inclusion on all other lists in the Family Care Safety Registry for which waiver is requested; and
(O) If in addition to the criminal offense(s) for which the applicant is requesting a waiver the applicant has any pending felony or misdemeanor charges, includes a statement explaining the circumstances and certified copies of the charging documents for all pending criminal charges; and, in the case of an applicant seeking a position with an in-home services provider agency or home health agency, if in addition to the circumstances related to the listing on any of the background checklists of the Family Care Safety Registry for which the applicant is requesting a waiver the applicant has any pending circumstances which if established would lead to an additional listing on any of the background checklists of the Family Care Safety Registry, includes a statement explaining the circumstances and certified copies of documents relating to those circumstances.

(4) The director, or the director’s designee, will not consider any application for a good cause waiver unless it is fully completed, signed by the applicant, and contains all required attachments.
(5) Each completed application will be reviewed by a good cause waiver committee of two
(2) or more employees of the department. The director shall determine the size of the
committee and shall, from time to time, appoint members to serve on the committee.
(A) If the applicant seeks a good cause waiver of placement on the disqualification list
maintained by the Department of Mental Health, the director shall appoint an employee of
the Department of Mental Health recommended by the director of the Department of Mental
Health to serve on the good cause waiver committee.
(B) A member of the good cause waiver committee shall recuse himself or herself in a good
cause waiver review in which the member's impartiality might reasonably be questioned,
including but not limited to instances where the committee member has a personal bias or
prejudice concerning the applicant, or personal knowledge of evidentiary facts concerning
the application for good cause waiver.
(6) The department may, at any time during the application process or review thereof,
request additional information from the applicant. If the applicant fails to supply any
requested additional information within thirty
(30) calendar days of the date of the request, unless the applicant requests and the depart-
ment grants an extension, the department will consider the application for good cause waiv-
er to be withdrawn by the applicant.
(7) The department may request the applicant, prior to the completion of the review, to
appear in person to answer questions about his or her application. If the applicant is
requested to appear in person, the department, in its sole discretion, shall determine the
location for the appearance and may conduct any such proceedings using electronic means,
including but not limited to telephonic or video conferencing. The department shall review
and may investigate the information contained in each application for completeness,
accuracy and truthfulness. The burden of proof shall be upon the applicant to demonstrate
that he or she no longer poses a risk to the health, safety or welfare of residents, patients or
clients. The following factors shall be considered in determining whether a good cause
waiver should be granted:
(A) The applicant’s age at the time the crime was committed or at the time the incident
occurred that resulted in the applicant being listed on the background checklists in the
Family Care Safety Registry;
(B) The circumstances surrounding the crime or surrounding the incident that resulted in
the applicant being listed on the background checklists in the Family Care Safety Registry;
(C) The length of time since the conviction or since the occurrence of the incident that
resulted in the applicant being listed on the background checklists in the Family Care Safety
Registry;
(D) The length of time since the applicant completed his or her sentence for the dis-
qualifying conviction(s), whether or not the applicant was confined, conditionally released,
on parole or probation;
(E) The applicant’s entire criminal history and entire history of all incidents that resulted in
the applicant being listed on the background checklists in the Family Care Safety Registry, including whether that history shows a repetitive pattern of offenses or incidents;
(F) The applicant’s prior work history;
(G) Whether the applicant had been employed in good standing by a provider but
subsequently became ineligible for employment due to the hiring restrictions in section
660.317, RSMo;
(H) Whether the applicant has been convicted or found guilty of, or pled guilty or nolo
contendere to any offense displaying extreme brutality or disregard for human welfare or
safety;
(I) Whether the applicant has omitted a material fact or misrepresented a material fact pertaining to his or her criminal or employment history or to his or her history of incidents that resulted in his or her being listed on the background checklists in the Family Care Safety Registry;

(J) Whether the applicant has ever been listed on the Employee Disqualification List maintained by the department as provided in section 660.315, RSMo;

(K) Whether the applicant’s criminal offenses were committed, or the incidents that resulted in the applicant being listed on the background checklists in the Family Care Safety Registry occurred, during the time he or she was acting as a provider or as an employee for a provider;

(L) Whether the applicant has, while disqualified from employment by a provider, obtained employment by fraud, deceit, deception or misrepresentation, including misrepresentation of his or her identity;

(M) Whether the applicant has ever had a professional or occupational license, certification, or registration revoked, suspended, or otherwise disciplined;

(N) Any other information relevant to the applicant’s employment background or past actions indicating whether he or she would pose a risk to the health, safety or welfare of residents, patients or clients; and

(O) Whether the applicant has supplied all information requested by the department.

(8) If, at the time of an application for a waiver, or during the waiver consideration process, the applicant has been charged or indicted for, but not convicted of, any of the crimes covered under the provisions of section 660.317, RSMo, the division will hold the request for waiver in abeyance while such charges are pending or until a court of competent jurisdiction enters a judgment or order disposing of the matter.

(9) Each applicant who submits a waiver application meeting the requirements of section (3) of this rule shall be notified in writing by the director, or the director’s designee, as to whether his or her application has resulted in a determination of good cause or no good cause. Such notification shall be effective if sent to the applicant’s address given on the application.

(10) Any good cause waiver granted to an applicant applies only to:

(A) The specific disqualifying conviction(s), finding(s) of guilt, plea(s) of guilty or nolo contendere, as contained in the certifying copies of the court documents which are required in the application; and/or

(B) The incident(s) that resulted in the applicant being listed on the background checklists in the Family Care Safety Registry, as contained in the investigative reports or other supporting documentation required in the application or subsequently requested by the department.

(11) Any good cause waiver granted to an applicant applies only to those disqualifying criminal convictions on incidents that resulted in the applicant being listed on the background checklists in the Family Care Safety Registry, as covered under the provisions of section 660.317, RSMo, and shall not apply to any other hiring restriction or exclusion imposed by any other federal or state laws or regulations.

(12) The director, or the director’s designee, may withdraw a good cause waiver if it receives information or finds that—
(A) The applicant has omitted a material fact or misrepresented a material fact in seeking a good cause waiver;
(B) The applicant has been subsequently convicted or found guilty of, or pled guilty or nolo contendere to any class A or B felony violation of Chapter 565, 566, or 569, RSMo, or any violation of subsection 3 of section 198.070, RSMo, or section 568.020, RSMo, in this state or any other state;
(C) Such applicant is a prospective or current employee of an in-home services provider or home health agency and has been subsequently involved in an incident that results in the applicant being listed on any of the background checklists in the Family Care Safety Registry;
(D) The applicant has omitted, misrepresented or failed to disclose or provide any of the information required by section 660.317, RSMo, or the provisions of this rule; or
(E) There has been a material change in the circumstances upon which the good cause waiver was granted.

(13) If the good cause waiver is withdrawn by the department, the notice of such withdrawal shall be mailed by the department to the applicant’s last known address, with a copy of the notice sent to the applicant’s last known employer, if any.

(14) No applicant may be employed in a direct care or direct service position with a provider during the pendency of a request for waiver unless the applicant has been continuously employed by that provider prior to August 28, 2003. If an applicant is employed on or after August 28, 2003, he or she may be employed following submission of a completed waiver application on a conditional basis to provide in-home services or home health services to any in-home services client or home health patient during the pendency of that waiver application if:
(A) The disqualifying crime is not one that would preclude employment pursuant to subsection 6 of section 660.317, RSMo; and
(B) The applicant is not listed on the Department of Health and Senior Services’ employee disqualification list established pursuant to section 660.315, RSMo.

(15) If a waiver is denied to an applicant employed on or after August 28, 2003, on a conditional basis, the conditional employment shall immediately terminate.

(16) Applicants who have been denied a good cause waiver, or who have had their good cause waivers withdrawn by the department, may reapply one (1) time every twelve (12) months, or whenever the circumstances related to the disqualifying conviction(s) have changed.

(17) Each provider shall be responsible for—
(A) Requesting criminal background checks on all prospective employees, regardless of waiver status, in accordance with the provisions of sections 660.317 and 43.540, RSMo; and
(B) Contacting the department to confirm the validity of a prospective employee’s good cause waiver prior to hiring the prospective employee if the prospective employee reveals the existence of a good cause waiver or reveals the existence of an otherwise disqualifying circumstance.

(18) Each in-home services provider or home health provider shall also be responsible for—
(A) Requesting Family Care Safety Registry background screenings on all prospective employees, regardless of waiver status, in accordance with the provisions of section
660.317.7, RSMo; and
(B) Contacting the department to confirm the validity of a prospective employee’s good cause waiver prior to hiring the prospective employee if the prospective employee reveals the existence of a good cause waiver or reveals the existence of an otherwise disqualifying circumstance.

(19) All applications for good cause waivers and related documents shall become permanent records maintained by the department.

Chapter 84—Training Program for Nursing Assistants 19 CSR
(C) In order to be approved, the applicant shall have an area which will be designated during training sessions as a classroom with sufficient space to allow fifteen (15) students to be seated with room for note-taking, appropriate equipment as needed for teaching the course, approved instructors and clinical supervisors, and shall assure that the instructor and each student has a manual for the state-approved course. Any ICF/SNF which has received a Notice of Noncompliance related to administration and resident care from the division in the two (2)-year period prior to application for approval shall not be eligible for approval and if this Notice is issued after approval, approval shall be withdrawn by the division within ninety (90) days and the certifying agencies shall be notified of the withdrawal of approval. Students already enrolled in a class in this facility, however, may complete their course if a Notice is issued after a course has begun. However, a noncompliant facility where an extended or partially extended survey has been completed may apply in writing to the division requesting permission for approval to train and test nurse assistants for certification. The approval for each separate class may be granted to teach and test in the facility but not by the facility staff. If approval is granted for a waiver for a certified facility or exception for a licensed-only facility, the division shall require certain criteria to be met, depending on the issues such as time and distance to other training agencies in the area.

Chapter 86—Residential Care Facilities and Assisted Living Facilities
(A) A facility may apply in writing to the department for a waiver of this section for a specific employee.
(B) The department may issue a written waiver to a facility upon determination that a waiver would be consistent with the public health and safety. In making this determination, the department shall consider the duties of the employee, the circumstances surrounding the conviction, the length of time since the conviction was entered, whether a waiver has been granted by the department’s Bureau of Narcotics and Dangerous Drugs pursuant to 19 CSR 30-1.034 when the facility is registered with that agency, whether a waiver has been granted by the federal Drug Enforcement Administration (DEA) pursuant to 21 CFR 1301.76 when the facility is also registered with that agency, the security measures taken by the facility to prevent the theft and diversion of controlled substances, and any other factors consistent with public health and safety. II/III.