**Hourly limitation waivable by department or department's designee.** The department or the department’s designee may waive the 24-hour limitation related to recovery care beds, as defined in 50-5-101, as that limitation applies to a particular bed, if the attending physician of the individual occupying the bed determines that the waiver is medically appropriate. The waiver may be granted by the department before or after the 24-hour limitation is exceeded.

37.40.338 BED HOLD PAYMENTS
(7) The department may allow therapeutic home visits for trial placement in the Home and Community Services (Medicaid Waiver) program.

37.40.405 SWING-BED HOSPITALS, SPECIAL SERVICE REQUIREMENTS (1)
(b) Except when a waiver is obtained under (4), the hospital must determine that no appropriate nursing facility bed is available to the Medicaid patient within a 25 mile radius of the swing-bed hospital. The hospital is required to maintain written documentation of inquiries to nursing facilities about the availability of a nursing facility bed and indicating that if a bed is not available, the hospital will provide swing-bed services to the patient. The swing-bed hospital is encouraged to enter into availability agreements with Medicaid-participating nursing facilities in its geographic region that require the nursing facility to notify the hospital of the availability of nursing facility beds and dates when beds will be available.

(4) A provider may request a waiver of the determination requirement of (1)(b) for an acute care patient of the swing-bed hospital or may request for a swing-bed patient a waiver of the transfer requirement of (2) when the recipient's attending physician verifies in writing that either the recipient's condition would be endangered by transfer to an appropriate nursing facility bed within a 25 mile radius of the swing-bed hospital or that the individual has a medical prognosis that his or her life expectancy is six months or less if the illness runs its normal course.

(a) The waiver request and physician's written verification must be submitted to the Department of Public Health and Human Services, Senior and Long Term Care Division, 2030 11th Avenue, P.O. Box 4210, Helena, MT 59640-4210. Waiver approvals granted by county offices will not be valid or effective for purposes of this rule.

(b) The waiver request and physician's written verification must be received by the nursing facility services bureau within five working days of admission to the swing-bed or within five days of availability of an appropriate nursing facility bed and the provider must obtain written approval from the Medicaid services bureau prior to billing for services provided after the date of admission to the swing-bed or the date of availability of an appropriate nursing facility bed.

(2) General rule Full time employees.
All skills listed in the MNASC must be satisfactorily passed prior to eligibility to complete
the State Competency Evaluation Program (SCEP). For individuals with limited handicaps which preclude satisfactory completion of all skills listed on the checklist, a waiver may be approved by the SA. Waiver requests are to be in writing and list the skills, and the reasons, the individual is unable to physically perform the skill. (Example: an individual is hearing impaired and not able to accurately take a blood pressure). Nurse aides may not perform any skill which is waived. Waivers will be reviewed, evaluated and approved on an individual basis. Waivers, if any, will be recorded on the individual’s official Certification of Competency notice provided by the SA.

Amended May 15, 1997 by H.R. 968. A waiver may be authorized in a State if the State:

1. Determines there is no other such program offered within a reasonable distance of the facility;
2. Assures, through an oversight effort, that an adequate environment exists for operating the program; and
3. Provides notice of such determination and assurances to the State Long-Term Care Ombudsman.

The State may approve NATCEP in (but not by) nursing facilities that are prohibited from approval if the nursing facility: --in the case of a facility which applies for program approval, be denied approval of the nurse aide training and competency evaluation program for 24 consecutive months (2 years) from the date that any of these penalties were imposed. --before being allowed to conduct a program, be required to resubmit a request for approval of a new program or re-approval of a previous program at such time any of these penalties have expired.

Waiver of prohibition of nurse aide training and competency evaluation programs in nursing facilities.

Nursing facilities which have been subjected to any remedy described in 483.151(b)(2) may apply to the SA, in writing, for a waiver of the prohibition of providing nurse aide training and competency evaluation in a facility if the facility meets the following:
1. There are no other nurse aide training and competency evaluation programs in, or within a reasonable distance from, the community in which the nursing facility is located.