



Office of Performance Evaluations Idaho Legislature

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Background review of Idaho's Governance of Nursing Assistants

Requested by Senator Dave Lent

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Scope of background review

This document is a background review and not an evaluation. Background reviews are used by the Office of Performance Evaluations to respond to a legislator's time-sensitive requests for information. The reviews are typically conducted within 24 working hours and are based on readily available sources. This document does not contain formal findings or recommendations.

Questions addressed

1. What is Idaho's approach to regulating nursing assistants?
2. How does the state's approach affect the occupation and employment of nursing assistants?
3. How do other states govern certified nursing assistants?

Brief answers

1. Idaho statute and rule have no reference to regulating nursing assistants. The Department of Health and Welfare's Bureau of Facilities Standards regulates the subset of nursing assistants who work in nursing homes. Federal law requires this of states. The bureau's activities are similar to those of state licensing boards, such as setting training and examination standards, inspecting and approving training programs, maintaining a registry, and investigating abuse. The lack of a state legal

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- framework leaves the bureau with unilateral authority to implement the federal requirements. Because these decisions are not in administrative rule, no formal legislative or public input is required. Stakeholders have no formal recourse if they disagree with the bureau's decisions. The bureau does not have authority over nursing assistants outside the nursing home context.
2. Most nursing assistants do not work in nursing homes. Nevertheless, the bureau's activities affect the whole occupation. The state's career-technical education curriculum for nursing assistants is designed to meet the bureau's standards. Employers, including hospitals, prefer or require their nursing assistants to be certified through the bureau's process. Reasons include (1) the certification is a marker of quality, (2) the training filters out candidates who do not want to do caregiving work, (3) the registry contains records of abuse and neglect by certified nursing assistants (in a nursing home), and (4) the credentialing requirements help satisfy third party accreditation standards. Regulating a subset of nursing assistants and the widespread use of the bureau's certification creates the perception that the state regulates the whole occupation.
 3. We reviewed statutes and rules for the surrounding states: Montana, Nevada, Oregon, Utah, Washington, and Wyoming. Each state delegates the authority for the federally required activities in statute, unlike Idaho. Most states describe the standards for nursing assistants and training programs in statute; the rest did so in rule. Some states outline the scope of practice in statute or rule. Half of the states regulate nursing assistants outside of nursing homes. For example, Washington sets standards for *registered* nursing assistants, but only nursing homes are required to employ *certified* assistants. States also have formal governance structures that include stakeholder and public involvement. For example, Nevada has a nursing assistant advisory committee with representatives from key stakeholder groups such as long-term care facilities, acute care facilities, home nursing providers, and AARP.

Methods

To answer these questions, we conducted seven interviews. We reviewed the following documents and sources:

federal rules

Idaho statute and rule

the State Operation Manual from Centers for Medicare and Medicaid Services

curriculum for certified nursing assistants in Idaho

regulations in six neighboring states

job recruitment sites

Additional details

Regulating nursing assistants

Nursing assistants are regulated unlike any other occupation in the State of Idaho. Nursing assistants are unlicensed, like other paraprofessional staff in personal care and medical settings.¹ Idaho statute does not delegate the regulation of nursing assistants to a state agency.

However, federal law requires that states to maintain a nurse aide registry.² This federal law, in effect, creates state regulation of nursing assistants in nursing homes by requiring several activities that resemble the oversight involved in licensing other professions, such as:

- developing training standards,
- supervising and approving training programs and examinations,
- maintaining a registry of qualified and disqualified nursing assistants, and
- investigating abuse, neglect, or misappropriation of resident property.

The Department of Health and Welfare's Bureau of Facility Standards is the survey agency responsible for these regulatory activities. The bureau makes policy decisions about how to implement federal requirements. Because these policy decisions are not in administrative rule, no formal legislative or public input is required.³

In contrast to the bureau's activities, state licensure often entails explicit statutory authority with a governing board and formal standards, processes, and definitions laid out in rule. Each of these elements requires public and legislative input.

The bureau's authority to regulate nursing assistants in nursing homes is derived from federal law and extends only to nursing homes. However, the Bureau's decisions impact the nursing

¹ The state has standards for certain employers to ensure employees, including nursing assistants, are appropriately vetted and trained. The Board of Nursing has standards for nurses delegating nursing tasks to unlicensed personnel, including nursing assistants. None of these state standards are specific to the occupation of nursing assistant.

² 42 CFR § 483.156, authorized by the Omnibus Budget Reconciliation Act of 1987, requires the following conditions for the state to certify nursing homes: (1) the state operates a registry of unlicensed individuals who provide nursing or nursing-related services in nursing homes, (2) within federal guidelines, the state sets standards for training and competency evaluation for inclusion on the registry, (3) the state must ensure nursing homes only employ unlicensed personnel on the registry. Nursing homes must be certified by the state to receive Medicare or Medicaid payments. By federal law, the state agency that inspects nursing homes is the only entity that can enter findings of abuse, neglect, or misappropriation into the nurse aid registry. In Idaho, that agency is the Bureau of Facility Standards.

³ Idaho has, in statute, a credential for a Medication Assistant-Certified under the Board of Nursing that is only available to certified nursing assistants.

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assistant profession beyond nursing homes. Many employers treat the credential a general credential for nursing assistants in any setting.

Training nursing assistants

The only training programs currently approved by the bureau are through Career Technical Education (CTE), which oversees high school and technical college programs. Students must complete one of these programs to qualify to take the exam to be certified.⁴ CTE designed the curriculum for nursing assistants to meet the bureau's standards and to help students pass the examination required to be on the nurse aide registry. In interviews, stakeholders spoke highly of CTE and the bureau's recent collaborative development of the curriculum.

The bureau has set training standards higher than the federal minimum. Certified nursing assistants are required to complete 120 total hours of training with 32–40 hours of hands-on training under a licensed nurse compared to the federally required 75 total hours with 16 hours of hands-on training.

The bureau is responsible for approving and inspecting training programs. Federal law allows the state to approve training programs operated by nursing homes.⁵ Idaho appears to be unusual in that it does not approve facility-based training programs (i.e., training programs done by nursing homes).

The bureau's choice to rely entirely on programs governed by CTE appears to be motivated by two reasons: (1) a high degree of confidence in CTE's curriculum and governing structure, and (2) a lack of sufficient resources at the bureau to provide the level of oversight the bureau would be comfortable with for programs not affiliated with CTE.⁶

Employing nursing assistants

Nursing assistant certification is only required in nursing homes. However, more certified nursing assistants work outside of nursing homes than within them. Hospitals are likely the largest employer in the state of certified nursing assistants. A brief search of job postings shows

⁴ Nursing assistants certified in other states can apply for a transfer without taking these programs. The bureau has recently approved a national online instructor to teach the classroom portion of the training, but training sessions have not commenced due to the lack of approved clinical training locations. The bureau has waived the pre-certification training requirements for nursing assistants who were hired to work in nursing homes during the public health emergency. During this time, the federal government also waived the requirement that nursing assistants be certified.

⁵ The facility that trains a student cannot administer the student's examination. Facilities have, in the past, partnered with local technical colleges to train certified nursing assistants on-site.

⁶ The nursing home survey team has 8 vacancies out of 15 surveyor positions.

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that a variety of employers require or give preference to people with CNA certifications, including:

- physician offices,
- home health agencies,
- surgical centers,
- assisted livings,
- hospices, and
- personal care service providers.⁷

In interviews, stakeholders gave us the following reasons for employers preferring nursing assistants who are certified:

- completing CNA training is a marker of quality
- CNA training exposes them to the type of work that direct care staff do, making them less likely to turn over
- certification may promote client safety and reduce provider liability (as previous abuse or neglect in a nursing home would appear on the nurse aide registry)
- staff credentialing requirements for third-party accreditation standards

Paraprofessional personal care and medical staff, including nursing assistants, are among the fastest growing occupations in Idaho and the country. Particularly through the pandemic, employers have struggled to fill these positions. Training these workers has been a priority for Idaho's Workforce Development Council.

Concerns

The bureau's regulation affects the nursing assistant occupation as a whole.

Even though most nursing assistants do not work in nursing homes, the bureau's authority is limited to nursing homes. As such, the bureau designed standards for the work nursing assistants do in nursing homes. The certification meant for a specific context has become a focal point for the nursing assistant profession as a whole.

The state's certification of nursing assistants gives an impression that the occupation as a whole is regulated. For example, CTE staff report that they are frequently contacted regarding the appropriate scope of practice for nursing assistants. However, the state does not define such a scope. Another example comes from a long-time industry veteran with a large employer of certified nursing assistants. He had assumed the state was investigating and recording cases of abuse or neglect by CNAs regardless of setting. However, CNAs will only be disqualified if they

⁷ Certification as a CNA fulfills federal training requirements for home health and hospice direct care staff.

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abuse or neglect residents in a nursing home; abusing or neglecting patients at a hospital or residents at an assisted living has no implication for the CNA registry.

Employers other than nursing homes have expressed interest in offering formal training for nursing assistants that can lead to certification. The goal would be to train nursing assistants for the setting they will be working in, such as acute care.

Policy decisions concerning certified nursing assistants are made without the formal processes that come with licensure.

Because the nurse aide registry has no governing state statute or rule, the bureau makes decisions unilaterally without the formal opportunity for public input or for appeal.⁸ Policy decisions need not be written or formalized.

Stakeholders shared in interviews specific decisions with which they disagreed. For example, many nursing homes would like to offer facility-based trainings without partnership with the state technical colleges. However, but the bureau has chosen not to approve them. The bureau has also indicated that it does not plan to start approving private training programs unaffiliated with nursing homes.

The bureau's decisions concerning certified nursing assistants are made based on an assessment of what is best for residents of nursing homes, given the oversight resources available to the bureau. The weight and responsibility for the consequences of the choices made rest with the bureau (and, specifically, the Bureau Chief). In every other regulated profession in Idaho, this weight and responsibility rest with a governing board that has clear statutory guidelines and formally developed rules made with public input.

Nursing assistants outside of nursing homes are not regulated.

When Congress set requirements for nursing homes in 1987, nursing homes were the primary setting for personal care. Regulating nursing assistants meant regulating most paraprofessionals working with vulnerable adults.

Nursing homes are no longer the primary setting for personal care with the proliferation of home and community-based services. State law rather than federal law governs these nursing home alternatives. Some states regulate paraprofessionals in these settings who do equivalent work to nursing assistants in nursing homes. Some stakeholders we interviewed wanted a larger state role in regulating paraprofessionals in health and personal care settings.

OPE has noted in the recent past the gap in Idaho's protection of vulnerable adults. Idaho does not investigate perpetrators of abuse or neglect of vulnerable adults and has no way, short of

⁸ The decisions still must fall within federal guidelines.

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criminal conviction, of having abuse and neglect appear on a background check (except the nurse aide registry).

Other States

Below is a brief overview of CNA governance in Idaho's neighboring states.

Montana

Montana includes two classes of paraprofessionals on its [nurse aide registry](#): certified nursing assistants and home health aides. Montana outlines the governance of the nurse aide registry, including of training programs, [in statute](#). The Department of Health and Human Services manages the nurse aide registry. The state does not license nursing assistants.

Nevada

Nevada's [Board of Nursing manages the nurse aid registry. Statute establishes](#) the requirements for CNAs and training programs. Like Idaho, Nevada has an additional certificate for medication aides. Within the Board of Nursing is a [CNA advisory committee](#). The committee, established in [statute](#), includes representatives from long-term care facilities, facilities that provide acute care, and agencies that provide nursing in the home. It also includes three representatives from the Department of Health and one from AARP. The state does not license nursing assistants.

Oregon

Oregon has two levels of CNA certification. The nurse aide registry is maintained by the Board of Nursing. The Board contains a CNA representative. [Statute](#) discusses the governance of the registry and outlines the [scope of practice](#) for CNA-1s and CNA-2s. Oregon requires certification for all nursing assistants, including assistants in state-licensed adult foster homes, assisted living facilities, and residential care facilities. Oregon has an additional certification for certified medication aides.

Utah

Utah statute has the least detailed description of nursing assistants, but [statute](#) does direct their Department of Health to define nursing assistants and personal care aides in rule. The [rule](#) describes requirements for training and program development. The rule also specifies that the Department will contract out the management of the registry (excepting investigations, which must be done by the survey agency). Utah has an additional medication assistant certification for CNAs.

Washington

Washington has two levels of nursing assistant regulation, plus an endorsement for medication assistants. Any individual assisting a nurse must register with the state. However, the state only requires certification and inclusion on the nurse aid registry for

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assistants working in nursing homes. Assistants working in home health care must be [certified](#) as a home care aide (unless certified as a nursing assistant). [Statute](#) and [rule describe](#) standards and the scope of practice for CNAs and governance of the registry. The Department of Social and Health Services maintains the registry. The registry only includes [certified nursing assistants](#).

Wyoming

Wyoming's Board of Nursing [manages](#) the nurse aide registry. Wyoming has two levels of CNA certification – CNA I and CNA II, plus a Medication Aide certification for CNA IIs. [Statute](#) authorizes and [rule](#) defines the [requirements](#) and scopes of practice. The state requires CNA certification home health aides in addition to those working in skilled nursing facilities.

Options

Idaho is the only state among its neighbors not to have any statute describing the governance of certified nursing assistants. Idaho's options, moving forward, appear to be:

Status quo: Continue to have the bureau manage CNAs unilaterally.

Create a statutory framework for the current structure: Continue the current regulatory structure of CNAs, but authorize the bureau's activities in statute. This would facilitate the inclusion of standards in rule and could lead to more transparency and facilitate public and legislative input.

Create a governance structure for CNAs: Like Nevada, Idaho could establish in statute a committee to advise the bureau in decisions regarding nursing assistants. Idaho could also assign the nurse aide registry to the Board of Nursing or a subcommittee.⁹

Limit the registry to nursing assistants at nursing homes. Some states only include nursing assistants who work at nursing homes on the registry. By creating such a requirement, Idaho would decouple the training and workforce development of nursing assistants from certification to work in nursing homes. The state would need resources to monitor who is actively employed at a nursing home.

Expand the use of the registry. States appear to have the flexibility to use the nurse aide registry for settings other than nursing homes, as long as the certification standards meet federal requirements. Idaho could expand the settings where nursing assistants need to be certified. Alternatively, Idaho could set licensing standards for the occupation but only require nursing assistants in nursing homes to be on the nurse aide registry.

⁹ While other agencies can administer the nurse aide registry, the bureau cannot delegate the investigation of abuse, neglect, or misappropriation of resident property.