

## NOTICES OF FINAL RULEMAKING

The Administrative Procedure Act requires the publication of the final rules of the state's agencies. Final rules are those which have appeared in the *Register* first as proposed rules and have been through the formal rulemaking process including approval by the Governor's Regulatory Review Council or the Attorney General. The Secretary of State shall publish the notice along with the Preamble and the full text in the next available issue of the *Register* after the final rules have been submitted for filing and publication.

### NOTICE OF FINAL RULEMAKING

#### TITLE 4. PROFESSIONS AND OCCUPATIONS

#### CHAPTER 19. BOARD OF NURSING

#### PREAMBLE

- |                                    |                                 |
|------------------------------------|---------------------------------|
| <b>1. <u>Sections Affected</u></b> | <b><u>Rulemaking Action</u></b> |
| R4-19-808                          | Amend                           |
- 2. The statutory authority for the rulemaking, including both the authorizing statute (general) and the statutes the rule is implementing (specific):**

Authorizing statutes: A.R.S. §§ 32-1605.01(B)(3), 32-1646(A)(5), and 32-1606(A)(1), Laws 1999, Ch. 229, § 2

Implementing statutes: A.R.S. §§ 32-1606(B)(16), Laws 1999, Ch. 229, § 2, 32-1609, 32-1643(A)(9), 32-1645, and 32-1648
- 3. The effective date of this rule:**

November 15, 2002. The Board is requesting that this rule be effective immediately upon filing with the Secretary of State under A.R.S. § 41-1032. This rule is less stringent than the rule that is currently in effect and does not have an impact on the public health, safety, welfare or environment. The rule eliminates the requirement to apply for certification within 30 days of employment at a long-term care facility and the requirement to be employed at the facility for 75-100 days. This rule will allow nursing assistant applicants to apply for a temporary certificate regardless of how long they have worked, where they work, or the date of their application. The rule does not impose any additional requirements for an applicant.
- 4. A list of all previous notices appearing in the Register addressing the final rule:**

Notice of Rulemaking Docket Opening: 8 A.A.R. 2970, July 19, 2002

Notice of Proposed Rulemaking: 8 A.A.R. 2937, July 19, 2002
- 5. The name and address of agency personnel with whom persons may communicate regarding the rulemaking:**

Name:	Pamela K. Randolph
Address:	Arizona State Board of Nursing 1651 E. Morten, Suite 210 Phoenix, AZ 85020
Telephone:	(602) 331-8111, ext. 139
Fax:	(602) 906-9365
E-mail:	prandolph@azbn.org
- 6. An explanation of the rule, including the agency's reasons for initiating the rule:**

The Board of Nursing is amending R4-19-808 to relax some of the requirements for obtaining a temporary nursing assistant certificate. Of the 5,416 applicants who applied to the Board last year for a nursing assistant certificate, less than 1% qualified and obtained a temporary certificate. Health care providers and applicants have requested that the Board amend the rule to allow more applicants to qualify for a temporary certificate.

The current employment requirements for a temporary certificate are deleted in the amended rule. The Board is also extending the expiration date of the certificate to comply with the statutory requirement that it be valid for six months. The Board anticipates that this amendment will increase the availability of Certified Nursing Assistants (C.N.A.s) while maintaining public protection.

*Arizona Administrative Register*  
**Notices of Final Rulemaking**

---

**7. A reference to any study relevant to the rule that the agency reviewed and either relied on in its evaluation of or justification for the rule or did not rely on in its evaluation of or justification for the rule, where the public may obtain or review each study, all data underlying each study, and any analysis of each study and other supporting material:**

Not applicable

**8. A showing of good cause why the rule is necessary to promote a statewide interest if the rule will diminish a previous grant of authority of a political subdivision of this state:**

Not applicable

**9. The summary of the economic, small business, and consumer impact:**

The Board of Nursing initiated a register for Certified Nursing Assistants (C.N.A.) in 1991 and received statutory authority for certifying nursing assistants in 1995. The Board is required to maintain a register of Certified Nursing Assistants, approve nursing assistant training and evaluation programs, and investigate complaints. Due to federal regulations, nursing assistants cannot be charged a certification fee. The Board obtains revenue for nursing assistant activities from state and federal grants and optional document fees. Fifty to sixty percent of the complaints received and discipline administered by the Board involve C.N.A.s. The Board maintains a register of approximately 18,000 active C.N.A. certificates, and approximately 50,000 active R.N. and L.P.N. licenses.

The current rule contains exacting employment criteria for issuing a temporary nurse assistant certificate that has resulted in less than 1% of applicants receiving temporary certificates. Board licensing technicians report that they receive approximately 20 calls per month inquiring about temporary nursing assistant certification. A very small number of callers actually meet the current employment criteria for a temporary certificate because of the necessity to apply for the certificate within 30 days of hire. Most examination applicants are hired as trainees and do not apply for nursing assistant certification until their training program is completed, approximately 3-6 weeks after hire. Many endorsement applicants report that they cannot be hired without the certificate. The Board is amending the rule so that more applicants will qualify for a temporary nursing assistant certificate.

Temporary certificates are needed because of the delay in obtaining fingerprint reports from the F.B.I. Department of Health Services regulations allow nursing assistants to work in a Medicare/Medicaid long-term care facility for four months without certification. Many times the Board does not receive fingerprint results from the FBI within this four-month window. The Board has become aware that there have been attempts to manipulate the system by firing and re-hiring the nursing assistant and thereby starting a new four-month window. The rules being amended are employer-employee matters and do not relate to public safety.

In 2001, the Board issued 21 temporary nursing assistant certificates. In the same year, the Board has received approximately 4696 C.N.A. applications by examination and 720 by endorsement. The Board anticipates that all the endorsement applicants and at least 50 percent of the examination applicants will apply for temporary certification under the proposed rule for a total of approximately 3,000 temporary certificate applications per year. In November 2002, a recommendation will be presented to the Board to increase the fee for the temporary nursing assistant certificate from \$15 to \$25. With this increase, the fee will be the same as that charged for a temporary R.N. or L.P.N. license and is 50 percent below the ceiling of \$50 imposed by A.R.S. § 32-1643. The amendment plus the planned fee increase is anticipated to result in approximately \$75,000 in revenue to the Board. The issuing of a temporary certificate, under the amended rule, will take a licensing technician approximately 20 minutes resulting in an extra 1000 hours per year needed to carry out this function. Utilizing a full-time licensing technician at an expense of \$11.28 per hour plus 19% benefits will result in a cost of approximately \$13,500.00. In addition, mailing, handling and material costs are estimated to be approximately \$1.00 per certificate resulting in expenses of \$3000.00. Total expenses are anticipated to be \$16,500.00. There may be a negative effect on revenues to the Board if individuals who obtain a temporary nursing assistant certificate decline the option of purchasing a "wallet size" card verifying their status as certified nursing assistants. Currently, approximately 2,000 applicants per year purchase the optional \$40.00 document resulting in revenue of approximately \$80,000 to the Board. Any excess revenue generated by the fees collected for the issuance of temporary nursing certificates will be utilized by the Board to cover the expenses related to C.N.A. investigations.

Applicants will pay for the temporary nursing assistant certificates. Since the temporary certificate is voluntary, it is expected that only applicants who can bear the expense will apply. Many applicants report that they are eligible for an increase in pay upon obtaining certification, which may compensate for the expense of the temporary certificate.

Health care facilities may elect to pay for the temporary certificate. In informal conversations with the Board, facilities have indicated a willingness to pay for the certificate, especially as a nursing assistant is nearing the end of the four-month window. Having an uncertified nurse assistant at the facility beyond the "window" could lead to sanctions by the Department of Health Services. Facilities invest approximately \$1000.00 in training per nursing assistant and would be able to keep trainees employed longer with temporary nursing assistant certificates. Due to the eligibility requirements imposed on applicants for a temporary nursing assistant certificate, the public will be protected as well.

**10. A description of the changes between the proposed rule, including supplemental notices, and final rule:**

Various technical and grammatical changes were made at the suggestion of Council staff.

**11. A summary of the principal comments made regarding the rule and the agency response to them:**

An oral proceeding was held on August 23, 2002 at the Board offices. Four people attended the hearing and none offered comment on the rule. No written comments were received. Several agencies and people informally commented to Board staff that they supported the rule. No negative comments were expressed either formally or informally.

**12. Any other matters prescribed by statute that are applicable to the specific agency or to any specific rule or class of rules:**

Not applicable

**13. Incorporations by reference and their location in the rule:**

None

**14. Was this rule previously made as an emergency rule:**

No

**15. The full text of the rule follows:**

**TITLE 4. PROFESSIONS AND OCCUPATIONS**

**CHAPTER 19. BOARD OF NURSING**

**ARTICLE 8. CERTIFIED NURSING ASSISTANTS**

Section

R4-19-808. Temporary Certificate

**ARTICLE 8. CERTIFIED NURSING ASSISTANTS**

**R4-19-808. Temporary Certificate**

- A. Subject to subsection (B), the Board shall issue a temporary nursing assistant certificate to an applicant who desires to work as a certified nursing assistant if: ~~the applicant lacks a state criminal history as verified in a report issued by the Arizona Department of Public Safety and the applicant:~~
- ~~1. Is qualified under:~~
    - a. A.R.S. § 32-1645 or § 32-1648, and
    - b. R4-19-806 or R4-19-807; and
  1. The Board receives a report from the Arizona Department of Public Safety which verifies that it has no criminal history record information, as defined in A.R.S. § 41-1701, relating to the applicant; and
  - ~~2. If seeking certification by endorsement:~~
    - a. ~~Has filed an application for certification by endorsement within 30 days of hire by a Medicare or Medicaid certified long-term care facility;~~
    - b. ~~Has been employed by the same Medicare or Medicaid certified long-term care facility for 75 to 100 days, and~~
    - e. ~~Has submitted documents or an official statement from another state verifying that the applicant has a current certificate or equivalent document from that state; or~~
  2. The applicant:
    - a. Submits to the Board an application for a temporary nursing assistant certificate with the fee required under A.R.S. § 32-1643(A)(9); and
    - b. Is qualified for certification by endorsement under A.R.S. § 32-1648 and R4-19-807 and submits documentation or an official statement from another state or territory of the United States verifying that the applicant has a current certificate or equivalent document from that state or territory; or
    - c. Is qualified for certification by examination under A.R.S. § 32-1645 and R4-19-806.
  - ~~3. If seeking certification by examination:~~
    - a. ~~Has submitted an application within 30 days of hire by a Medicare or Medicaid certified long-term care facility; and~~
    - b. ~~Has been employed by the same Medicare or Medicaid certified long-term care facility for 75 to 100 days, and~~
  4. Pays applicable fees.
- B. An applicant who discloses a disciplinary charge or substantiated complaint, criminal conviction, chemical dependency, pending disciplinary charge or substantiated complaint by a regulatory agency, or malpractice claim is not eligible for a temporary certificate without prior Board approval.
- C. Unless extended for good cause under subsection (D), a temporary certificate is valid for ~~a maximum of two~~ six months.
- D. A temporary certificate holder may apply and the Board or the Executive Director shall grant an extension for good cause. Good cause means reasons beyond the control of the temporary certificate holder, such as unanticipated delays in obtaining information required for nursing assistant certification.