

MEMORANDUM

TO: House Human Services Committee

FROM: Laura Q. Pelosi, MMR LLC
Representing the Vermont Health Care Association

DATE: January 18, 2022

Re: Act 6; Federal 1135 waiver for temporary nurse aides

Due to the severe workforce shortage, as well as limited availability of both nurse aide training programs and testing, CMS issued an 1135 waiver permitting use of temporary nurse aides in nursing homes. Specifically, the waiver allows nursing homes to employ individuals for more than four months even if they have not met the requisite certification requirements. CMS has *not* waived the requirement for nursing homes to ensure temporary nurse aides demonstrate competency in skills and techniques necessary to deliver care. Nursing homes are required to train temporary nurse aides, and they have been receiving both online course instruction and clinical instruction in the facility. Vermont nursing homes have relied heavily on this program to meet the needs of patients and residents at this unprecedented time with unprecedented staffing challenges.

While traveling LNAs are being relied upon, the temporary nurse aide program is proving to be a strong long-term care workforce pipeline development program with a goal toward recruiting, training, and retaining permanent licensed nurse aides. In fact, at CMS' encouragement, VHCA has worked with the Office of Professional Regulation/Board of Nursing and the Division of Licensing and Protection to create a pathway to licensure for temporary nurse aides. They would be required to complete the full curriculum, however, hours worked on the floor would count toward the clinical requirements. Candidates would be required to sit for and pass the licensure exam. Thirty-five of thirty-seven nursing homes in Vermont are federally certified and covered by the 1135 waiver. The Division of Licensing and Protection has expanded this program to the two state-only licensed nursing homes pursuant to its regulatory authority. See *Memorandum from Suzanne Leavitt to State Licensed and (Federally) Certified Health Care Providers*. This is a crucial tool to ensure our nursing homes do not lose a workforce they have developed over the pandemic, in particular individuals that have demonstrated an interest in and aptitude for long-term care.

Our nursing homes are recruiting Vermonters for these positions, but also individuals from bordering states in NY, NH, and MA. It is important that provisions within Act 6 do not conflict with the flexibilities provided by this critical program, which will continue for four months following expiration of the 1135 waiver.

VHCA requests adding language to Section 17 of Act 6/H.654 to ensure that any time limitations for providers to receive licensure do not conflict with this program. VHCA and the Office of Professional Regulation have agreed to the following language:

Nothing in this section is intended to limit, restrict, or modify application of existing or future Federal waivers of licensure requirements to licensed and certified facilities.