

NEW JERSEY ADMINISTRATIVE CODE  
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TITLE 8. HEALTH  
CHAPTER 39. STANDARDS FOR LICENSURE OF LONG-TERM CARE FACILITIES  
SUBCHAPTER 43. CERTIFICATION OF NURSE AIDES IN LONG-TERM CARE FACILITIES

§ 8:39-43.1 Nurse aide competency

(a) An individual who meets any of the following criteria shall be considered by the Department to be competent to work as a nurse aide in a licensed long-term care facility in New Jersey:

1. Has a currently valid nurse aide in long-term care facilities certificate and is registered in good standing on the New Jersey Nurse Aide Registry;
2. Has been employed for less than 120 days and is currently enrolled in an approved nurse aide in long term care facilities training course and scheduled to complete the competency evaluation program (skills and written/oral examination) within 120 days of employment; or
3. Has been employed for no more than 120 days, has completed the required training specified in (a)2 above, and has been granted a conditional certificate by the Department while awaiting clearance from the criminal background investigation conducted in accordance with *N.J.A.C. 8:43I*.

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**§ 8:39-43.2 Requirements for nurse aide certification**

(a) An applicant for certification as a nurse aide in long-term care facilities shall:

1. Successfully complete a nurse aide in long-term care facilities training program that has been approved by the Department;
2. Provide evidence that he or she is of good moral character, including, but not limited to, compliance with the requirements of the Criminal Background Investigation Program in accordance with *N.J.A.C. 8:43I*; and
3. Pass both the Department's clinical skills competency exam and written/oral exam.

(b) An applicant shall fulfill the requirements in (a) above in order to be listed on the New Jersey Nurse Aide Registry.

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**§ 8:39-43.3 Exceptions**

(a) The following persons may take the Department's written/oral examination without first completing a nurse aide training course and clinical skills evaluation approved in accordance with *N.J.A.C. 8:39-43.10*:

1. Students, graduate nurses, or foreign licensed nurses, pending licensure, who submit evidence of successful completion of a course in the fundamentals of nursing;
2. Persons who submit evidence of the successful completion of a course in the fundamentals of nursing within the 12 months immediately preceding application to take the written/oral competency examination, including:

i. Persons certified as a nurse aide in long-term care facilities in another state by a state governmental agency and listed on that state's nurse aide registry, who do not meet the requirements for equivalency specified at (a)1 above; and

ii. Persons who have had training and experience as a nurse aide in a military service, equivalent to that of a nurse aide;

3. Persons who are certified as homemaker-home health aides by the New Jersey Board of Nursing, in accordance with N.J.A.C. 13:37-14, and who successfully complete the Long-Term Care Module of the Core Curriculum for Unlicensed Assistive Personnel approved by the Department; and

4. Persons who successfully complete the Core Curriculum for Unlicensed Assistive Personnel approved by the Department and the New Jersey Board of Nursing, and the Long-Term Care Module of the Core Curriculum for Unlicensed Assistive Personnel approved by the Department.

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**§ 8:39-43.4 Certificates**

(a) A nurse aide in long-term care facilities certificate shall be valid for a period of two years from the date of issue.

(b) A nurse aide certificate shall not be retained by an employer for any reason.

(c) A nurse aide certificate is not transferable by sale, gift, duplication, or other means and shall not be forged or altered.

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**§ 8:39-43.5 Revocation and suspension of certificates**

(a) A certificate issued to a nurse aide in accordance with this subchapter shall be revoked in the following cases:

1. Finding of abuse, neglect or misappropriation of property of a resident of a long-term care facility or assisted living residence, or of a patient, resident, or client of any other facility or agency licensed by the Department;

2. Conviction or guilty plea as specified at *N.J.A.C. 8:39-9.3(b)* or other crime or offense as specified at *N.J.A.C. 8:43I-2.1(b)*; or

3. Sale, purchase, or alteration of a certificate; use of fraudulent means to secure the certificate, including filing false information on the application; or forgery, imposture, dishonesty, or cheating on an examination.

(b) The Commissioner or his or her designee may summarily suspend the certificate of a nurse aide when the continued certification of an individual poses an immediate threat to the health, safety or welfare of the public, including residents and patients of long-term care facilities, assisted living facilities and other licensed health care facilities or agencies. An individual whose certificate is summarily suspended shall have the right to appeal to the Commissioner for an expedited hearing at the Office of Administrative Law, which shall be conducted pursuant to the Administrative Procedure Act, *N.J.S.A. 52:14B-1* et seq. and *N.J.S.A. 52:14F-1* et seq. and the Uniform Administrative Procedure Rules, *N.J.A.C. 1:1*. If the summary suspension is upheld at the Office of Administrative Law, the individual whose certificate has been summarily suspended shall have the right to apply for injunctive relief in the Superior Court of New Jersey. Nothing in this subsection shall be construed to prevent the Commissioner from thereafter revoking the license in accordance with (a) above.

**CASE NOTES:**

*Initial Decision (2009 N.J. AGEN LEXIS 586)* adopted, which found that a certified nurse aide verbally and mentally abused a resident by yelling and cursing at the resident in response to the resident's provocative agitated behavior after

the aide took a cup of coffee from her that belonged to another resident; provocation was not a defense where the aide was trained to handle an agitated patient with restraint. *N.J. Dep't of Health & Senior Services v. Easterling-Leake*, OAL Dkt. No. HLT 03649-2009 N, 2009 N.J. AGEN LEXIS 756, Final Decision (September 28, 2009).

*Initial Decision (2009 N.J. AGEN LEXIS 302)* adopted, in which the ALJ found, on conflicting evidence, that a nurse aide misappropriated and used the credit cards of resident patients in her care; the aide's contention that she was framed by the real perpetrator was not supported by the overwhelming circumstantial evidence against her. *N.J. Dep't of Health & Senior Services v. Lee*, OAL Dkt. No. HLT 01070-09, 2009 N.J. AGEN LEXIS 570, Final Decision (June 18, 2009).

ALJ erred in sanctioning a nurse aide to a 5-day suspension of her certificate where no such sanction existed; rather the applicable sanction for a finding of neglect was placement on the nurse aide registry for a period of at least one year, and full revocation was required in the case of a finding of abuse, neglect or misappropriation of resident property. The Commission overturned the negligence finding and the 5-day suspension and ordered the case remanded so that the ALJ could apply the proper standard of review, review the testimony regarding the allegations of verbal abuse, and impose an appropriate sanction. *N.J. Dep't of Health & Senior Services v. Rogers*, OAL Dkt. No. HLT 1006-08, 2009 N.J. AGEN LEXIS 660, Final Decision/Remand Order (March 26, 2009).

*Initial Decision (2009 N.J. AGEN LEXIS 141)* adopted, in which the ALJ found, on conflicting testimony, that a nurse aide physically abused a resident when she struck back at the resident who had hit her during a diaper change; the fact that the incident occurred during the aide's probationary employment period rendered the conduct that much more egregious, and her projected conduct once she acquired permanent employment did not bode well for her residents. *N.J. Dep't of Health & Senior Services v. Boatwright*, OAL Dkt. No. HLT 10269-08, 2009 N.J. AGEN LEXIS 666, Final Decision (March 25, 2009).

*Initial Decision (2009 N.J. AGEN LEXIS 140)* adopted, which found that a nurse aide misappropriated resident property when she used a resident's ATM card without his authorization to withdraw \$ 7,602.38 over a three month period for her own benefit; the aide's contention that the withdrawals were favors to the resident, who wanted to buy snacks and re-pay debts he owed to others, was simply not credible nor supported by the evidence. *Huber v. N.J. Dep't of Health & Senior Services*, OAL Dkt. No. HLT 09286-08, 2009 N.J. AGEN LEXIS 665, Final Decision (March 9, 2009).

Nurse aide's certification was revoked for one year and an entry on the Nurse Aide Registry was ordered for a period of one year, where the aide was properly charged with neglect because she failed to use a Hoyer lift rather than a one-man lift to lift a resident, who had suffered a stroke that left her with limited mobility. The aide was further properly charged with neglect because once the resident fell, the aide failed to provide her charge nurse with the information as to what had occurred so that the resident could be properly treated. *N.J. Dep't of Health & Senior Services v. Cator*, OAL Dkt. No. HLT 8230-07, 2008 N.J. AGEN LEXIS 179, Initial Decision (March 8, 2008).

Certified nurse aide's act of throwing a balled-up sheet at a resident of a long-term care facility and spinning the resident around in her wheelchair constituted abuse. *N.J. Dep't of Health & Senior Services v. Jean*, OAL Dkt. No. HLT 10885-06, 2007 N.J. AGEN LEXIS 419, Initial Decision (June 7, 2007).

Nurse aide's name was to be listed on the Nurse Aid Registry and her certificate revoked, where evidence showed that (1) while being showered, a resident asked repeatedly to use the bathroom, but the aide refused to allow her to do so despite being in immediate proximity to a facility and instead, the aide required the resident to void into a plastic garbage bag, causing the resident to experience embarrassment and mental distress; (2) the aide jammed the shower wand between the resident's legs and moved it back and forth, causing injury to the resident's labia in the form of abrasions resulting in harm, pain, and mental anguish; and (3) the aide left the resident in her room covered only by a sheet and when the sheet fell off, the resident was exposed to the view of workmen and others in the hall, causing the resident to be denied privacy and to experience embarrassment and mental anguish. *N.J. Dep't of Health & Senior Services v. Badio*, OAL Dkt. No. HLT 9591-06, 2007 N.J. AGEN LEXIS 41, Initial Decision (January 22, 2007).

Ordering revocation of a nurse aide's certification and permanent placement of her name on the Nurse Aide Registry, where credible evidence supported the finding that the aide struck the resident with a shoe after the resident kicked the aide in the stomach when the resident did not want to get out of bed, and the aide's action caused swelling and a large

bruise. *N.J. Dep't of Health & Senior Services v. Lacrete*, OAL Dkt. No. HLT 7560-04, 2006 N.J. AGEN LEXIS 818, Initial Decision (September 26, 2006).

*Adopting Initial Decision (2005 N.J. AGEN LEXIS 568)* and ordering that a finding of misappropriation of a resident's property be placed next to a nursing aide's name on the Nurse Aide Registry and her certificate revoked, where evidence showed that the aide took the checkbook of a former resident of a specialty care center to the aide's home, and failed to report the taking to the resident, to the center, or to the police. *N.J. Dep't of Health & Senior Services v. Williams*, OAL Dkt. No. HLT 8937-04, 2005 N.J. AGEN LEXIS 1315, Final Decision (November 1, 2005).

*Initial Decision (2005 N.J. AGEN LEXIS 642)* adopted, which found that a nurse aide did not act with malice in blocking a patient's access to the elevator, but rather, was trying to protect the resident from harm, and that the nurse aide merely acted in self-defense when she grabbed the resident's arm after the resident was pulling the aide's hair; thus, the nurse aide did not commit abuse. "Abuse" cannot involve conduct that is simply accidental or inadvertent. *Dep't of Health & Senior Services v. Jarda*, OAL Dkt. No. HLT 11114-04, 2005 N.J. AGEN LEXIS 1309, Final Decision (October 20, 2005).

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**§ 8:39-43.6 Recertification**

(a) The Department shall require the renewal and updating of a nurse aide listing on the registry at least once every two years on a schedule established by the Department.

(b) In order to be recertified, an individual shall have a currently valid nurse aide in long-term care facilities certificate and shall have been employed performing nursing or nursing-related services for at least seven hours for pay, in a licensed health care facility or for an agency licensed by the Department, within the past 24 months from the date of expiration as specified on the nurse aide certificate, and shall not have had his or her certificate revoked in accordance with *N.J.A.C. 8:39-43.5(a)*, and shall not have his or her certificate suspended in accordance with *N.J.A.C. 8:39-43.5(b)*.

(c) The designated facility representative shall verify such employment by signing the individual's recertification data mailer upon request of the individual.

(d) Any individual who does not meet the recertification requirement listed in (b) above and who wishes to be recertified, shall repeat the requirements for certification at *N.J.A.C. 8:39-43.2*, unless the original date of issue of the certificate is within the five years prior to the expiration date listed on the certificate and the nurse aide successfully completes the skills evaluation and written/oral examination.

1. Any individual who has allowed his or her certificate to expire must undergo a criminal background investigation as required by *N.J.A.C. 8:43I*, regardless of whether the person must complete a training program.

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**§ 8:39-43.7 Nurse aide registries**

(a) The Department shall establish and maintain a nurse aide registry in accordance with *42 CFR 483.156*, as supplemented and amended.

(b) The Department shall establish and maintain a nurse aide abuse registry in accordance with *42 CFR 483.156*, as supplemented and amended.

1. The nurse aide abuse registry shall include the names of individuals who are found to have abused, neglected or misappropriated the property of any resident while working in a long-term care facility as an uncertified nurse aide.

## CASE NOTES

*Adopting Initial Decision (2007 N.J. AGEN LEXIS 813)* and ordering that a finding of neglect be entered on the Nurse Aide Registry, where although the certified nurse aide's testimony claiming her innocence of the charge appeared to be credible based upon her demeanor, the testimony of other witnesses and the objective physical evidence preponderated in favor of a finding of guilt. It was indisputable that the aide was responsible for the care of an elderly, incontinent resident, that the resident got out of her bed and her doing so was not detected because the tabs monitor was not attached as required by the Kardex care plan, that the resident's diaper and clothing were soaked with urine and soiled with feces, that the resident suffered a serious injury to her left hip and leg, and that the aide admitted to the risk manager at the care center and to the director of nursing that she had not examined or checked the resident from approximately 1:30 a.m. until she was found at approximately 5:30 a.m. in contravention of the aide's responsibility to toilet the resident every two hours. *N.J. Dep't of Health & Senior Services v. Pawlowska, OAL Dkt. No. HLT 6659-07, 2008 N.J. AGEN LEXIS 146*, Final Decision (January 18, 2008).

*Initial Decision (2007 N.J. AGEN LEXIS 787)* adopted, which concluded that the evidence was insufficient to warrant placing a certified nurse aide on the Nurse Aide Registry for allegedly having verbally abused a resident under her care. *N.J. Dep't of Health & Senior Services v. Lewis, OAL Dkt. No. HLT 7747-07, 2008 N.J. AGEN LEXIS 147*, Final Decision (January 18, 2008).

Certified nurse aide committed an act of abuse when a resident was splashed with hot tea; despite the aide's claim that warm tea was accidentally spilled, witnesses who were actually present in the room when the incident occurred agreed that the resident was becoming agitated and further agreed that the aide did have a cup of hot tea in her hand and did throw the hot tea at the resident in response to the resident's agitation, and an examination of the resident shortly after the incident showed that the resident's chest was red from the tea (adopting in part and modifying in part *2007 N.J. AGEN LEXIS 788*). *N.J. Dep't of Health & Senior Services v. Snowden, OAL Dkt. No. HLT 7842-07, 2008 N.J. AGEN LEXIS 148*, Final Decision (January 18, 2008).

*Initial Decision (2007 N.J. AGEN LEXIS 487)* adopted, which concluded that a certified nurse aide neglected and abused a resident in a long-term care facility where the resident, an alert and oriented woman, testified that the aide had hit her face on the left side rail of the bed as she was helping the resident during the night; the resident further testified that when the resident told the aide what she, the aide, had done, the aide responded "good" and advised her to shut up, the resident was not changed until 2:00 a.m. that morning, and that was all the assistance and care that she had received for that night shift. *N.J. Dep't of Health & Senior Services v. Adams, OAL Dkt. No. HLT 3783-07, 2007 N.J. AGEN LEXIS 929*, Final Decision (August 20, 2007).

*Initial Decision (2007 N.J. AGEN LEXIS 487)* adopted, which concluded that a certified nurse aide neglected a resident in a long-term care facility where the resident, who could not toilet herself at the time in question, testified that she could not move fast enough when she was turning over on her left side during the night and the aide was rough in turning her, that she thereafter tried to help herself and called for help, that she could not remember how long she waited for help before she took her diaper off and threw it on the floor, and that the aide had told her she would be back to change her in a short time but the aide never returned to change her. *N.J. Dep't of Health & Senior Services v. Adams, OAL Dkt. No. HLT 3783-07, 2007 N.J. AGEN LEXIS 929*, Final Decision (August 20, 2007).

*Adopting Initial Decision (2007 N.J. AGEN LEXIS 453)* and ordering that a finding of verbal abuse be entered on the Nurse Aide Registry, where credible evidence established that a patient approached the aide and several other aides and interrupted their conversation, that as a result of this interruption, the aide told the patient that no one was talking to her and that, because of similar prior conduct of the patient, "That's why my mother is alive and . . . your mother is dead," and the aide's remark upset the resident to an extent not seen previously. *N.J. Dep't of Health & Senior Services v. Jenkins, OAL Dkt. No. HLT 4964-06, 2007 N.J. AGEN LEXIS 930*, Final Decision (August 9, 2007).

*Initial Decision (2007 N.J. AGEN LEXIS 452)* adopted, which found, on conflicting evidence, that a certified nurse aide transferred a stroke victim resident from the resident's wheelchair to the bed in a rough manner, pulled on the resident's paralyzed arm, thereby causing the resident pain, failed to communicate with the resident upon the resident's expression of pain, and threw a towel at the resident, and concluded that these acts did not rise to the level of abuse, but did constitute neglect, justifying an entry on the Nurse Aide Registry. *N.J. Dep't of Health & Senior Services v. Armand, OAL Dkt. No. HLT 1343-07, 2007 N.J. AGEN LEXIS 966*, Final Decision (August 9, 2007).

*Adopting Initial Decision (2007 N.J. AGEN LEXIS 418)* and ordering that a finding of misappropriation of a resident's property be placed on the Nurse Aide Registry, where it appeared that a certified nurse aide used the telephone of

a long-term care facility resident on several occasions. Although the aide raised her absence of understanding, and therefore requisite intent, it was not believable to argue in her defense that a long-experienced certified nursing aide, over the course of three separate days, could have made calls in all innocence from a phone she knew to have been paid for by a resident, and in reliance on the ostensible permission allowed by the same resident, who was suffering from partial dementia. N.J. Dep't of Health & Senior Services v. Robert, OAL Dkt. No. HLT 803-07, 2007 N.J. AGEN LEXIS 931, Final Decision (July 18, 2007).

*Initial Decision* (2007 N.J. AGEN LEXIS 185) adopted, which concluded that a finding that a certified nurse aide verbally abused a resident had been substantiated and should be entered on the Nurse Aide Registry where it appeared that the aide did threaten and curse at the resident, pointing a can of deodorant in his face; in addition, the aide engaged the resident in verbal disputes, and allowed the matter to escalate instead of diffusing the situation. N.J. Dep't of Health & Senior Services v. Thompson, OAL Dkt. No. HLT 249-07, 2007 N.J. AGEN LEXIS 542, Final Decision (May 17, 2007).

*Initial Decision* (2007 N.J. AGEN LEXIS 154) adopted, which concluded that a certified nurse aide neglected a resident in a long-term care facility where the aide, faced with a situation of a resident who was incontinent, upset, and in need of a clothing change and careful attention, simply left the resident alone in his room, slumped over in his chair, seated in feces, vulnerable to the anxiety-inducing turmoil she created, and then left the facility without completing her shift, although she had been promised that another aide would be available to help within only a few minutes of her request for aid. N.J. Dep't of Health & Senior Services v. Martinez, OAL Dkt. No. HLT 320-07, 2007 N.J. AGEN LEXIS 526, Final Decision (May 14, 2007).

Adopting Initial Decision's conclusion that neither a finding of neglect nor a finding of abuse should be placed next to the nurse aide's name on the Nurse Aide Registry for alleged abuse and neglect of an elderly resident suffering from Alzheimer's Disease; the ALJ found that the testimony of the resident's roommate was unreliable and not credible, and the director of social services at the facility and a certified nurse's aide both disbelieved the roommate's statements on the matter. N.J. Dep't of Health & Senior Services v. Yates, OAL Dkt. No. HLT 8438-06, 2007 N.J. AGEN LEXIS 326, Final Decision (March 15, 2007).

*Initial Decision* (2007 N.J. AGEN LEXIS 29) accepted, which concluded that a certified nurse aide did not neglect or verbally or mentally abuse two residents of an assisted living and convalescent home by statements that the two residents did not like black people; while an incident occurred involving the two residents and the aide in the dining room that, at the minimum, had the aide speaking in a loud and/or gruff manner as concerns the topic of who would be caring for the residents while their white aide was on vacation, the aide in no way intended for her statement to be intimidating or otherwise to cause pain or mental anguish, humiliation, or harassment. N.J. Dep't of Health & Senior Services v. McIntosh, OAL Dkt. No. HLT 212-07, 2007 N.J. AGEN LEXIS 324, Final Decision (March 8, 2007).

Adopting Initial Decision (2007 N.J. AGEN LEXIS 5) and ordering that a finding of abuse be entered on the Nurse Aide Registry, where the eyewitness's statement was consistent with photographs showing the patient's bruise marks; the certified nurse aide, who had denied the allegation, did not appear at the hearing. N.J. Dep't of Health & Senior Services v. Francois, OAL Dkt. No. HLT 11769-05, 2007 N.J. AGEN LEXIS 323, Final Decision (February 22, 2007).

*Initial Decision* (2007 N.J. AGEN LEXIS 19) adopted, which concluded that DHSS carried its burden of persuasion of proof by a preponderance of the competent and credible evidence that two nurse aides abused a resident and that their names should be placed in the Nurse Aide Registry; the aides' explanations about the clearly abusive comments and restriction of the resident to her room lacked credibility, and neither could offer an explanation regarding their instances of swearing as to why they believed the resident should learn to be a better cursor. N.J. Dep't of Health & Senior Services v. Williams, OAL Dkt. No. HLT 8404-04 and HLT 8842-04, 2007 N.J. AGEN LEXIS 325, Final Decision (February 22, 2007).

*Initial Decision* (2006 N.J. AGEN LEXIS 724) adopted, which concluded that DHSS had failed to prove by a preponderance of the credible evidence that two certified nurse aides abused or were negligent in their handling of their patient, an older woman, who was demented, easily confused, and at risk of falling and who had fallen from a chair and fractured her hip; no injury report was submitted, no one saw the patient fall, no one clearly stated that there was no safety belt, no physician's orders were introduced, and no management safety plan for the patient was introduced. N.J. Dep't of Health & Senior Services v. Yu, OAL Dkt. No. HLT 429-06; HLT 2392-06, 2006 N.J. AGEN LEXIS 873, Final Decision (September 27, 2006).

*Initial Decision (2006 N.J. AGEN LEXIS 725)* adopted, which concluded that it could not be found that a certified nurse aide threw a wet pad at a resident of a long-term care facility where there was no competent legal evidence to corroborate the resident's hearsay statement that the act had occurred. N.J. Dep't of Health & Senior Services v. Turner, OAL Dkt. No. HLT 2091-06, 2006 N.J. AGEN LEXIS 872, Final Decision (September 20, 2006).

*Initial Decision (2006 N.J. AGEN LEXIS 454)* adopted, which concluded that the evidence was insufficient to support a finding of neglect by a certified nurse aide; the ALJ found that DHSS did not show that the aide intentionally moved the call bell out of the patient's reach, where the aide's testimony was sufficiently credible that she tied the call bell to the side of the bed to prevent harm to the patient after the patient had previously wrapped it around his neck, and the bell inadvertently fell to the ground. N.J. Dep't of Health & Senior Services v. Toth, OAL Dkt. No. HLT 2106-06, 2006 N.J. AGEN LEXIS 782, Final Decision (August 25, 2006).

Name of a certified nurse aide would not be placed on the Nurse Aide Registry on grounds that the aide struck and/or taunted a resident, where the resident clearly had no recollection of what had occurred, her testimony was rambling, incoherent, and not believable, her statements taken after the incident were inconsistent, including the failure to tell a nurse that the aide had struck her, and there was the absence of any red marks or bruises; on the other hand, the aide appeared very soft spoken and was consistent in her testimony. N.J. Dep't of Health & Senior Services v. Toussaint, OAL Dkt. No. HLT 755-06, 2006 N.J. AGEN LEXIS 453, Initial Decision (July 19, 2006).

*Initial Decision (2006 N.J. AGEN LEXIS 336)* adopted, which concluded that neglect of a resident by a certified nurse aide had not been substantiated; although it was undisputed that the physician had ordered the use of a Gerrichair with a lap tray to keep resident, a fall risk, in a seated position and that the resident had been placed in a Gerrichair with no tray and with no tab alarm to sound if the resident attempted to rise, the aide's testimony about the lack of notice and knowledge as to the resident's care plan was entirely credible based on the observations of the aide and her demeanor during her testimony as well as the fact that even the nursing staff and the direct care staff on an earlier shift were unaware of the safety precautions applicable to the resident. N.J. Dep't of Health & Senior Services v. Quirindongo, OAL Dkt. No. HLT 754-06, 2006 N.J. AGEN LEXIS 584, Final Decision (June 16, 2006).

*Adopting Initial Decision (2005 N.J. AGEN LEXIS 959)* and ordering that a finding of abuse be entered on the Nurse Aide Registry, where the ALJ found sufficient credible evidence of the aide's verbal and physical abuse of patients, including yelling at a patient and placing a pillow-case over a patient's head. N.J. Dep't of Health & Senior Services v. Casey, OAL Dkt. No. HLT 01890-05, 2005 N.J. AGEN LEXIS 1306, Final Decision (December 6, 2005).

*Adopting Initial Decision (2005 N.J. AGEN LEXIS 568)* and ordering that a finding of misappropriation of a resident's property be placed next to a nurse aide's name on the Nurse Aide Registry and the aide's certificate revoked, where evidence showed that the aide took the checkbook of a former resident of a specialty care center to the aide's home, and failed to report the taking to the resident, to the center, or to the police. N.J. Dep't of Health & Senior Services v. Williams, OAL Dkt. No. HLT 8937-04, 2005 N.J. AGEN LEXIS 1315, Final Decision (November 1, 2005).

*Initial Decision (2005 N.J. AGEN LEXIS 494)* adopted, which concluded that DHSS had not shown abuse by a preponderance of evidence, where none of the eyewitnesses could testify that the certified nurse aide purposely hit an Alzheimer's resident with her arm or elbow when the aide was attempting to close the dining room doors; in addition, although voices were raised, there was no evidence that the aide engaged in the willful use of oral or gestured language that in any way included disparaging and derogatory terms directed at the resident. N.J. Dep't of Health & Senior Services v. Smith, OAL Dkt. No. HLT 1220-05, 2005 N.J. AGEN LEXIS 1310, Final Decision (October 24, 2005).

*Adopting Initial Decision (2005 N.J. AGEN LEXIS 358)* and ordering that a finding of abuse be entered on the Nurse Aide Registry where the evidence showed that a certified nurse aide abused a quadriplegic resident in her early 60's, suffering from MS and with very slight use of her hands, by comments that subjected the resident to mental anguish, disparaging and derogatory terms within the resident's hearing, and threats of deprivation and involuntary seclusion. In particular, the aide, in the presence and hearing of the resident, stated to two students training to become certified nurse aides that the resident was "too heavy" and "dead weight," the aide told the resident to "lay off the call light" because she was not going to return to get her up again, and when informed by the resident that she had the flu, the aide harshly retorted that the flu had nothing to do with her "acting up" and again told her not to use the call light. N.J. Dep't of Health & Senior Services v. Michael-George, OAL Dkt. No. HLT 6685-04, 2005 N.J. AGEN LEXIS 1472, Final Decision (September 16, 2005).

*Initial Decision (2005 N.J. AGEN LEXIS 391)* adopted, finding that there was sufficient credible evidence to support the agency's claim that a certified nurse aide abused and neglected a nursing home resident by placing the call bell

out of the resident's reach. N.J. Dep't of Health & Senior Services v. Wilson, OAL Dkt. No. HLT 2100-05, 2005 N.J. AGEN LEXIS 1110, Final Decision (September 9, 2005).

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**§ 8:39-43.8 Hearings for resident abuse, resident neglect, or misappropriation of resident property**

(a) Prior to entering a finding on the nurse aide abuse registry, the Department shall provide an opportunity of at least 30 days notice to the certified nurse aide or uncertified nurse aide, identifying the intended action, the factual basis and source of the finding, and the individual's right to a hearing.

(b) If a hearing is requested, it shall be conducted by the Office of Administrative Law or by a hearing officer of the Department in accordance with hearing procedures established by the Administrative Procedure Act., *N.J.S.A. 52:14B-1* et seq. and *52:14F-1* et seq. and the Uniform Administrative Procedure Rules, *N.J.A.C. 1:1*.

(c) No further right to an administrative hearing shall be offered to a certified nurse aide or uncertified nurse aide who has been afforded a hearing before a State or local administrative agency or other neutral party, or in a court of law, at which time the nurse aide received adequate notice and an opportunity to testify and to confront witnesses, and where there was an impartial hearing officer who issued a written decision verifying the findings of abuse, neglect, or misappropriation of property of a resident. The individual shall have a right to enter a statement to be included in the registry contesting such findings.

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**§ 8:39-43.9 Equivalency for nurse aides registered in other states**

(a) A nurse aide certificate received in another state or territory of the United States may be entered on the registry, provided that the following conditions are satisfied:

1. The Department receives documentation from the state's or U.S. territory's registry that such nurse aide has completed a training and competency evaluation program at least equal to that required in New Jersey;

2. The nurse aide has not been convicted of any crimes and has no documented findings of abuse, neglect, or misappropriation of resident property on the registry; and

3. The nurse aide complies with the requirements for a criminal background investigation as required by *N.J.A.C. 8:43I*.

**NOTES:**

Chapter Notes

**§ 8:39-43.10 Approval of a nurse aide in long-term care facilities training program**

(a) Written approval of the Department is required prior to enrollment of students and the commencement of a training program in an educational institution, a facility, or a proprietary program. Training program approval, when granted, shall be granted for a 24-month period.

(b) An approved training program for nurse aides shall consist of 90 hours of training. This shall include 50 hours of classroom instruction and 40 hours of clinical experience in a New Jersey licensed long-term care facility. All training programs shall use the curriculum approved by the Department, in accordance with (c) below.

(c) The New Jersey Curriculum for Nurse Aide Personnel in Long-Term Care Facilities ("the curriculum"), which has been approved by the Department, shall be the approved curriculum for a 90 hour training program. The entire con-



tent of the curriculum shall be taught. A copy of the curriculum and the form needed to apply for approval of a training course may be obtained by contacting the following office:

Certification Program

New Jersey Department of Health and Senior Services

PO Box 367

Trenton, NJ 08625-0367

(d) The New Jersey competency evaluation shall consist of both a skills examination and a written/oral examination.

(e) A facility-based approved training program and the New Jersey competency evaluation shall be scheduled so as to be completed within 120 days of the starting date of employment for a nurse aide.

(f) A training program offered in an educational institution to train and test certified nurse aides shall be approved by the Department.

(g) No resident care unit shall serve as the site of clinical instruction for more than one training program at a time.

(h) The training program for nurse aides shall not be used as a substitute for staff orientation or staff education programs.

(i) Classroom and clinical instruction for particular tasks or procedures shall be scheduled concurrently to the extent practicable.

(j) The Department may request submission of additional information or require the redesign and/or revision of the program materials. Redesign or revision of the program application does not ensure that approval will be granted.

(k) Any changes in a training program, such as changes in location, dates, times or instructors, shall be reported in writing, to the Certification Program at least 30 working days prior to the planned change. No change shall be implemented without the written approval of the Certification Program.

(l) The facility or educational institution conducting a training program shall maintain on file a copy of the lesson plans for the course. Each lesson plan shall state, at a minimum, the following:

1. The objective(s) of the lesson;
2. The content of the lesson;
3. A description of clinical activities for each lesson, consistent with the objectives in the curriculum;
4. The hours of instruction;
5. Methods of presentation and teacher strategies; and
6. Methods for evaluation of students with respect to their classroom and clinical performance in the facility.

(m) Each nurse aide training program instructor/evaluator shall:

1. Be currently licensed in New Jersey as a registered professional nurse;
2. Possess at least three years of full-time or full-time equivalent experience in a licensed health care facility;
3. Possess at least one year of full-time or full-time equivalent experience as a registered professional nurse in a licensed long term care facility, within the five years immediately preceding submission of the instructor/evaluator resume to the Certification Program of the Department for approval; and
4. Have successfully completed a training workshop offered by the Department for instructors/evaluators.

(n) The student-to-instructor ratio for classroom instruction shall not exceed a ratio of 20 students to one instructor.

(o) The student-to-instructor ratio for clinical instruction shall not exceed a ratio of 10 students to one instructor.

(p) Each student shall be under the supervision of the registered professional nurse instructor at all times when providing resident care as part of the student's clinical experience in the facility. The registered professional nurse instructor shall be responsible for evaluating the student's classroom and clinical performance.

(q) The resume of each nurse instructor/evaluator currently teaching the training program shall be available in the facility or educational institution.

**NOTES:**

Chapter Notes

**§ 8:39-43.11 Evaluation of training programs**

(a) The facility or educational institution conducting a training program shall develop, implement, and document a process for evaluating the effectiveness of the training program. The evaluation process shall include, at a minimum, the following:

1. Assignment of responsibility for the evaluation process;
2. An annual written evaluation report, including findings, conclusions, and recommendations;
3. A written evaluation by the facility or educational institution of the performance of instructors/evaluators;
4. Written evaluations, by students, of the training program; and
5. Statistical data that shall be maintained on file in the facility or educational institution. The statistical data shall include, at a minimum, the following for each course:
  - i. The beginning and ending dates;
  - ii. The number of students enrolled;
  - iii. The number and percentage of students who satisfactorily completed the course;
  - iv. The number and percentage of students who failed the course;
  - v. The number and percentage of students who passed the New Jersey Nurse Aide Competency Evaluation Program, including written/oral examination and skills; and
  - vi. The number and percentage of students who failed the New Jersey Nurse Aide Competency Evaluation Program, including written/oral examination and skills.

(b) The facility or training program shall retain all evaluation reports for at least three years and shall submit a report to the Department upon request.

**NOTES:**

Chapter Notes

**§ 8:39-43.12 Student records**

(a) Each facility or educational institution that conducts a training program shall establish a student record for each student. The student record shall include, at a minimum, the following:

1. The beginning and ending dates of the training program;
2. An attendance record;
3. A signed skills competency task form; and
4. An evaluation of the student's classroom and clinical performance, completed by the student's instructor.

(b) The facility shall retain the records specified at (a) above for at least four years.

(c) The facility or educational institution conducting a training program shall ensure that a student who is absent receives a reasonable and timely opportunity to obtain the classroom and/or clinical instruction missed, as documented in the student's record.

**NOTES:**

Chapter Notes

**§ 8:39-43.13 Denial or termination of a nurse aide in long-term care facilities training program**

(a) The Department shall conduct unannounced site visits of a nurse aide in long-term care facilities training program.

(b) The Department may deny, suspend, or withdraw approval if it determines that a nurse aide training program fails to follow the application as submitted to, and approved by, the Department.

(c) Approval of a nurse aide training program offered by or in a facility that participates in the Medicare or Medicaid Programs shall be denied in accordance with *42 CFR 483.151(b)*.

(d) If the Department proposes to deny, suspend, or revoke approval of a nurse aide training and/or skills competency evaluation program, except where governed by the Federal requirements noted in (c) above, the facility or educational institution may, within 30 days, request a hearing which shall be conducted pursuant to the Administrative Procedure Act, *N.J.S.A. 52:14B-1* et seq. and *52:14F-1* et seq., and the Uniform Administrative Procedure Rules, *N.J.A.C. 1:1*.

(e) Suspension or withdrawal of training program approval shall not affect currently enrolled students, who shall be permitted to complete the training program unless the Department determines that continuation of the program would jeopardize the health or safety of residents in any long-term care facility.

(f) If a nurse aide training program is discontinued for any reason, but the facility or educational institution continues to operate, the facility or educational institution shall be responsible for maintaining the records of students and graduates.

(g) If a nurse aide training program is discontinued for any reason and the facility or educational institution ceases to operate, the records of students and graduates shall be transferred to an agency acceptable to the Department. The Department shall be advised, in writing, of the arrangements made to safeguard the records.

(h) If a nurse aide training program is discontinued for any reason, the facility or educational institution shall:

1. Assist in the transfer of students to other approved nurse aide training programs;
2. Provide the Department with a list of the students who have transferred to another training program, and the dates on which the students were transferred; and
3. Notify the Department that the requirements for closing have been fulfilled and provide notice of final closing.

(i) If a facility or educational institution plans to voluntarily discontinue a nurse aide training program, the facility or educational institution shall:

1. Provide the Department with a written statement of the rationale and plan for the intended closing;
2. Continue the program until the class established for currently enrolled students has been completed; and
3. Notify the Department, in writing, of the closing date of the program at least 90 days prior to that date.

**HISTORY:**

Amended by R.2007 d.83, effective March 19, 2007.

See: *38 N.J.R. 4141(a)*, *39 N.J.R. 924(a)*.

Added new (d); and recodified former (d) through (h) as (e) through (i).

**NOTES:**

Chapter Notes

**§ 8:39-43.14 Responsibilities of administrator**

(a) The licensed nursing home administrator or administrator of the educational institution conducting the training program shall be responsible for implementation of the training program in accordance with the rules in this subchapter. This responsibility shall include, but not be limited to, ensuring that:

1. The curriculum is implemented in accordance with the application as submitted and approved by the Certification Program of the Department;
2. Resident care provided by the student does not exceed the tasks and procedures that the student has satisfactorily demonstrated, as documented by the registered professional nurse on a skills competency task form; and
3. Job descriptions are established indicating the responsibilities of each nurse instructor/evaluator.

**NOTES:**

Chapter Notes

**§ 8:39-43.15 Employment of a nurse aide**

(a) No licensed long-term care facility shall employ a person as a nurse aide without making inquiry to the New Jersey nurse aide registry on the Promissor website at <http://www.promissor.com>, and to any other state where the facility believes the nurse aide is registered.

(b) The facility shall have a system in place to document compliance with (a) above.

(c) The facility shall maintain records sufficient to verify the previous employment of nurse aides who are not currently working but whose employment at the facility makes him or her eligible for recertification in accordance with *N.J.A.C. 8:39-43.6(c)*.

**HISTORY:**

Amended by R.2007 d.83, effective March 19, 2007.

See: *38 N.J.R. 4141(a)*, *39 N.J.R. 924(a)*.

In (a), substituted "on the Promissor website at <http://www.promissor.com>" for "at 1-800-274-8970".

**NOTES:**

Chapter Notes

**§ 8:39-43.16 Nurse aide functions**

The nurse aide shall function under the supervision and direction of a registered professional nurse and shall perform tasks that are delegated in accordance with the provisions of *N.J.A.C. 13:37-6.2*.

**NOTES:**

Chapter Notes

### § 8:39-43.17 Mandatory nurse aide education and training

(a) A program of individualized orientation of each nurse aide shall be conducted by a registered professional nurse. The orientation program shall include resident care training and demonstrations in basic nursing skills, followed by an internship of two to five days, depending on experience.

(b) Each nurse aide shall receive, at a minimum, 12 hours of regular in-service education per year, the content of which shall be based on the outcome of performance reviews of every nurse aide, which are completed at least once every 12 months. (The 12 hours may include topics that are covered under OBRA requirements, Pub. L. 100-239 (1989) which overlap or are duplicative of those required at *N.J.A.C. 8:39-13.4(b)*, up to a maximum of six hours of in-service training per year.)

#### NOTES:

Chapter Notes

### § 8:39-43.18 Fees

(a) In accordance with *42 CFR 483.154*, as amended and supplemented, fees may be charged by the testing agency for the following:

1. Clinical skills and written examination;
2. Clinical skills and oral examination;
3. Clinical skills and Spanish oral examination;
4. Written examination only;
5. Clinical skills examination only;
6. Oral examination only;
7. Spanish oral examination only;
8. Duplicate or updated certificate, which shall be charged to the individual; and
9. Recertification certificate, which shall be charged to the individual if the individual is neither currently employed nor has been offered employment by a long-term care facility.

(b) The fee charged by the Department for a two-year approval of a training program shall be \$ 75.00.

(c) The Department shall provide timely notice of any changes in fees specified in (a) above in the Public Notices section of the New Jersey Register.

(d) A nurse aide who is employed by, or who has received an offer of employment from, a facility on the date on which the aide begins a nurse aide training and competency evaluation program may not be charged for any portion of the program identified in (a) above, including tuition and testing, and fees for textbooks or other required course materials.

(e) If a nurse aide who is not employed, or does not have an offer to be employed as a nurse aide becomes employed by, or receives an offer of employment from, a licensed long-term care facility not later than 12 months after completing a nurse aide training and competency evaluation program, the facility shall provide for the reimbursement of reasonable costs incurred in completing the program. Such costs include, but are not limited to, tuition, testing, and fees for textbooks or other required course materials.

(f) A nurse aide shall be reimbursed the costs of certification within one year of the successful completion of a reasonable probationary period established by the long-term care facility.

(g) No nurse aide shall be required, as a condition of employment, to pay the cost of the training program in the event of voluntary or involuntary termination of employment.

(h) All fees referenced at (a) and (b) above are non-refundable.

#### HISTORY:

Public Notice: ALA, CMA, CNA and PCA testing fees.

See: *35 New Jersey Register 2751(a)*.