

STATE OF NEW JERSEY
DEPARTMENT OF HEALTH
NOTICE OF RULE WAIVER/MODIFICATION/SUSPENSION
PURSUANT TO EXECUTIVE ORDER NO. 103 (MURPHY) (MARCH 9, 2020)
AND EXECUTIVE ORDER 119 (MURPHY) (APRIL 7, 2020)
COVID-19 STATE OF EMERGENCY

Temporary Rule **WAIVER/MODIFICATION OF N.J.A.C. 8:39-43.2 - REQUIREMENTS FOR NURSE AIDE CERTIFICATION, adopted by THE COMMISSIONER OF THE DEPARTMENT OF HEALTH**

Date: **April 14, 2020**

Authority: N.J.S.A. App.A:9-45 & App. A:9-47; Executive Order No. 103 (Murphy) (“EO 103”), Executive Order No. 119 (Murphy) (“EO 119”)

Effective Date: **April 14, 2020**

Expiration Date: Concurrent with end of EO 103, as extended by EO 119

This is an emergency adoption of a temporary rule waiver/modification of N.J.A.C. 8:39-43.2, which sets forth the requirements for applicants to receive certification as a nurse aide in long-term care facilities. Section 6 of EO 103, issued in response to the COVID-19 pandemic, authorizes agency heads to waive/suspend/modify any existing rule, where the enforcement of the rule would be detrimental to the public welfare during the emergency, notwithstanding the provisions of the Administrative Procedure Act or any law to the contrary. Pursuant to that authority, as well as the Emergency Health Powers Act, N.J.S.A. 26:13-1 to -31, and N.J.A.C. 8:36-2.7(a), and with the approval of the Governor and in consultation with the State Director of Emergency Management, the Commissioner of the Department of Health is waiving its rules as follows:

COVID-19 is a contagious, and at times fatal, respiratory disease that is responsible for the 2019 novel coronavirus outbreak. The Centers for Disease Control and Prevention (CDC) expects that additional cases of COVID-19 will be identified in the coming days, including more cases in the United States, and that person-to-person spread is likely to continue to occur. As of April 12, 2020, there were at least 61,850 positive cases of COVID-19 in New Jersey, with at least 2,350 of those cases having resulted in death. If COVID-19 continues to spread in New Jersey at a rate comparable to the rate of spread in other affected areas, it will greatly strain the health care professionals charged with caring for patients ill with COVID-19 and may become too large in scope to be handled by New Jersey’s currently certified health care professionals. Staffing

shortages have already been reported at long-term care facilities, assisted living facilities, assisted living programs and comprehensive personal care homes throughout New Jersey.

N.J.A.C. 8:39-43.2 sets forth the requirements for applicants to receive certification as a nurse aide in long-term care facilities. Under the rule, applicants must (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.

In order to effectively respond to the shortage of staff in long-term care facilities, assisted living facilities, assisted living programs and comprehensive personal care homes, it is necessary to expand N.J.A.C. 8:39-43.2, which requires that applicants for certification as a nurse aide in long-term care facilities pass both the Department's clinical skills competency exam and written/oral exam. Pursuant to this rule waiver/modification, the Department adds N.J.A.C. 8:39-43.2(c), which permits long-term care facilities, assisted living facilities, assisted living programs and comprehensive personal care homes to temporarily employ individuals who complete and pass the 8-hour Temporary Nurse Aide Training Program sponsored by the American Health Care Association and the National Center for Assisted Living and who have demonstrated competency using the program's skills competency checklist. All individuals seeking to work as a nurse aide pursuant to this waiver/modification must comply with the requirements for a criminal background check pursuant to N.J.A.C. 8:43I, and the time delineated in N.J.S.A. 26:2H-84(d) will be extended for a period of 90 days. This rule waiver/modification will allow the Department to effectively respond to the immediate shortage of staff in long-term care facilities while still ensuring that individuals who are hired as nurse aides receive the adequate training.

Facilities that hire one or more nurse aides under the modified requirements created by this waiver/modification must retain records detailing which, if any, of the above actions were implemented, including a list of the names, Social Security numbers and birth dates of the individuals temporarily hired pursuant to this waiver/modification, the training records and completed competency checklists, the duration of the implementation, and must document and immediately report to the Department any incidents involving the abuse, neglect or misappropriation of property of a resident of the facility, which are attributable to the nurse aides hired under this waiver/modification.

Facilities that hire one or more nurse aides under the modified requirements created by this waiver/modification must, within one week of the hiring of one or more nurse aides, provide the Department with the names, Social Security numbers and birth dates of the individuals temporarily hired pursuant to this waiver/modification by sending the information to:

Garlina Finn, Education Program Development Specialist
Certification Program
New Jersey Department of Health
P.O. Box 358
Trenton, New Jersey 08625-0358

This waiver/modification is effective only during the period of Public Health Emergency declared by Governor Philip D. Murphy in Executive Order No. 103 issued on March 9, 2020 and extended by Executive Order No. 119 issued on April 7, 2020, and so long as the Public Health Emergency exists pursuant to a Governor's Executive Order. When the Public Health Emergency is lifted, facilities will be required to return to operation in accordance with all licensure standards. Nurse aides employed pursuant to this waiver/modification will no longer be eligible to work as certified nurse aides and will have to fulfill the regulatory requirements to become a certified nurse aide.

Full Text of the modified rule follows (additions indicated in boldface **thus**):

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.

The above-referenced rule is hereby waived/modified subject to the following additional terms and conditions:

- (c) **During the period of Public Health Emergency declared by Governor Philip D. Murphy in Executive Order No. 103 issued on March 9, 2020, and extended by Executive Order No. 119 issued on April 7, 2020, and so long as the Public Health Emergency exists pursuant to a Governor's Executive Order, the following individuals, although not certified, may be employed as nurse aides:**
1. **Individuals who complete and pass the 8-hour Temporary Nurse Aide Training Program sponsored by the American Health Care Association and the National Center for Assisted Living program and have demonstrated competency using the program's skills competency checklist.**
 2. **All individuals seeking to work as a nurse aide pursuant to this waiver/modification must comply with the requirements for a criminal background check pursuant to N.J.A.C. 8:43I, and the time delineated in N.J.S.A. 26:2H-84(d) (60 days for the Division of State Police in the Department of Law and Public Safety background check and an additional 60 days for the federal authorities' background check) will be extended for a period of 90 days.**
 3. **Long-term care facilities, assisted living facilities, assisted living programs and comprehensive personal care homes may temporarily employ**

individuals who qualify under N.J.A.C. 8:39-43.2(c)(1) and (2). Facilities that hire one or more nurse aides under the modified requirements created by this waiver/modification must:

- a. retain records detailing which, if any, of the above actions were implemented, including a list of the names, Social Security numbers and birth dates of the individuals temporarily hired pursuant to this waiver/modification, the training records and completed competency checklists, the duration of the implementation, and must document and immediately report to the Department any incidents involving the abuse, neglect or misappropriation of property of a resident of the facility, which are attributable to the nurse aides hired under this waiver/modification.**
- b. within one week of the hiring of one or more nurse aides, provide the Department with the names, Social Security numbers and birth dates of the individuals temporarily hired pursuant to this waiver/modification by sending the information to:**

**Garlina Finn, Education Program Development Specialist
Certification Program
New Jersey Department of Health
P.O. Box 358
Trenton, New Jersey 08625-0358**

- 4. When the Public Health Emergency is lifted, facilities will be required to return to operation in accordance with all licensure standards. Nurse aides employed pursuant to this waiver/modification will no longer be eligible to work as nurse aides and will have to fulfill the regulatory requirements to become a certified nurse aide.**

I find that waiver/modification of the rules above is necessary because enforcement of the existing rules would be detrimental to the public welfare during this emergency.

4/14/20

DATE



**JUDITH M. PERSICHILLI, RN, BSN, MA
COMMISSIONER
DEPARTMENT OF HEALTH**