

STATE OF NEW JERSEY
DEPARTMENT OF HEALTH
CORRECTED 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. 8:36-3.2 – Qualifications of the Administrator of an Assisted Living Residence or Comprehensive Personal Care Home, adopted by THE COMMISSIONER OF THE DEPARTMENT OF HEALTH**

Date Corrected: **May 15, 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 23, 2020**

Expiration Date: Concurrent with the conclusion of the COVID-19 Public Health Emergency

This is an emergency adoption of a temporary rule waiver/modification of N.J.A.C. 8:36-3.2(l) and (m), which sets forth the requirements for restoration of an assisted living administrator certification from inactive status within three years of inactivity. 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 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 21, 2020, there were at least 92,387 positive cases of COVID-19 in New Jersey, with at least 4,753 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.

Under N.J.A.C. 8:36-3.2(k), an individual may request the restoration of his or her assisted living administrator certification from inactive status within three years of inactivity. To restore the certification, N.J.A.C. 8:36-3.2(l) requires the administrator to complete an assisted living training course consistent with the education requirements identified at N.J.A.C. 8:36-3.2(b) and pay the then-current certification fee. Additionally, under N.J.A.C. 8:36-3.2(m), inactive administrators must also complete 10 hours of continuing education credits for each year in which the certification was inactive in addition to the required 30 hours of continuing education credits for the last completed triennial certification period in which the administrator's certification was active.

This waiver is necessary to ensure that a sufficient number of qualified administrators are available to staff New Jersey's assisted living facilities and comprehensive personal care homes so that the facilities can effectively address the increasing number of both staff and residents being diagnosed with or suspected of having COVID-19. Increasing the number of available qualified administrators will allow assisted living facilities and comprehensive personal care homes to provide their staff with adequate and necessary support and supervision to ensure continuity of operations and provision of quality care.

Pursuant to this temporary rule waiver/modification, individuals whose assisted living administrators certification became inactive within the past three years (April 1, 2017 to April 1, 2020) are eligible to have their certification restored provided: (1) the applicant is not currently under investigation by the Assisted Living Administrators Panel or other State licensing authority; (2) the applicant's certification is not suspended, revoked, or restricted pursuant to N.J.A.C. 8:36-3.5; and (3) the applicant does not have a criminal history or pending criminal charges per N.J.A.C. 8:43I-4.1 et seq. If an applicant does not fall into one of these disqualification categories, then the applicant may initiate the temporary restoration process by emailing Lesley M. Clelland at Lesely.Clelland@doh.nj.gov. In order to have their certificates restored applicants must:

1. Complete the 10-hour Temporary Assisted Living Administrator Program sponsored by Longtree & Associates, LLC;
2. Successfully pass a criminal background check required by N.J.A.C. 8:43I-4.1 et seq.; and
3. Pay the current Assisted Living Administrator certification fee.

Upon successful completion of these requirements, the Department will issue the applicant a provisional certification. Applicants who successfully restore their certifications will need to provide their name, date of birth, and Social Security number to the Department. The information should be sent within a week of their certification restoration to:

Lesley M. Clelland, Program Specialist 3
New Jersey Department of Health
P.O. Box 358
Trenton, New Jersey 08625-0358

This temporary rule waiver/modification, as well as any provisional certifications issued thereunder, will expire forty-five (45) days after the end of the Public Health Emergency declared by Governor Philip D. Murphy in Executive Order Nos. 103 and EO 119. After the provisional certifications issued under this temporary rule waiver/modification have expired, individuals

whose assisted living administrator certifications have expired will no longer be permitted to function as certified assisted living administrators. Individuals wishing to obtain a full certification as an Assisted Living Administrator will be required to successfully complete the full requirements for inactive certifications set out at N.J.A.C. 8:36-3.2.

Full Text of the affected regulations follows, with additional terms and conditions indicated in boldface:

8:36-3.2 Qualifications of the administrator of an assisted living residence or comprehensive personal care home

(l) An individual requesting restoration of his or her certification from inactive status within three years of inactivity shall be required to pay the then-current certification fee and comply with the education requirements identified at (b) above.

(m) The applicant shall be required to complete 10 hours of continuing education credit for each year in which the certification was inactive in addition to the required 30 hours of continuing education for the last completed triennial certification period in which the applicant's certification was active.

(n) An administrator whose certification is in an inactive status and who subsequently fails to meet the requirements identified at (j) through (m) above shall be required to apply in writing for restoration of certification under the requirements as determined by the Certification Program on an individual basis and as provided for in these rules

(o) Notwithstanding the above provisions, during the period of the COVID-19 Public Health Emergency, individuals whose Assisted Living Administrator certification became inactive within the past three years (April 1, 2017 to April 1, 2020) are eligible for restoration under the following conditions:

1. An applicant is **DISQUALIFIED** from the restoration process if: (1) the applicant is currently under investigation by the Assisted Living Administrators Panel or other State licensing authority; (2) the applicant's certification is suspended, revoked, or restricted pursuant to N.J.A.C. 8:36-3.5; or (3) the applicant fails a criminal history background check per N.J.A.C. 8:36-3.2(d)(3) and (i)(2).
2. If an applicant qualifies for the restoration process then the applicant must:
 - a. Complete the 10-hour Temporary Assisted Living Administrator Program sponsored by Longtree & Associates, LLC;
 - b. Successfully pass a criminal background check required by N.J.A.C. 8:43I-4.1 et seq.; and
 - c. Pay the current Assisted Living Administrator certification fee.
3. Upon successful completion of the above requirements, the Department will issue the applicant a provisional assisted living administrator certification.

4. This temporary rule waiver/modification, as well as any provisional certifications issued thereunder, will expire forty-five (45) days after the end of the Public Health Emergency declared by Governor Philip D. Murphy in Executive Order Nos. 103. After the provisional certifications issued under this temporary rule waiver/modification have expired, individuals whose assisted living administrator certifications have expired will no longer be permitted to function as certified assisted living administrators. Individuals wishing to obtain full certification as an assisted living administrator will be required to successfully complete all the requirements for restoration of such certifications set out at N.J.A.C. 8:36-3.2.

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.

May 15, 2020
DATE



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

WAIVER CONTROL NUMBER: 20 – N.J.A.C. 8:36-3.2