

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

**Temporary Rule WAIVER/MODIFICATION OF N.J.A.C. 8:39-43 - CERTIFICATION OF NURSE AIDES IN LONG-TERM CARE FACILITIES adopted by THE COMMISSIONER OF THE DEPARTMENT OF HEALTH**

Date: June 8, 2020

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

Effective Date: June 8, 2020

Expiration Date: September 1, 2020.

This is an emergency adoption of a temporary rule waiver/modification of the requirements governing the expiration and renewal of certifications for Certified Nurse Aides (CNAs) under N.J.A.C. 8:39-43.4 and N.J.A.C. 8:39-43.6. 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, 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/modifying its rules as follows:

COVID-19 is a contagious, and at times fatal, respiratory disease that is responsible for the 2019 novel coronavirus outbreak. As of June 7, 2020, there were at least 164,164 positive cases of COVID-19 in New Jersey, with at least 12,176 of those cases having resulted in death. The public health emergency caused the temporary closure of several health care-adjacent organizations throughout the State, including PSI Services LLC, the company contracted by the Department of Health to process the certification and recertification of CNAs. As the number of confirmed cases, deaths, and hospitalizations has decreased in recent weeks, PSI has begun reopening their sites on a limited basis, although it remains unclear when they will be able to resume full operations.

Under N.J.A.C. 8:39-43.4(a), a certified nurse aide certification is valid for two years from the date of issue. N.J.A.C. 8:39-43.6(a) requires a nurse aide to renew his or her certification prior to its expiration date if he or she wishes to continue working as a CNA. However, because of the temporary closure of PSI sites during the public health emergency, many CNAs whose certifications expired after March 1, 2020 were unable to renew their certifications in compliance

with N.J.A.C. 8:39-43.6(a). To address this, the Department issued a memorandum on March 26, 2020 extending the expiration date of any CNA certifications due to expire between March 1, 2020 and May 31, 2020 for 90 days.

Because the public health emergency remains ongoing and PSI continues to operate only in a limited capacity, some CNAs whose certifications are due to expire between March 1, 2020 and August 30, 2020 will still be unable to renew their certifications prior to their expiration in compliance with N.J.A.C. 8:39-43.6. Due to these limitations beyond the control of CNAs and in consideration of the need to ensure adequate staffing of CNAs in good-standing at long term care facilities throughout the State, it is necessary and appropriate to formally waive/modify the requirements in N.J.A.C. 8:39-43.4(a) and N.J.A.C. 8:39-43.6(a). This temporary rule waiver/modification will supersede the memorandum issued by the Department on March 26, 2020 regarding the extension of nurse aide certifications.

Pursuant to this temporary rule waiver/modification, the expiration date of any nurse aide certification scheduled to expire between March 1, 2020 and August 1, 2020 shall be extended until September 1, 2020. Additionally, any certified nurse aide whose certification is scheduled to expire between March 1, 2020 and August 1, 2020 shall be permitted to renew his or certification outside of the two-year renewal window, up to and until September 1, 2020.

As of September 1, 2020, all CNAs will be required to resume complying with all regular certification requirements set forth in N.J.A.C. 8:39-43.4 and N.J.A.C. 8:39-43.6.

Any questions concerning this temporary rule waiver/modification should be directed to Jean DeVitto, Executive Director, Certificate of Need and Healthcare Facility Licensure Program at [CNL.InquiryWaiversIssued@doh.nj.gov](mailto:CNL.InquiryWaiversIssued@doh.nj.gov).

Full Text of the proposed modifications follows (additions indicated in boldface **thus**; deletions indicated in brackets [thus]):

#### 8:39-43.4 Certification

- (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.
- (d) Notwithstanding the above, during the duration of the COVID-19 Public Health Emergency, the expiration date of any nurse aide certification scheduled to expire between March 1, 2020 and August 1, 2020 shall be extended until September 1, 2020.**

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.

**(e) Notwithstanding the above provisions, during the duration of the COVID-19 Public Health Emergency, any certified nurse aide whose certification is scheduled to expire between March 1, 2020 and August 1, 2020 shall be permitted to renew his or certification outside of the two-year window required in subsection (a) above, up to and until September 1, 2020.**

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.

6/8/2020  
DATE

BY: Judith M. Persichilli  
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COMMISSIONER  
DEPARTMENT OF HEALTH

WAIVER CONTROL NUMBER: 20-N.J.A.C. 8:39-43.4 and 43.6