

STATE OF NEW JERSEY
DEPARTMENT OF HEALTH

NOTICE OF RULE WAIVER/MODIFICATION/SUSPENSION

PURSUANT TO EXECUTIVE ORDER NO. 103 (MURPHY) (MARCH 9, 2020) AND
SUBSEQUENT EXECUTIVE ORDERS EXTENDING THE 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: May 11, 2021

Authority: N.J.S.A. App. A:9-45 & App. A:9-47; Executive Order No. 103 (Murphy) ("EO 103")
and subsequent Executive Orders extending the COVID-19 State of Emergency

Effective Date: March 20, 2021

Expiration Date: 30 days after the expiration of the COVID-19 Public Health Emergency

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, and subsequent Executive Orders 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:

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. In June 2020, PSI began reopening its sites on a limited basis, although it remains unclear when PSI 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 PSI continues to operate at a limited capacity during this 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 rule modification 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. On June 8, 2020, the Department extended the expiration date for CNAs whose certifications were due to expire between March 1, 2020 and August 1, 2020 until September 1, 2020. Thereafter, on December 12, 2021, the Department extended the expiration date for CNAs whose certifications were due to expire between March 1, 2020 and December 31, 2020 until March 19, 2021.

Because the public health emergency remains ongoing and PSI continues to operate at a limited capacity, some CNAs whose certifications expire subsequent to March 19, 2021 will 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 further waive/modify the requirements in N.J.A.C. 8:39-43.4(a) and N.J.A.C. 8:39-43.6(a).

Pursuant to this temporary rule waiver/modification, the expiration date of any nurse aide certification scheduled to expire between March 1, 2020 and the date the COVID-19 Public Health Emergency expires or terminates shall be extended until thirty (30) days after the date the COVID-19 Public Health Emergency expires or terminates. Additionally, any certified nurse aide whose certification is scheduled to expire between March 1, 2020 and the date the COVID-19 Public Health Emergency expires or terminates shall be permitted to renew his or certification outside of the two-year renewal window, up to and until thirty (30) days after the expiration or termination of the COVID-19 Public Health Emergency.

Thirty (30) days after the expiration or termination of the COVID-19 Public Health Emergency, 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 Maria Christensen, Assistant Commissioner, Certificate of Need and Healthcare Facility Licensure Program at 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 Certificates

(a)– (d) (No Change.)

(e) Notwithstanding (a)-(d) above, the expiration date of any nurse aide certification scheduled to expire between March 1, 2020 and the date the COVID-19 Public Health Emergency expires or terminates shall be extended until thirty (30) days after the date the COVID-19 Public Health Emergency expires or terminates.

8:39-43.6 — Recertification

(a)-(e) (No Change.)

(f) Notwithstanding (a) – (e) above, any certified nurse aide whose certification is scheduled to expire between March 1, 2020 and the date the COVID-19 Public Health Emergency expires or terminates shall be permitted to renew his or her certification outside of the two-year window required in subsection (a) above, and up to and until thirty (30) days after the expiration or termination date of the COVID-19 Public Health Emergency.

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 11, 2021
DATE

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

