



1 of 100 DOCUMENTS

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RULE PROPOSALS

**LAW AND PUBLIC SAFETY
DIVISION OF CONSUMER AFFAIRS
STATE BOARD OF NURSING**

47 N.J.R. 406(a)

Proposed Amendments: N.J.A.C. 13:37-5.5, 8.2, 8.3, 14.1, 14.2, 14.4, 14.5, 14.7, 14.10, and 14.15

Proposed Repeals and New Rules: N.J.A.C. 13:37-6.1, 6.2, 14.3, 14.6, 14.8, 14.12, 14.13, and 14.14

Proposed New Rules: N.J.A.C. 13:37-6.3, 6.4, 6.5, 6.6, 14.11, 14.15, and 14.17

Proposed Repeal: N.J.A.C. 13:37-14.9

[Click here to view Interested Persons Statement](#)

Delegation and Certification; Homemaker-Home Health Aides

Authorized By: State Board of Nursing, George Hebert, Executive Director.

Authority: N.J.S.A. 45:11-24 and P.L. 2013, c. 182.

Calendar Reference: See Summary below for explanation of exception to calendar requirement.

Proposal Number: PRN 2015-013.

Submit comments by April 3, 2015, to:

George Hebert, Executive Director
State Board of Nursing
Post Office Box 45010
Newark, New Jersey 07101

or electronically at: www.NJConsumerAffairs.gov/proposal/comment/.

The agency proposal follows:

Summary

The Board of Nursing (Board) proposes to amend the rules governing delegation of nursing tasks and the certification and practice of homemaker-home health aides to clarify the scope of practice for certified homemaker-home health aides and the process by which individuals obtain and renew certification.

The Board proposes to amend N.J.A.C. 13:37-5.5 to change the title of the "lapsed certification" fee to "reinstatement" fee to conform to N.J.S.A. 45:1-7.4.

N.J.A.C. 13:37-6 sets forth rules governing the delegation of nursing tasks. The Board proposes amendments to this subchapter to clarify the process that registered professional nurses should undertake when delegating nursing tasks to licensed practical nurses, certified homemaker-home health aides (CHHAs), and unlicensed assistive persons. The Board proposes to amend the heading of Subchapter 6 from "Nursing Procedures" to "Delegation and Supervision" as the subchapter deals solely with delegation.

Existing N.J.A.C. 13:37-6.1 states that nursing procedures will be determined by the Nursing Practice Act as interpreted by the Board. The Board proposes to repeal and replace the rule to set forth the purpose and scope of Subchapter 6, as proposed for change in this notice of proposal. Proposed new N.J.A.C. 13:37-6.1 recognizes that registered professional nurses are the only individuals who may delegate nursing tasks to licensed practical nurses, CHHAs, and assistive persons. A registered professional nurse is responsible to make the determination to delegate a task, assure that the person to whom a task has been delegated is able to perform the task, for providing oversight of the person to whom a task is delegated, for care that has not been delegated, and for the care a patient receives under his or her direction or supervision.

Existing N.J.A.C. 13:37-6.2 outlines the Board's policies regarding delegation of selected nursing tasks. The Board proposes to repeal this rule. Proposed new N.J.A.C. 13:37-6.2 sets forth definitions for terms used throughout Subchapter 6. These terms include, but are not limited to, "assignment," "assistive person," "direction," "delegation," "plan of care," and "supervision." These definitions differentiate between "assignment," which is a decision-making process by which a nurse allocates work to another nurse, and "delegation," which is the process by which a registered professional nurse transfers the authority to perform a task to a licensed practical nurse, CHHA, or an assistive person. The definitions also differentiate between "direction," which is the provision of guidance and instructions relating to the performance of delegated nursing tasks, and "supervision," which is the provision of on-going guidance by a registered professional nurse for a nursing task delegated to a CHHA or an assistive person at the outset and the provision of on-going oversight and availability.

Proposed new N.J.A.C. 13:37-6.3 states that only a registered professional nurse may delegate nursing tasks. If a registered professional nurse determines that delegating a nursing task is not consistent with standards of practice, he or she shall not delegate that task.

Proposed new N.J.A.C. 13:37-6.4 sets forth the responsibilities of a registered professional nurse when he or she delegates a nursing task. Prior to delegating a nursing task, a registered professional nurse must assess the needs of the client, determine that the task is within his or her scope of practice and that it can be safely delegated, and evaluate whether the person to whom a task will be delegated has the ability to perform the task. The registered professional nurse must communicate to the person to whom the task is delegated how the task relates to the patient's needs, the plan of care, and directions for the task. The nurse must also make an effort to ascertain that directions have been understood. The registered professional nurse must identify the nature of the direction a licensed practical nurse, or the supervision a CHHA or assistive person needs to perform a delegated task and convey to the licensed practical nurse, CHHA, or assistive person the nature of the direction or supervision that will be provided.

After delegating a task, a registered professional nurse will be required to document the tasks that have been delegated, the identity of the person to whom a delegation was made, and that the nurse went through the steps required to delegate the tasks. The nurse would have to evaluate patient outcomes and provide feedback to the person to whom the task was delegated. A registered professional nurse is, and always has been, permitted to delegate the administration of medications to licensed practical nurses and assistive persons. Pursuant to a proposed change in rules governing the practice of CHHAs, a registered professional nurse will be permitted to delegate the administration of medications to CHHAs as well. Proposed new N.J.A.C. 13:37-6.4 sets forth the information that must be documented in patient records when a registered professional nurse delegates the administration of medications to a licensed practical nurse, CHHA, or assistive person. When a registered professional nurse delegates the administration of medication, he or she will be required to advise the person to whom the delegation was made that he or she should document every time a medication is administered. The rule also requires the nurse to advise such a person to report when a medication is administered incorrectly, is not administered at all, or when the patient has an adverse reaction to the medication.

Proposed new N.J.A.C. 13:37-6.5 sets forth tasks that a registered professional nurse cannot delegate. These include the physical, psychological, and social assessment of the patient, which requires professional nursing judgment and the formulation of the plan of nursing care. A registered professional nurse cannot delegate any task if he or she determines that it is inappropriate to delegate the task.

Proposed new N.J.A.C. 13:37-6.6 states that Subchapter 6 applies only to delegation and does not apply to the assignment of nursing tasks between nurses.

N.J.A.C. 13:37-8.2 requires every individual who is licensed or certified by the Board to wear an identification tag when providing services. N.J.A.C. 13:37-8.3 establishes prohibitions on sexual misconduct for every individual licensed or certified by the Board. As all other rules dealing with the practice of CHHAs are codified in Subchapter 14, the Board believes that identification tag requirements and sexual misconduct prohibitions for CHHAs should be codified in Subchapter 14 as well. Accordingly, the Board proposes to amend N.J.A.C. 13:37-8.2 to remove reference to "certificate holders" and N.J.A.C. 13:37-8.3 to remove reference to "client." The Board also proposes to amend N.J.A.C. 13:37-8.2 to recognize that exemptions to identification tag requirements do not apply if a nurse is required to wear an identification tag by N.J.S.A. 34:8-79. The Board proposes new N.J.A.C. 13:37-14.12 to require CHHAs to wear identification tags. [page=407] Proposed new N.J.A.C. 13:37-14.12 recognizes that an exemption to the identification tag requirement does not apply if a CHHA is required to wear an identification tag by N.J.S.A. 34:8-79. The Board also proposes to amend N.J.A.C. 13:37-8.3 to remove reference to CHHAs and to clients. Proposed new N.J.A.C. 13:37-14.17 contains the sexual misconduct prohibitions for CHHAs that are currently in N.J.A.C. 13:37-8.3.

Throughout Subchapter 14, the term "certified homemaker-home health aide" has been replaced with "CHHA." N.J.A.C. 13:37-14.2 provides definitions for terms used in Subchapter 14. The Board proposes to amend this rule to: clarify language (definition of "activities of daily living"); add new terms that are used in amended Subchapter 14, ("Board," "CHHA," "community health nursing," "full-time," "home care services agency," "home-making activities," and "part-time"); and delete terms that are no longer used in Subchapter 14 ("homemaker-home health aide" and "program sponsor").

Existing N.J.A.C. 13:37-14.3 sets forth the duties of a CHHA. The Board proposes to repeal and replace the section to recognize that the section has been changed to include provisions regarding registered professional nurses who delegate to CHHAs and the obligations of CHHAs. The proposed new rule states that a CHHA may perform nursing tasks only if a registered professional nurse delegates those tasks. A CHHA may perform home-making activities at the request or assignment of a patient, patient's family, or registered professional nurse. A registered professional nurse will be required to review the plan of care with a CHHA assigned to a patient. This review must be face-to-face for any tasks the registered professional nurse determines the CHHA is not adequately prepared to perform. A CHHA must review the plan of care once it has been developed and whenever changes are made by the registered professional nurse.

Existing N.J.A.C. 13:37-14.3 prohibits a CHHA from administering medications. The Board proposes to change this requirement, so that a CHHA may administer medications pursuant to a delegation from a registered professional nurse. This change reflects Board standards on delegation that allow a registered professional nurse to delegate the administration of medications to any individual the registered professional nurse deems competent to safely administer medications. The proposed new rule requires a delegating registered professional nurse to document specific information in patient records, require a CHHA to document when he or she administers medications, and set forth situations when the CHHA must immediately notify the delegating registered professional nurse. Existing subsection (c), which established supervision standards, is not carried forward in the new rule, as the existing subsection is superseded by proposed new N.J.A.C. 13:37-6.3.

N.J.A.C. 13:37-14.4 deals with CHHA training programs. The rule is proposed for amendment to clarify language and to state that agencies and institutions must apply to the Board annually for training program approval. The Board proposes to delete a list of entities that qualify as home care services agencies and which may provide CHHA training programs. Proposed amendments to N.J.A.C. 13:37-14.2 provide a definition for home care service agencies and it is unnecessary to include this list in N.J.A.C. 13:37-14.4. The Board proposes to delete provisions that refer to home care agencies that are accredited by national accrediting bodies as legitimate training programs. N.J.S.A. 45:11-23 does not identify accreditation as a means of qualifying home care service agencies to provide CHHA training services. The proposed amendments state that instruction must be provided by individuals who meet the program instructor requirements of N.J.A.C. 13:37-14.8. The proposed amendments permit the Board to conduct on-site visits of training programs and to deny or revoke program approval if the program is not meeting the standards of Subchapter 14. A program

will be required to inform students that a criminal history background check is a pre-requisite for certification and to administer a competency evaluation examination.

N.J.A.C. 13:37-14.5 is proposed for amendment to require that CHHA training programs include instruction in Board statutes and rules.

Existing N.J.A.C. 13:37-14.6 sets forth the responsibilities of program sponsors. Existing N.J.A.C. 13:37-14.7 requires every program to have a program coordinator. The Board believes that it is not necessary to require CHHA training programs to have a sponsor and a coordinator. The Board proposes to repeal N.J.A.C. 13:37-14.6 and to incorporate the responsibilities of the program sponsor into the responsibilities of the program coordinator.

Proposed new N.J.A.C. 13:37-14.6 sets forth requirements for applying for CHHA training program approval from the Board. An application for approval must include the name and address of the agency, course dates and locations, anticipated number of students, and the name of the program coordinator. Applicants also must provide information regarding program instructors and the approval fee (set forth at N.J.A.C. 13:37-5.5(b)2).

N.J.A.C. 13:37-14.7 sets forth the responsibilities of program coordinators and is proposed for amendment to clarify language and to include the substance of existing N.J.A.C. 13:37-14.6. The proposed amendments revise the qualifications for program coordinators. The existing rule permits program coordinators to have full-time equivalent experience as a registered professional nurse. The proposed amendments establish that this full-time equivalent experience is four years of part-time work, two years of which must be in community health nursing or home care. The proposed amendments delete the existing responsibilities of the coordinator and establish new responsibilities that include the existing responsibilities of program coordinators and incorporate the existing responsibilities of program sponsors. The proposed amendments also require program coordinators to provide appropriately equipped classrooms and skills laboratories and require program coordinators to attend Board orientation sessions. Existing N.J.A.C. 13:37-14.7(c) states that coordinators who have a bachelor's or master's degree in a non-nursing field could qualify for an exemption to the requirement that coordinators have a bachelor's degree in nursing. The Board does not grant such exemptions as it believes that all coordinators should have a degree in nursing and the Board proposes to delete this provision.

N.J.A.C. 13:37-14.8 is proposed for repeal and replacement to require instructors to be registered professional nurses who have worked either full-time for two years, with one year in community health or home care, or part-time for four years, with two years in community health or home care, over the past five years. Assistants may provide instruction in a portion of a training program, as long as the assistant has one year of full-time or two years of part-time experience in the area being taught. The proposed new rule also requires that lesson plans cover the topics required by N.J.A.C. 13:37-14.4(g) and 14.15, requires instructors to develop and administer the competency evaluation examination, and deletes a provision that requires instructors to develop criteria to determine if a student has completed the training program.

Existing N.J.A.C. 13:37-14.9, which is proposed for repeal, outlines requirements for completion of a training program. The Board has relocated these requirements to existing N.J.A.C. 13:37-14.10.

Existing N.J.A.C. 13:37-14.10 is proposed for recodification as N.J.A.C. 13:37-14.9. The rule deals with applications for certification. The Board proposes to amend this rule to revise application requirements by introducing new requirements that applications include evidence that they have passed the competency evaluation examination, and proof that they will be employed by home care services agencies. The proposed amendments state that the application includes the criminal history background check authorization form and delete a requirement that applicants submit evidence of good moral character. The Board does not receive information relevant to an applicant's qualifications for certification from the submission of evidence of good moral character and it is not necessary to require this documentation. Proposed amendments to the rule set forth the educational routes by which an applicant may qualify for certification and the criminal history background check and conditional certification process.

Existing N.J.A.C. 13:37-14.12 deals with waiver of the training program requirement for nursing students. The provisions of this rule have been incorporated into recodified N.J.A.C. 13:37-14.9 and the Board proposes to delete N.J.A.C. 13:37-14.12.

Existing N.J.A.C. 13:37-14.13 establishes standards for obtaining initial certification and renewing certification. The provisions of this rule have been incorporated into recodified N.J.A.C. 13:37-14.9 and proposed new N.J.A.C. 13:37-14.13. Therefore, the Board proposes to repeal N.J.A.C. 13:37-14.13.

[page=408] Existing N.J.A.C. 13:37-14.14 sets forth the reciprocity process to obtain Board certification for those certified as CHHAs in other states. The existing rule is proposed for repeal and replaced with proposed new N.J.A.C. 13:37-14.11. The rule is proposed for amendment to incorporate new standards for reciprocity from P.L. 2013, c. 182 (N.J.S.A. 45:1-7.1 et seq.). An applicant for certification through reciprocity would be certified in New Jersey if the state he or she is certified has substantially similar education and examination requirements to those in New Jersey, the applicant practiced as a CHHA in the other state for at least six months during the previous five years, the certification in the other state is in good standing, the applicant passes a criminal history background check, and the applicant designates an agent for service of process if he or she is not a New Jersey resident or does not have an office in New Jersey. An applicant would be required to submit an application, the application fee, a promise of employment letter from a home care services agency, and consent to, and the fee for, the criminal history background check. Certification in another state would not be considered in good standing if any action has been taken against the certification, any action has been taken against the applicant's privileges to practice in an out-of-State institution, there is a disciplinary proceeding pending that could affect the applicant's ability to practice, or there is a pending or final action taken against the CHHA by a criminal authority. Applicants would be required to have paid any fines levied by an out-of-State board for a certification to be in good standing. The Board could revoke a New Jersey certification that was obtained through fraud or misrepresentation. The Board could grant certification through reciprocity to an applicant whose out-of-State certification was not in good standing due to a pending action as long as the pending action does not demonstrate an inability to practice or indicate that certifying the applicant could adversely affect public health, safety, or welfare.

P.L. 2013, c. 182 sets forth standards for renewal of certification. These standards include procedures for renewal of certification, procedures for obtaining inactive certification and reactivating certification, procedures for the automatic suspension of certification for non-renewal, and procedures for the reinstatement of suspended certifications. The Board proposes new N.J.A.C. 13:37-14.13, 14.14, and 14.15 to effectuate these standards. Proposed new N.J.A.C. 13:37-14.13 requires the Board to send notices of renewals to CHHAs at least 60 days prior to the expiration of certification. The rule requires CHHAs to renew certification prior to the expiration of the certification. A CHHA may renew his or her certification as inactive. An inactive CHHA shall not practice as a CHHA. A CHHA who does not renew certification by the expiration date will have 30 days after the expiration date for late renewal. A CHHA who renews during this late renewal period would have to pay the late renewal fee in addition to the biennial renewal fee. If a CHHA fails to renew by the end of the late renewal period, his or her certification would be suspended without hearing. A suspended CHHA cannot practice as a CHHA.

Proposed new N.J.A.C. 13:37-14.14 establishes standards for reactivating an inactive certification pursuant to P.L. 2013, c. 182. An inactive CHHA seeking to reactivate would have to submit to the Board a renewal application, certification of employment listing every job held during the period of inactive certification, the renewal fee, and proof that the CHHA is or will be employed by a home care services agency. If a reactivation application indicates to the Board that the CHHA needs to address practice deficiencies prior to reactivation, the Board could require the CHHA to complete education or an examination. The Board could also impose monitoring or practice limitations on the CHHA as a condition of reactivation. The rule provides standards for determining whether a CHHA has practice deficiencies.

Proposed new N.J.A.C. 13:37-14.15 establishes standards for reinstating a suspended certification. A suspended CHHA seeking to reinstate certification would be required to submit to the Board a reinstatement application, certification of employment listing the jobs held during the period of suspension, the renewal fee for the current biennial renewal period, the renewal fee from the biennial renewal period immediately preceding the current biennial renewal period, the reinstatement fee, and proof that the person is or will be employed by a home care services agency. If a reinstatement application indicates to the Board that the CHHA needs to address practice deficiencies prior to reinstatement, the Board could require the CHHA to complete education or an examination. The Board could also impose monitoring or practice limitations on the CHHA as a condition of reactivation. The rule provides standards for determining whether a CHHA has practice deficiencies.

Recodified N.J.A.C. 13:37-14.16 is proposed for amendment to clarify language, recognize that the Board may suspend a CHHA training program, to remove references to the "program sponsor," and to correct citations for statutes. The proposed amendments delete a provision that states that decisions on violations constitute a public record. This provision is already established by N.J.S.A. 45:1-1 et seq.

The Board has determined that the comment period for this notice of proposal shall be 60 days; therefore, pursuant to N.J.A.C. 1:30-3.3(a)5, this notice is excepted from the rulemaking calendar requirement.

Social Impact

The Board believes that the proposed amendments, repeals, and new rules to Subchapter 6 will benefit registered professional nurses, the patients they serve, and the licensed practical nurses, CHHAs, and assistive persons to whom registered professional nurses delegate nursing tasks. The rules benefit registered professional nurses by providing criteria to determine when and how they should delegate. Such criteria provides the registered professional nurse guidance as to when a delegation is appropriate and when it is not, which will alleviate concerns registered professional nurses may have regarding delegation. The rules will benefit licensed practical nurses, CHHAs, and assistive persons because a registered professional nurse will more clearly understand the procedures to follow when delegating tasks and therefore will be more likely to delegate to them. Patients will benefit because the services that licensed practical nurses, CHHAs, and assistive persons perform will be properly supervised by the registered professional nurse and will only be performed by licensed practical nurses, CHHAs, or assistive persons whom a registered professional nurse deems able to safely perform the services. The proposed amendments, new rules, and amendments will also facilitate patients remaining in their homes.

The Board believes that the proposed amendments, repeals, and new rules to Subchapter 14 will have a positive impact on applicants for certification, CHHAs, and consumers who use their services. The proposed amendments, repeals, and new rules clarify for applicants the education they need in order to qualify for certification. The proposed amendments, repeals, and new rules also clarify the tasks a CHHA may perform and the level of supervision a CHHA needs in order to perform those tasks. This ensures that CHHAs will work in a safe and effective manner. The supervision and education standards contained in the proposed amendments, repeals, and new rules ensure that CHHAs will safely and effectively provide services to consumers who will benefit from the CHHAs' preparation.

Economic Impact

Proposed new N.J.A.C. 13:37-14.3 establishes new supervision standards for CHHAs, which may have an economic impact on entities that employ CHHAs. These new standards require registered professional nurses to review the nursing plan of care with CHHAs. This may impose costs on entities that are currently not providing adequate supervision of CHHAs in that these entities would have to employ additional registered professional nurses to provide appropriate supervision of CHHAs. The Board does not believe the proposed amendments, repeals, and new rules will have any other economic impact.

Federal Standards Statement

A Federal standards analysis is not required because there are no Federal laws or standards applicable to the proposed amendments, repeals, and new rules.

Jobs Impact

The proposed amendments, repeals, and new rules may result in a slight increase in the number of jobs for registered professional nurses in that home care services agencies may need to employ more registered professional nurses to provide the supervision required by proposed new N.J.A.C. 13:37-14.3. The Board does not believe that the proposed amendments, repeals, and new rules will increase or decrease the number of jobs in New Jersey in any other way.

[page=409] Agriculture Industry Impact

The Board does not believe that the proposed amendments, repeals, and new rules will have any impact on the agriculture industry of this State.

Regulatory Flexibility Analysis

Since nurses are individually licensed by the Board, they may be considered "small businesses" under the Regulatory Flexibility Act (the Act), N.J.S.A. 52:14B-16 et seq. N.J.S.A. 45:11-23 requires that CHHAs be employed by home care services agencies. As such, CHHAs would not be considered "small businesses" under the Act. Training programs for CHHAs and entities that employ CHHAs may be considered "small businesses" under the Act.

The economic impact on small businesses is the same as the impact on all businesses as discussed in the Economic Impact above. The Board does not believe that licensees or training programs will need to employ any professional services to comply with the requirements of the proposed amendments, repeals, and new rules. Entities that employ CHHAs may need to employ additional registered professional nurses to provide the supervision of CHHAs required by

the proposed amendments, repeals, and new rules. The proposed amendments, repeals, and new rules impose compliance, reporting, and recordkeeping requirements as outlined in the Summary above.

The Board believes that because the proposed amendments, repeals, and new rules protects the welfare and safety of the public when a registered professional nurse delegates a nursing task and when the public deals with CHHAs aides by ensuring that CHHAs are properly trained and supervised. As such, the proposed amendments, new rules, and repeals must be applied uniformly to all licensees, training programs, and entities that employ CHHAs regardless of their size.

Housing Affordability Impact Analysis

The proposed amendments, repeals, and new rules will have an insignificant impact on affordable housing in New Jersey and there is an extreme unlikelihood that the rules would evoke a change in the average costs associated with housing because the proposed amendments, new rules, and repeals concern delegation by registered professional nurses and the certification and regulation of CHHAs.

Smart Growth Development Impact Analysis

The proposed amendments, repeals, and new rules will have an insignificant impact on smart growth and there is an extreme unlikelihood that the rules would evoke a change in housing production in Planning Areas 1 or 2, or within designated centers, under the State Development and Redevelopment Plan in New Jersey because the proposed amendments, new rules, and repeals concern delegation by registered professional nurses and the certification and regulation of CHHAs.

Full text of the rules proposed for repeal may be found in the New Jersey Administrative Code at N.J.A.C. 13:37-6.1, 6.2, 14.3, 14.6, 14.8, 14.9, 14.12, 14.13, and 14.14.

Full text of the proposed amendments and new rules follows (additions indicated in boldface **thus**; deletions indicated in brackets [thus]):

SUBCHAPTER 5. GENERAL REQUIREMENTS OF LICENSURE; LICENSE RENEWAL; FEE SCHEDULE

13:37-5.5 Fee schedule

(a) (No change.)

(b) The following fees shall be charged by the Board in connection with certification of homemaker-home health aides:

1.-7. (No change.)

8. [Lapsed certification] Reinstatement fee (after 30 days).....	20.00 plus the certification renewal fee set forth in (b)6 above
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9.-10. (No change.)

(c)-(f) (No change.)

SUBCHAPTER 6. [NURSING PROCEDURES] **DELEGATION AND SUPERVISION**

13:37-6.1 Purpose and scope

(a) This subchapter governs the delegation of nursing tasks by a registered professional nurse to licensed practical nurses, certified homemaker-home health aides (CHHAs), or assistive persons.

(b) Only a registered professional nurse has the authority to delegate nursing tasks to a licensed practical nurse, a CHHA, or an assistive person.

(c) A registered professional nurse who delegates a nursing task is responsible for having made the determination to delegate the task, to assure that the person to whom the task is delegated is trained and competent to perform the task, for providing the appropriate oversight to the person to whom the task is delegated, and the provision of all care that has not been delegated.

(d) A registered professional nurse is responsible for the care that a patient receives under his or her direction or supervision and accountable for the manner in which the task is performed and outcomes of care.

13:37-6.2 Definitions

The following words and terms, when used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise.

"Assessment" means the in-person evaluation of a patient conducted by a registered professional nurse to establish a baseline of the patient's physical and functional status and to identify the level and nature of services needed to meet the patient's needs.

"Assignment" means a decision-making process by which a nurse allocates work to another nurse.

"Assistive person" means an unlicensed individual, regardless of title, to whom tasks are delegated. "Assistive person" does not include a licensed practical nurse or a CHHA who is subject to the jurisdiction of the Board of Nursing, but may include other persons not subject to jurisdiction of the Board of Nursing, but regulated or certified by other agencies.

"CHHA" means a certified home-maker home health aide who holds a certification issued by the Board of Nursing, after completing a training program and having passed a competency examination, pursuant to N.J.S.A. 45:11-24.

"Delegation" means transferring, from a registered professional nurse to a licensed practical nurse, a CHHA, or an assistive person, the authority and responsibility to perform a nursing task, while retaining accountability for overall care.

"Direction" means the provision of guidance and instructions relating to the performance of a delegated nursing task. "Direction" requires that guidance be provided at the outset, but does not require the same degree of on-going oversight as is required if supervision is to be provided.

"Plan of care" means a documented delineation of the proposed treatment to be provided to a patient, including, but not limited to, patient diagnoses or problems, the short-term and long-term goals for patient care and discharge, developed by a registered professional nurse, specifying any nursing tasks to be delegated to a licensed practical nurse, a CHHA, or an assistive person.

"Supervision" means the provision of on-going guidance by a registered professional nurse for a nursing task delegated to a CHHA or an assistive person at the outset, as well as the provision of on-going oversight and availability, as determined appropriate in the professional judgment of the registered professional nurse.

13:37-6.3 Authorized delegation

(a) Only a registered professional nurse may delegate nursing tasks.

(b) A registered professional nurse shall not delegate if the nurse, in his or her professional judgment, determines that such delegation is not consistent with standards of practice.

[page=410] 13:37-6.4 Registered nurse obligations relating to delegations to a licensed practical nurse, CHHA, or assistive person

(a) Prior to delegating any nursing task to a licensed practical nurse, a CHHA, or an assistive person, the registered professional nurse shall:

1. Conduct an assessment of the needs of the patient and develop a plan of care;
2. Determine that the task to be delegated is within the registered professional nurse's scope of practice, generally involves predictable results, without life-threatening consequences, and can be performed without requiring judgment based on nursing knowledge, repeated nursing assessments during the performance of the task, or complex observation or critical decisions;
3. Evaluate the training, knowledge, and skills of the licensed practical nurse, the CHHA, or the assistive person to whom the task is to be delegated, assuring that the tasks to be delegated do not require skills and knowledge that exceed those that have been satisfactorily established, by verifying the credentials as to licensed practical nurses and CHHAs, and assessing the competencies achieved through their training and experience, or, in the case of an assistive person, evaluating competencies through direct observation or through policy and procedures of the institution or agency that address the knowledge, and skills of the assistive person to perform the nursing task;
4. Communicate to the licensed practical nurse, the CHHA, or the assistive person the task that is being delegated and how it relates to the patient's needs and the plan of care, the directions for that task and the expectations for that task, in clear, concise, correct, and complete terms, and make efforts to ascertain that the directions have been understood;
5. Identify the nature of the direction that will be provided to the licensed practical nurse or supervision to the CHHA, or assistive person, based on consideration of the following factors:
 - i. The stability and condition of the patient;
 - ii. The nature and complexity of the task;
 - iii. The proximity and availability of the registered professional nurse to the licensed practical nurse, the CHHA, or assistive person;
 - iv. The nature of the setting where the delegated task will be performed; and
 - v. The available means of communication between the registered professional nurse and the licensed practical nurse, CHHA, or assistive person, either through physical presence of the registered professional nurse or through real-time electronic means; and
6. Convey to the licensed practical nurse, the CHHA, or the assistive person, the nature of the direction or supervision to be provided and any obligations to report changes in the patient's status or untoward reactions.

(b) After delegating the nursing task to a licensed practical nurse, CHHA, or assistive personnel, the registered professional nurse shall:

1. Document, either in facility or health care service firm patient records or in records maintained by the registered professional nurse, the tasks that the registered professional nurse has delegated and to whom and that the registered professional nurse has gone through the steps required by (a)1 through 6 above;

2. Evaluate patient outcomes, assessing whether the desired and/or expected outcomes were achieved, addressing any problems, concerns, or changes in conditions, as may be applicable; and

3. Provide feedback to the licensed practical nurse, CHHA, or assistive person.

(c) When delegating the administration of a specific medication to a licensed practical nurse, a CHHA, or an assistive person, the registered professional nurse shall ensure that the facility patient record or record maintained by the registered professional nurse includes:

1. The specific medication whose administration has been delegated;
2. Any specific instructions the registered nurse provided as part of that delegation;
3. The duration of the delegation;
4. A timeframe for the professional registered nurse to reevaluate the patient;
5. The dosage of the medication, route of administration for the medication, and frequency of the medication;
6. Any side effects that the licensed practical nurse, the CHHA, or the assistive person should watch for;
7. Any contraindications to administering the medication;
8. Any conditions that would require the licensed practical nurse, CHHA, or assistive person to contact the registered professional nurse;
9. Any instructions on positioning of the patient prior to and after the administration of the medication; and
10. The instructions for proper preparation and maintenance of the medication.

(d) When delegating the administration of medication to a licensed practical nurse, a CHHA, or an assistive person, the registered professional nurse shall advise the person whom the task is delegated to:

1. Document every time that the medication is administered; and
2. Report immediately to the delegating registered professional nurse, if:
 - i. The medication was administered at the wrong time;
 - ii. The wrong dose of medication was administered;
 - iii. The wrong medication was administered;
 - iv. The medication was administered through the wrong route;
 - v. The medication was not administered;
 - vi. The patient refused to take the medication; or
 - vii. The patient evidences any adverse reaction or side-effects to the medication.

13:37-6.5 Non-delegable nursing tasks

(a) If, after undertaking the steps required by N.J.A.C. 13:37-6.4(a), as to whether a task should be delegated, a registered professional nurse determines that delegation of a task is inappropriate, the nurse shall not delegate the task.

(b) A registered professional nurse shall not delegate the physical, psychological, and social assessment of the patient, which requires professional nursing judgment, intervention, referral, or modification of care.

(c) A registered professional nurse shall not delegate the formulation of the plan of nursing care and evaluation of the effectiveness of the plan.

13:37-6.6 Assignment

The requirements of this subchapter apply solely to delegation. These requirements are not applicable when a registered professional nurse makes an assignment to another registered professional nurse, when a registered professional nurse makes an assignment to a licensed practical nurse, when a licensed practical nurse makes an assignment to a registered professional nurse, or when a licensed practical nurse makes an assignment to another licensed practical nurse.

SUBCHAPTER 8. NURSING PRACTICE

13:37-8.2 Identification tags

(a) Each licensee [or certificate holder] shall wear an identification tag when engaging in the practice for which the individual is licensed [or certified]. The identification tag shall be clearly visible at all times, and such tag shall bear the first name or initial, the full surname and the term reflecting the individual's level of licensure [or certification], for example, Registered Nurse or R.N. The letters on the tag shall be of equal size in type, not smaller than one-quarter inch. The size of the identification tag shall be equal to or greater than that of any other identification worn by the licensee [or certificate holder].

(b) Where a general hospital requires a facility staff member who is a licensee [or a certificate holder] to wear an identifying badge pursuant to P.L. 1997, [c.76] c. 76 (N.J.S.A. 26:2H-12.8a), that staff member need [only] wear only one identification badge, as long as the badge meets requirements of both P.L. 1997, [c.76] c. 76 (N.J.S.A. 26:2H-12.8a) and (a) above.

[page=411] (c) In order to protect his or her personal safety or to prevent the substantial invasion of his or her privacy, or to prevent the identification tag from causing physical harm to the patient, a licensee [or certificate holder] may request an exemption from the requirements of (a) above. Such requests for an exemption shall be made by the licensee [or certificate holder] in writing to the Board and shall set forth the reasons why wearing the tag would endanger the licensee's [or the certificate holder's] personal safety, substantially invade the licensee's [or the certificate holder's] privacy, or physically harm a patient.

(d) (No change.)

(e) The exemption set forth in (c) above shall not apply to a nurse providing home-based services for a registered health care service firm who is required to wear an identification tag pursuant to N.J.S.A. 34:8-79.

13:37-8.3 Sexual misconduct

(a) This section shall apply to all advanced practice nurses, registered professional nurses, **and** licensed practical nurses [and homemaker-home health aides] licensed or certified by the Board.

(b) As used in this section, the following terms have the following meanings unless the context indicates otherwise:

...

["Client or patient" means any person who is the recipient of nursing services or certified homemaker-home health care rendered by a licensee pursuant to N.J.S.A. 45:11-23 et seq.

"Client or patient relationship" means an association between a licensee and client or patient wherein the licensee owes a continuing duty to the client or patient to be available to render nursing services consistent with the licensee's education, training and experience.]

...

"Patient" means any person who is the recipient of nursing services rendered by a licensee pursuant to N.J.S.A. 45:11-23 et seq.

"Patient relationship" means an association between a licensee and patient wherein the licensee owes a continuing duty to the patient to be available to render nursing services consistent with the licensee's education, training, and experience.

"Sexual contact" means the knowing touching of a person's body directly or through clothing, where the circumstances surrounding the touching would be construed by a reasonable person to be motivated by the licensee's own prurient interest or for sexual arousal or gratification. "Sexual contact" includes the imposition of a part of the licensee's body upon a part of the [client or] patient's body, sexual penetration, or the insertion or imposition of any object or any part of a licensee or [client or] patient's body into or near the genital, anal, or other opening of the other person's body.

...

(c) A licensee shall not engage in sexual contact with a [client or] patient with whom he or she has a [client or patient-nurse] **patient** relationship. The [client or] patient relationship is considered ongoing for purposes of this section unless:

[1. For a homemaker-home health aide, the last homemaker-home health aide service was rendered more than three months prior;]

Recodify existing 2.-4. as **1.-3.** (No change in text.)

(d) A licensee shall not seek or solicit sexual contact with a [client or] patient with whom he or she has a [client or] patient relationship and shall not seek or solicit sexual contact with any person in exchange for nursing [or homemaker-home health aide] services.

(e) A licensee shall not engage in any discussion of an intimate sexual nature with a [client or] patient, unless that discussion is related to legitimate [client or] patient needs. Such discussion shall not include disclosure by the licensee of his or her own intimate sexual relationships.

(f) A licensee shall provide privacy and examination conditions [which] **that** prevent the exposure of the unclothed body of the [client or] patient unless necessary to the nursing [or homemaker-home health aide] services rendered.

(g) (No change.)

(h) A licensee shall not engage in any activity performed with a patient [or client which] **that** would lead a reasonable person to believe that the activity serves the licensee's personal prurient interests or is for the sexual arousal, [the] sexual [or] gratification of the licensee [or client] or patient, or which constitutes an act of sexual abuse.

(i) (No change.)

(j) Nothing in this section shall be construed to prevent a licensee from rendering nursing [or homemaker-home health aide] services to a spouse, providing that the rendering of such nursing services is consistent with accepted standards

and that the performance of nursing [or homemaker-home health aide] services is not utilized to exploit the [client or] patient for the sexual arousal or sexual gratification of the licensee.

(k) It shall not be a defense to any action under this section that:

1. The [client or] patient solicited or consented to sexual contact with the licensee; or
2. The licensee was in love with or had affection for the [client or] patient.

SUBCHAPTER 14. HOMEMAKER-HOME HEALTH AIDES

13:37-14.1 Purpose and scope

(a) The rules in this subchapter are designed to protect the health and safety of the public through certification of homemaker-home health aides (**CHHAs**), pursuant to N.J.S.A. 45:11-[24(d)(20)] **24.d(20)**.

(b) This subchapter prescribes standards and curricula for [homemaker-home health aide] **CHHA** education and training programs [which] **that** a [homemaker-home health aide] **CHHA**, as defined in this subchapter, is required to complete in order to work in this State. This subchapter also establishes standards and requirements for [homemaker-home health aide] **CHHA** certification and for the renewal, suspension, or revocation of that certification.

13:37-14.2 Definitions

The following words and terms, as used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise.

"Activities of daily living" means the functions or tasks for self-care, which are performed either independently or with supervision or assistance. Activities of daily living include [at least] mobility, transferring, walking, grooming, bathing, dressing, [and] undressing, eating, and toileting.

["Homemaker-home health aide" means a person who is employed by a home care services agency and who, under supervision of a registered professional nurse, follows a delegated nursing regimen or performs tasks which are delegated consistent with the provisions of N.J.A.C. 13:37-6.2.]

"Board" means the Board of Nursing.

"CHHA" means a certified homemaker-home health aide who is employed by a home care services agency and who, under supervision of a registered professional nurse, follows a delegated nursing regimen or performs tasks that are delegated consistent with the provisions of N.J.A.C. 13:37-6.4.

"Community health nursing" means professional nursing practice emphasizing health promotion, health maintenance, primary prevention, health education and management, coordination of health care services, and continuity of care for individuals, families, and groups in the community. "Community health nursing" includes home visits to assess, plan for, and provide nursing services; health guidance and direct care; and coordination of services with community resources, families, and other health professionals and paraprofessionals.

"Full-time" means that a person has worked at least 1,820 hours in a year.

"Home care services agency" means home health agencies, assisted living residences, comprehensive personal care homes, assisted living programs, or alternate family care sponsor agencies licensed by the Department of Health pursuant to P.L. 1971, c. 136 (N.J.S.A. 26:2H-1 et seq.), nonprofit homemaker-home health aide agencies, and health care service firms regulated by the Division of Consumer Affairs pursuant to P.L. 1989, c. 331 (N.J.S.A. 34:8-43 et seq.) and P.L. 1960, c. 39 (N.J.S.A. 56:8-1 et seq.), which are engaged in the business of procuring or offering to procure employment for homemaker-home health aides, where a fee may be exacted, charged, or received directly or indirectly for procuring or offering to procure that employment.

[page=412] **"Home-making activities"** means the functions and tasks that a CHHA may be asked to perform by the patient, the patient's family, or a delegating registered professional nurse that are necessary to provide the patient with an appropriate therapeutic environment and comfort at home, including shopping, errands, laundry, meal planning and preparation, including therapeutic diets, serving of meals, and child care.

"Part-time" means that a person has worked at least 1,040 hours in a year, but has not worked enough hours to qualify as **"full-time."**

...

["Program sponsor" means the agency, hospital or educational institution or entity granted approval by the Board of Nursing to conduct a homemaker-home health aide training program.]

13:37-14.3 Duties of a homemaker-home health aide; registered professional nurse delegation and direction

(a) A CHHA shall perform nursing tasks, including activities of daily living, only if delegated by a registered professional nurse.

(b) A CHHA may perform home-making activities, as requested or assigned by the patient, the patient's family, or a registered professional nurse responsible for the patient's care.

(c) When a CHHA is assigned to a patient that has already been assessed by a registered professional nurse, the registered professional nurse shall review the nursing plan of care with the CHHA. The registered professional nurse and CHHA shall meet face-to-face, if the registered professional nurse determines that the CHHA is not yet adequately prepared to perform the tasks that he or she would perform for the patient pursuant to a delegation from the registered professional nurse so that the registered professional nurse may provide instruction to the CHHA as to the manner in which the tasks shall be performed.

(d) A CHHA shall review the plan of care with a delegating registered professional nurse after the assessment has been conducted and a plan of care developed and whenever changes have been made to the plan of care by the registered professional nurse.

(e) A CHHA shall administer medications only if:

1. A registered professional nurse delegates the administration of a specific medication to the CHHA pursuant to N.J.A.C. 13:37-6.4(c);

2. The delegating registered professional nurse documents in the nursing plan of care and in the patient record kept by the CHHA's home care services agency:

i. The specific medication whose administration has been delegated;

ii. Any specific instruction the registered professional nurse provided to the CHHA as part of that delegation;

iii. The duration of the delegation;

iv. A timeframe for the professional registered nurse to reevaluate the patient;

v. The dosage of the medication, route of administration for the medication, and frequency of the medication;

vi. Any side effects that the CHHA should watch for;

vii. Any contraindications to administering the medication;

- viii. Any conditions that would require the CHHA to contact the registered professional nurse;
 - ix. Any instructions on positioning of the patient prior to and after the administration of the medication; and
 - x. The instructions for proper preparation and maintenance of the medication;
3. The CHHA shall document every time that he or she administers medications; and
4. The CHHA shall report immediately to the delegating registered professional nurse or his or her registered professional nurse designee if:
- i. The medication was administered at the wrong time;
 - ii. The wrong dose of medication was administered;
 - iii. The wrong medication was administered;
 - iv. The medication was administered through the wrong route;
 - v. The medication was not administered;
 - vi. The patient refused to take the medication; or
 - vii. The patient evidences any adverse reaction or side-effects to the medication.

13:37-14.4 [Homemaker-home health aide] CHHA training program

(a) An agency or educational institution shall apply to the Board pursuant to N.J.A.C. 13:37-14.6 for written approval to conduct a CHHA training program prior to the commencement of the training program. Program approval shall be valid for a 12-month period.

[(a)] **(b)** A [homemaker-home health aide] CHHA training program [may] **shall** be conducted by a home care agency [licensed by the Division of Consumer Affairs; a home health agency or hospital licensed by the Department of Health;] **or** an educational institution approved by the New Jersey State Department of Education or the [Department of] **Commission on** Higher Education.[]; or a home care agency accredited by an independent national or state accrediting body which is without direct or indirect financial interest in the agency. Said accrediting body shall have prior approval of the Board of Nursing.]

[(b)] **(c)** A [homemaker-home health aide] CHHA training program shall consist of at least 76 hours[, to] . **The program shall** include 60 hours of classroom instruction and 16 hours of clinical instruction in a skills laboratory or patient care setting, covering topics outlined in [(d)] **(g)** below and N.J.A.C. 13:37-14.5.

(d) The student-to-instructor ratio for classroom instruction shall not exceed 30 students to one classroom instructor.

[(c) The 16 hours of clinical instruction in a skills laboratory or patient care setting shall be supervised by a registered professional nurse. The supervision ratio shall not exceed 10 homemaker-home health aides to one registered professional nurse.]

(e) Classroom and clinical instruction shall be taught by an individual who meets the requirements of N.J.A.C. 13:37-14.8(a) and (b).

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

[(d)] **(g)** The curriculum for a [homemaker-home health aide] CHHA training program shall include instruction in:

1.-15. (No change.)

(e) Written approval of the Board of Nursing is required prior to commencement of the training program, which approval shall be granted for a 12-month period.

(f) At the discretion of the Board, program approval may be contingent upon a visit to the program site by a representative of the Board.

(g) The Board may deny or revoke program approval if the program sponsor does not meet the standards set forth in this subchapter.]

(h) The Board may conduct an on-site visit of any program prior to approval of the program, or at any other time, in order to ensure compliance with the requirements of this subchapter. If the on-site visit indicates that a program is not in compliance with this subchapter, the Board shall either deny approval of the program or revoke approval.

(i) The program shall inform an individual, before the individual is admitted to a CHHA training program, that a criminal history background check is a pre-requisite for certification as a CHHA.

(j) Every CHHA training program shall include a competency evaluation examination that tests a student's ability to complete the functions of a CHHA.

13:37-14.5 Home care and hospice care training programs

(a) In addition to the curriculum training requirements of N.J.A.C. 13:37-14.4[(d)] (g), the training program for a [homemaker-home health aide] **CHHA** in home care or hospice care shall include instruction in:

1. The role of the [homemaker-home health aide] **CHHA**, including:
 - i. Settings utilizing [homemaker-home health aides] **CHHAs**;
 - ii. Role of the [homemaker-home health aide] **CHHA**; and
 - iii. Legal and ethical considerations for the [homemaker-home health aide] **CHHA**;

2.-4. (No change)

5. Infant and child care, including:

- i. (No change.)
- ii. Family dynamics; [and]

6. The responsibility of an agency to the [homemaker-home health aide] **CHHA**, including:

[page=413] i.-vii. (No change.)

viii. Agency policies on patient and family confidentiality[.] ; **and**

7. Board statutes and rules governing CHHA practice (N.J.S.A. 45:11-24 through 24.9 and N.J.A.C. 13:37-14).

13:37-14.6 Application for CHHA training program approval

(a) A training program that seeks Board approval shall submit the following to the Board at least two months prior to the commencement of the training program:

1. A completed application for training program approval. The application form includes:

i. The name and address of the agency or school;

ii. The course dates and location;

iii. The anticipated number of students;

iv. The name and address of the program coordinator; and

v. If the program is conducted by a home care services agency, the agency's license or registration number issued by the Department of Health or the Division of Consumer Affairs.

2. An instructor approval application, which provides the name of the instructor assigned to each session;

3. The program approval fee for each location at which the program will be offered, as set forth in N.J.A.C. 13:37-5.5(b)2; and

4. Resumes of each instructor. Each resume shall include the instructor's:

i. Name;

ii. Address;

iii. Education (institution, type of degree or diploma, month and year of graduation);

iv. Work experience (employer's name and address, dates of employment, including month and year, job title, whether full-time or part-time); and

v. New Jersey nursing license number.

13:37-14.7 Program coordinator; **qualifications and** responsibilities

(a) The [homemaker-home health aide] **CHHA** training program shall be coordinated by a registered professional nurse licensed in New Jersey [with] **who**:

1. [A minimum of a bachelor's] **Holds a bachelor's or higher** degree in nursing; and

[2. At least two years of full-time or full-time equivalent experience as a registered professional nurse within the five-year period immediately preceding application, one year of which shall have been in community health, public health or home care.]

2. Has worked either:

i. Full-time for a total of two years as a registered professional nurse within the five-year period immediately preceding application, one year of which shall have been in community health nursing or home care; or

ii. Part-time for a total of four years as a registered professional nurse within the five-year period immediately preceding application, two years of which shall have been in community health nursing or home care.

[(b) The program coordinator's responsibilities shall include, but not be limited to, the following:

1. Ensuring that the curriculum is coordinated and implemented in accordance with this subchapter.

2. Establishing job descriptions indicating the responsibilities of each instructor;
3. Ensuring that each instructor meets the qualifications specified in N.J.A.C. 13:37-14.8;
4. Ensuring that the program sponsor has available the resume of each instructor;
5. Ensuring that each student is supervised by a registered professional nurse during the student's clinical experience;
6. Ensuring that the registered professional nurse supervising the student evaluates the student's clinical performance and transmits the results of the evaluation to the classroom nursing instructor; and
7. Ensuring that patient care provided during the training period by the student is provided in a safe and competent manner and that the tasks and procedures delegated to the student in accordance with N.J.A.C. 13:37-6.2 do not exceed the tasks and procedures which the student has satisfactorily demonstrated as documented by the registered professional nurse.

(c) Program coordinators who do not have a bachelor's degree in nursing but who are otherwise bachelor's or master's prepared and who began their employment on or before June 6, 1994 may qualify for an exemption from the requirements of subsection (a) subject to Board approval.]

(b) The program coordinator shall provide an appropriately equipped classroom and skills laboratory with sufficient equipment and resources to provide for efficient and effective theoretical and clinical learning experiences.

(c) The program coordinator shall have the following responsibilities:

- 1. Establishing and implementing policies and procedures for the program;**
- 2. Maintaining on file a copy of the core curriculum, as provided in N.J.A.C. 13:37-14.4(g), and the home care and hospice care curriculum, as provided in N.J.A.C. 13:37-14.5;**
- 3. Establishing methods to ensure that students who have missed classroom or clinical instruction receive the instruction that has been missed;**
- 4. Establishing and maintaining records for each student, which may be maintained electronically. The student record shall include the following:**
 - i. The beginning and ending dates of the program session;**
 - ii. An attendance record, including the dates of any makeup sessions; and**
 - iii. Evaluation of the student's performance by the classroom instructor and by the registered professional nurse who supervised the student's clinical instruction;**
- 5. Developing, implementing, and maintaining on file, which may be maintained electronically, a plan for evaluating the effectiveness of the program. The evaluation plan shall include the following:**
 - i. The name of the person responsible for conducting the evaluation plan;**
 - ii. An annual written training program evaluation report, including findings, conclusions, and recommendations;**
 - iii. A written evaluation of instructor performance;**
 - iv. Program, instructor, and student data, which shall include the following:**

- (1) The beginning and ending dates of each program session;
 - (2) The number of students enrolled;
 - (3) The number and percentage of students who successfully completed the program; and
 - (4) The number and percentage of students who failed the program;
6. Ensuring that the curriculum includes the information required pursuant to N.J.A.C. 13:37-14.4(g) and 14.5;
7. Establishing job descriptions indicating the responsibilities of each instructor;
8. Ensuring that each instructor meets the qualifications specified in N.J.A.C. 13:37-14.8;
9. Ensuring that the program is in compliance with this subchapter; and
10. Submitting to the Board eligibility lists detailing those students who have successfully completed a homemaker-home health aide program.

(d) The program coordinator shall notify the Board of Nursing in writing:

- 1. Within two weeks of a change in location or instructor; and
- 2. Immediately of a cancellation of a training program.

(e) Program coordinators shall attend orientation sessions held by the Board.

13:37-14.8 Program instructor: qualifications and responsibilities

(a) Classroom and clinical instruction in a CHHA training program shall be provided by a registered professional nurse licensed in New Jersey who has worked either:

[page=414] 1. Full-time for two years as a registered professional nurse within the past five years, one year of which shall have been in community health or home care; or

2. Part-time for four years as a registered professional nurse within the past five years, two years of which shall have been in community health or home care.

(b) A CHHA training program that has an instructor who meets the requirements of (a) above may allow a person who does not meet the requirements of (a) above to assist the instructor during the training program, if that person has a minimum of one year of full-time or two years of part-time experience in the area being taught.

(c) Program instructors who began their current employment position before June 6, 1994, need not meet the requirements of (a) above.

(d) The program instructor's responsibilities shall include the following:

- 1. Developing a lesson plan that covers the topics required pursuant to N.J.A.C. 13:37-14.4(g) and 14.5; and
- 2. Developing and administering the competency evaluation examination required by N.J.A.C. 13:37-14.4(j).

13:37-[14.10] **14.9** Application for CHHA certification[; documents required]

(a) An applicant for certification as a [homemaker-home health aide] CHHA shall submit the following to the Board:

1. Evidence [of satisfactory completion of] **that the applicant satisfactorily completed a [homemaker-home health aide] CHHA training program approved by the Board, including the competency evaluation examination required by N.J.A.C. 13:37-14.4(j);**

2. Evidence that the applicant has completed the education requirements of (b) below;

3. A completed Criminal History Certification of Authorization form for the applicant;

4. Proof that the applicant is employed, or will be employed, by a home care services agency; and

[2. Evidence in such form as the Board may prescribe that the applicant is of good moral character, is not a habitual user of controlled substances and has never been convicted or of pleaded nolo contendere, non vult contendere or non vult to an indictment, information or complaint alleging violation of a Federal or state law; and]

[3.] **5. The application fee and initial certification fee as set forth in N.J.A.C. 13:37-[5.8(b)1] 5.5(b).**

(b) Applicants for certification shall qualify for certification by either:

1. Completing a CHHA training program approved by the Board pursuant to N.J.A.C. 13:37-14.6;

2. Holding certification as a nurse aide from the Department of Health and completing a course that covers the information required by N.J.A.C. 13:37-14.5; or

3. Successfully completing a clinical nursing course in a registered professional nursing education program or a licensed practical nursing education program, which includes basic nursing theory and skills.

(c) An applicant shall have completed the education required by (b)1 or 3 above no more than six months prior to an application for certification being submitted to the Board. An education program completed more than six months prior to submission shall not qualify an applicant for certification.

(d) Prior to receipt of the results of a criminal history background check pursuant to N.J.S.A. 45:11-24.4, the Board shall issue a conditional certification to an applicant upon receiving the items required under (a) above, as long as the applicant attests in the application that he or she has not been convicted of a disqualifying crime or disorderly persons offense pursuant to N.J.S.A. 45:11-24.3. The conditional certification shall be valid for up to 120 days.

(e) An applicant who indicates on the application that he or she has been convicted of a disqualifying crime or disorderly persons offense pursuant to N.J.S.A. 45:11-24.3 shall not be eligible for a conditional certification. Once the criminal history background check has been completed for an applicant who has indicated that he or she has been convicted of a disqualifying crime or disorderly persons offense, the applicant shall have 30 days to submit information to the Board demonstrating that he or she has been rehabilitated. The Board shall determine if this information demonstrates that the applicant has been rehabilitated pursuant to N.J.S.A. 45:11-24.3 and if it should issue certification to the applicant.

(f) Once the Board receives the results of a criminal history background check for an applicant who has indicated that he or she has not been convicted of a crime or disorderly persons offense, it shall:

1. Issue a homemaker-home health aide certificate to the applicant, if the criminal history background check indicates that the applicant has never been convicted of a crime or disorderly persons offense;

2. Review the nature of the crime or disorderly persons offense and determine if it should issue a CHHA certificate to the applicant, if the criminal history background check indicates that the applicant has been convicted of a crime or disorderly persons offense that is not categorized as a disqualifying crime or disorderly persons offense pursuant to N.J.S.A. 45:11-24.3; or

3. Revoke the conditional certificate, if the criminal history background check indicates that the applicant has been convicted of a disqualifying crime or disorderly persons pursuant to N.J.S.A. 45:11-24.3. An applicant shall have 30 days to submit information disputing the accuracy of the criminal history background check. The Board shall review the information submitted by the applicant to determine if it should issue a certificate to the applicant.

13:37-[14.11] **14.10** (No change in text.)

13:37-14.11 Certification by reciprocity

(a) Upon receipt of a completed application, application fee, promise of employment letter from a New Jersey home care services agency, consent to a criminal history record background check, and requisite fee for such a check, the Board shall issue certification as a CHHA to any person who documents that he or she holds a valid, current CHHA certification in good standing issued by another state, if:

- 1. The Board determines that the state that issued the certification has or had at the time of issuance, education, training, and examination requirements for certification substantially equivalent to the current standards of this State;**
- 2. The applicant has been practicing as a CHHA for a period of at least six months within the five years prior to the date of application; and**
- 3. The requirements of (b) below are satisfied.**

(b) Prior to the issuance of the certification in (a) above, the Board shall have received:

- 1. Documentation satisfactory to the Board that the applicant's certification in any other state in which the applicant is licensed is in good standing;**
- 2. The results of a criminal history record background check of the files of the Criminal Justice Information Services Division in the Federal Bureau of Investigation and the State Bureau of Identification in the Division of State Police do not disclose a conviction for a disqualifying crime; and**
- 3. Designation of an agent in this State for service of process, if the applicant is not a State resident and does not have an office in this State.**

(c) For purposes of this section, "good standing" means that:

- 1. No action has been taken against the applicant's certification by any licensing board;**
- 2. No action adversely affecting the applicant's privileges to practice as a CHHA has been taken by any out-of-State institution, organization, or employer;**
- 3. No disciplinary proceeding is pending that could affect the applicant's privileges to practice as a CHHA;**
- 4. All fines levied by any out-of-State board have been paid; and**
- 5. There is no pending or final action by any criminal authority for violation of law or regulation, or any arrest or conviction for any [page=415] criminal or quasi-criminal offense under the laws of the United States, New Jersey, or any other state, including, but not limited to: criminal homicide; aggravated assault; sexual assault, criminal sexual contact or lewdness; or any offense involving any controlled dangerous substance or controlled dangerous substance analog.**

(d) The Board, after a CHHA has been given notice and an opportunity to be heard, may revoke any certification based on a certification issued by another state obtained through fraud, deception, or misrepresentation.

(e) The Board may grant a certification without examination to an applicant seeking reciprocity who holds a corresponding certification from another state who does not meet the good standing requirement of (b) above due to a pending action by a licensing board, a pending action by an out-of-State institution, organization, or employer affecting the applicant's privileges to practice, a pending disciplinary proceeding, or a pending criminal charge or arrest for a crime provided the alleged conduct of the applicant that is the subject of the action, proceeding, charge, or arrest, assuming it is true, does not demonstrate a serious inability to practice as a CHHA, adversely affect the public health, safety, or welfare, or result in economic or physical harm to a person, or create a significant threat of such harm.

13:37-14.12 Identification tags

(a) Every CHHA shall wear an identification tag at all times while providing care to patients. The identification tag shall be clearly visible at all times and shall include the CHHA's first name or initial, the full surname, the words "homemaker-home health aide" and a photograph of the individual pursuant to P.L. 2002, c. 81. The letters on the tag shall be of equal size, in type not smaller than one-quarter inch. The size of the identification tag shall be equal to or greater than that of any other identification worn by the CHHA.

(b) In order to protect his or her personal safety, or to prevent the substantial invasion of his or her privacy, or to prevent the identification tag from causing physical harm to a patient, a CHHA may request an exemption from the requirements of (a) above. Such requests for an exemption shall be made by the CHHA in writing to the Board and shall set forth the reasons why wearing the tag would endanger the aide's personal safety, substantially invade the aide's privacy, or physically harm a patient.

(c) The exemption set forth in (b) above shall not apply to a CHHA providing home-based services for a registered health care service firm who is required to wear an identification tag pursuant to N.J.S.A. 34:8-79.

13:37-14.13 Renewal of certification

(a) The Board shall send a notice of renewal to each CHHA, at least 60 days prior to the expiration of the certification. The notice of renewal shall explain inactive renewal and advise the CHHA of the option to renew as inactive. If the notice to renew is not sent 60 days prior to the expiration date, no monetary penalties or fines shall apply to the CHHA for failure to renew provided that the certification is renewed within 60 days from the date the notice is sent or within 30 days following the date of certification expiration, whichever is later.

(b) A CHHA shall renew his or her certification for a period of two years from the last expiration date. The CHHA shall submit a renewal application to the Board, along with the renewal fee set forth in N.J.A.C.

13:37-5.5(b), prior to the date of certification expiration.

(c) A CHHA may renew his or her certification by choosing inactive status. A CHHA electing to renew his or her certification as inactive shall not practice as a CHHA, or hold him- or herself out as eligible to practice as a CHHA, in New Jersey until such time as the certification is returned to active status.

(d) If a CHHA does not renew the certification prior to its expiration date, the CHHA may renew the certification within 30 days of its expiration by submitting a renewal application, a renewal fee, and a late fee as set forth in N.J.A.C. 13:37-5.5(b). During this 30-day period, the certification shall be valid and the CHHA shall not be deemed practicing without certification.

(e) A CHHA who fails to submit a renewal application within 30 days of certification expiration shall have his or her certification suspended without a hearing.

(f) An individual who practices as a CHHA with a suspended certification shall be deemed to be engaging in the uncertified practice and shall be subject to action consistent with N.J.S.A. 45:1-14 et seq., even if no notice of suspension has been provided to the individual.

13:37-14.14 Certification reactivation

(a) A CHHA who holds an inactive certification pursuant to N.J.A.C. 13:37-14.13(c) may apply to the Board for reactivation of certification. A CHHA seeking reactivation of an inactive certification shall submit:

1. A renewal application;
2. A certification of employment listing each job held during the period of inactive certification, which includes the names, addresses, and telephone number of each employer;
3. The renewal fee for the biennial period for which reactivation is sought as set forth in N.J.A.C. 13:37-5.5(b); and
4. Proof that the person is employed by, or has a promise of employment from, a home care services agency.

(b) If a Board review of an application establishes a basis for concluding that there may be practice deficiencies in need of remediation prior to reactivation, the Board may require the applicant to submit to and successfully pass an examination or an assessment of skills, a refresher course, or other requirements as determined by the Board prior to reactivation of the certification. If that examination or assessment identifies deficiencies or educational needs, the Board may require the applicant as a condition of reactivation of certification to take and successfully complete education or training or to submit to supervision, monitoring, or limitations, as the Board determines are necessary to assure that the applicant practices with reasonable skill and safety. The Board may restore the certification subject to the applicant's completion of the training within a period of time prescribed by the Board following the restoration of the certification. In making its determination whether there are practice deficiencies requiring remediation, the Board shall consider the following:

1. Length of time the certification was inactive;
2. Employment history;
3. Professional history;
4. Disciplinary history and any action taken against the applicant by any licensing board;
5. Actions affecting the applicant's privileges taken by any institution, organization, or employer related to practice as a CHHA or other professional or occupational practice in New Jersey, any other state, the District of Columbia, or in any other jurisdiction;
6. Pending proceedings against any professional or occupational license or certificate issued to the applicant by a professional board in New Jersey, any other state, the District of Columbia, or in any other jurisdiction; and
7. Civil litigation related to practice as a CHHA or other professional or occupational practice in New Jersey, any other state, the District of Columbia, or in any other jurisdiction.

13:37-14.15 Certification reinstatement

(a) Pursuant to N.J.S.A. 45:1-7.1.c, an individual who has had his or her certification suspended pursuant to N.J.A.C. 13:37-14.13(e) may apply to the Board for reinstatement. An individual applying for reinstatement shall submit:

1. A reinstatement application;
2. A certification of employment listing each job held during the period of suspended certification, which includes the names, addresses, and telephone number of each employer;

3. The renewal fee for the biennial period for which reinstatement is sought as set forth in N.J.A.C. 13:37-5.5(b);
4. The past due renewal fee for the biennial period immediately preceding the renewal period for which reinstatement is sought as set forth in N.J.A.C. 13:37-5.5(b);
5. The reinstatement fee set forth in N.J.A.C. 13:37-5.5(b); and

[page=416] 6. Proof that the person is employed by, or has a promise of employment from, a home care services agency.

(b) If a Board review of an application establishes a basis for concluding that there may be practice deficiencies in need of remediation prior to reinstatement, the Board may require the applicant to submit to and successfully pass an examination or an assessment of skills, a refresher course, or other requirements as determined by the Board prior to reinstatement of certification. If that examination or assessment identifies deficiencies or educational needs, the Board may require the applicant as a condition of reinstatement of certification to take and successfully complete education or training or to submit to supervision, monitoring, or limitations, as the Board determines are necessary to assure that the applicant practices with reasonable skill and safety. The Board may restore certification subject to the applicant's completion of the training within a period of time prescribed by the Board following the restoration of the certification. In making its determination whether there are practice deficiencies requiring remediation, the Board shall consider the following:

1. Length of time the certification was suspended;
2. Employment history;
3. Professional history;
4. Disciplinary history and any action taken against the applicant by any licensing board;
5. Actions affecting the applicant's privileges taken by any institution, organization, or employer related to practice as a CHHA or other professional or occupational practice in New Jersey, any other state, the District of Columbia, or in any other jurisdiction;
6. Pending proceedings against any professional or occupational license or certificate issued to the applicant by a professional board in New Jersey, any other state, the District of Columbia, or in any other jurisdiction; and
7. Civil litigation related to practice as a CHHA or other professional or occupational practice in New Jersey, any other state, the District of Columbia, or in any other jurisdiction.

13:37-[14.15] **14.16** Duties and powers of the Board

(a) The Board may deny, [or] revoke, **or suspend a CHHA** training program approval if the program [sponsor] **coordinator** has failed to comply with N.J.S.A. 45:11-[24(d)(20) to (24)] **20 et seq.**, or **the requirements** of this subchapter.

(b) The Board may investigate complaints made against a **training program**, program [sponsor] **coordinator**, or [certified homemaker-home health aide] **CHHA** and may conduct [hearings] **inquiries** in connection with such complaints.

(c) The Board may suspend or revoke the certification of a [homemaker-home health aide] **CHHA** who has violated any provisions of N.J.S.A. 45:11-[24(d)(20) to (24)] **20 et seq.**, or **the requirements** of this subchapter.

(d) Any Board action [for certification suspension or revocation or training program revocation] **set forth in N.J.S.A. 45:1-21 and 22** shall take place only upon notice [to the licensee] and the opportunity for a hearing in accordance with 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) Decisions on violations shall be a public record maintained by the Board pursuant to N.J.S.A. 45:11-24(d)(20) and (24).]

13:37-14.17 Sexual misconduct

(a) The purpose of this section is to identify for CHHAs conduct that shall be deemed sexual misconduct.

(b) As used in this section, the following terms have the following meanings unless the context clearly indicates otherwise:

"Patient" means any person who is the recipient of services from a CHHA.

"Patient-aide relationship" means a relationship between a CHHA and a patient wherein the CHHA owes a continuing duty to the patient to perform nursing tasks a registered professional nurse has delegated to the CHHA, non-nursing tasks a registered professional nurse has directed the CHHA to perform, or home-making activities as requested by a patient or patient's family.

"Sexual contact" means the knowing touching of a person's body directly or through clothing, where the circumstances surrounding the touching would be construed by a reasonable person to be motivated by the CHHA's own prurient interest or for sexual arousal or gratification. "Sexual contact" includes the imposition of a part of the CHHA's body upon a part of the patient's body, sexual penetration, or the insertion or imposition of any object or any part of a CHHA or patient's body into or near the genital, anal, or other opening of the other person's body.

"Sexual harassment" means solicitation of any sexual act, physical advances, or verbal or non-verbal conduct that is sexual in nature, and which occurs in connection with a CHHA performing nursing tasks a registered professional nurse has delegated to the CHHA or non-nursing tasks a registered professional nurse has directed the CHHA to perform, and that either: is unwelcome, is offensive to a reasonable person, or creates a hostile workplace environment, and the CHHA knows, should know, or is told this; or is sufficiently severe or intense to be abusive to a reasonable person in that context. "Sexual harassment" may consist of a single extreme or severe act or of multiple acts and may include conduct of a CHHA with an individual whether or not such individual is in a subordinate position to the CHHA.

"Spouse" means the husband, wife, civil partner, domestic union partner, or fiancée of the CHHA or an individual involved in a long-term committed relationship with the CHHA. For purposes of the definition of "spouse," a long-term committed relationship means a relationship, which is at least six months in duration.

(c) A CHHA shall not engage in sexual contact with a patient with whom he or she has a patient-aide relationship. The patient-aide relationship is ongoing for purposes of this section, unless the last service provided to the patient was rendered more than three months ago.

(d) A CHHA shall not seek or solicit sexual contact with a patient with whom he or she has a patient-aide relationship and shall not seek or solicit sexual contact with any person in exchange for professional services.

(e) A CHHA shall not engage in any discussion of an intimate sexual nature with a person with whom the CHHA has a patient-aide relationship, unless that discussion is directly related to a task delegated by a registered professional nurse to the CHHA or which a registered professional nurse directed the CHHA to perform. Such discussion shall not include disclosure by the CHHA of his or her own intimate sexual relationships.

(f) A CHHA shall provide privacy conditions that prevent the exposure of the unclothed body of the patient unless necessary to the CHHA services rendered.

(g) A CHHA shall not engage in sexual harassment either within or outside of the professional setting.

(h) A CHHA shall not engage in any other activity, which would lead a reasonable person to believe that the activity serves the CHHA's personal prurient interests, which is for the sexual arousal or sexual gratification of the CHHA or patient, or which constitutes an act of sexual abuse.

(i) Violation of any of the prohibitions or directives set forth in (c) through (h) above shall constitute professional misconduct pursuant to N.J.S.A. 45:1-21.c and e.

(j) Nothing in this section shall be construed to prevent a CHHA from providing care to a spouse, providing that the provision of such care is consistent with accepted standards and that the performance of this care is not utilized to exploit the spouse for the sexual arousal or sexual gratification of the CHHA.

(k) It shall not be a defense to any action under this section that:

- 1. The patient solicited or consented to sexual contact with the CHHA; or**
- 2. The CHHA is in love with or held affection for the patient.**