

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

Temporary Rule **WAIVER/MODIFICATION OF N.J.A.C. 8:43I-2.9(c), Full Certification**

Date: **December 10, 2020**

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: **December 10, 2020**

Expiration Date: March 19, 2021

This is an emergency adoption of a temporary rule waiver/modification of N.J.A.C. 8:43I-2.9(c), which sets the criminal background clearance requirements for individuals seeking certification or recertification as a nurse aide. Section 6 of EO 103 and subsequent Executive Orders issued in response to the COVID-19 pandemic, authorize agency heads to waive, modify or suspend 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 has modified its rules as follows:

In order to be certified as a nurse aide in New Jersey, the individual seeking certification must pass an exam, which is administered by the Department of Health's contractor, PSI Services LLC, and obtain criminal background clearance from the Department of Health. Individuals seeking to renew their nurse aide certifications must apply for their renewal through PSI Services and also obtain criminal background clearance from the Department. Under N.J.A.C. 8:43I-2.9(c), the criminal background clearance notification issued by the Department advising an individual that he or she is qualified for certification or recertification as a nurse aide is only valid for a period of 180 days from the date of issuance. Thus, individuals seeking initial certifications as nurse aides must take and pass the nurse aide exam within 180 days of issuance of their criminal background clearance notifications in order to obtain certification. And, individuals seeking recertification as a nurse aide must apply for their renewals within 180 days of the date of the criminal background clearance notification. If the individual does not obtain certification or recertification upon the expiration of the 180 days of the date of the criminal background clearance notification, then the individual must initiate the fingerprinting process again, which is paid for by the Department.

As a result of the public health emergency caused by COVID-19, several health care-adjacent organizations throughout the State, including PSI Services, temporarily closed. Additionally, organizations conducting and processing fingerprints have either closed or significantly reduced their operating hours due to the public health emergency. These organizations have recently begun reopening their sites on a limited basis, although it remains unclear when they will be able to resume full operations.

Because of the temporary closure of PSI Services' sites during the public health emergency, certified nurse aides (CNAs) seeking renewals of their certifications after March 1, 2020 were experiencing difficulty with obtaining their recertifications. As a result, the Department issued a rule waiver/modification of N.J.A.C. 8:39-43.4(a) and N.J.A.C. 8:39-43.6(a) on June 8, 2020, which extended the expiration dates of any nurse aide certification scheduled to expire between March 1, 2020 and August 1, 2020 until September 1, 2020. While the certifications were extended, the expiration dates of the criminal background clearances remained at 180 days from the date of issuance. As such, CNAs seeking to renew their licenses during the COVID-19 pandemic were unable to do so because their criminal background clearances expired prior to obtaining their renewals.

Individuals seeking initial certification as a nurse aide during the COVID-19 pandemic were experiencing a similar fate as they were finding it difficult to sit for their exams due to PSI Services' limited operations. Consequently, these individuals were also facing the expiration of their criminal background clearances before they could obtain their certifications.

Due to the critical need for CNAs during the ongoing public health emergency, the Department issued a rule waiver/modification of N.J.A.C. 8:43I-2.9(c) on August 7, 2020, which extended the expiration date of criminal background clearance notifications issued by the Department to a CNA or CNA candidate between November 1, 2019 and March 31, 2020 for a period of 270 days from the date of issuance of the notice of qualification.

Because the public health emergency remains ongoing and PSI continues to operate at a limited capacity, some CNAs whose certifications expired subsequent to August 30, 2020 were unable to renew their certifications prior to their expiration in compliance with N.J.A.C. 8:39-43.6. As such, the Department issued an additional waiver/modification of N.J.A.C. 8:39-43.4(a) and N.J.A.C. 8:39-43.6(a) December 10, 2020, which extended the expiration date of any nurse aide certification scheduled to expire between March 1, 2020 and December 31, 2020 until March 19, 2021. In turn, the Department, through this rule modification, is providing an additional extension of the expiration date of criminal background clearance notifications issued to candidates to ensure that there is adequate staffing of CNAs in good-standing at long term care facilities throughout the State. Accordingly, the Department is extending the expiration dates of criminal background clearance notifications issued to CNAs and CNA candidates between November 1, 2019 and June 30, 2020 until March 19, 2021. If full certification is not obtained by March 19, 2021, the notice shall expire, and a new criminal history report must be obtained.

The remaining provisions set forth in N.J.A.C. 8:43I-2.9 shall remain in effect.

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

N.J.A.C. 8:43I-2.9 – FULL CERTIFICATION

(a) A conditionally certified nurse aide will be granted full, unrestricted certification, upon:

1. Completion of a NATCEP and passing the State skills and written or oral exam as required by N.J.A.C. 8:39-43; and

2. Receipt by the Department of the fingerprint supported criminal history record background check from both the Division of State Police and the Federal Bureau of Investigation indicating that either:

i. The person has no disqualifying convictions; or

ii. The person has disqualifying convictions, but the Department has issued a determination of rehabilitation in accordance with N.J.A.C. 8:43I-2.4.

(b) A nurse aide seeking to renew his or her certification will be issued a renewal authorization upon receipt by the Department of the fingerprint supported criminal history record background check indicating that either:

1. The person has no disqualifying convictions; or

2. The person has disqualifying convictions, but the Department has issued a determination of rehabilitation in accordance with N.J.A.C. 8:43I-2.4.

(c) Determinations that an individual is qualified for certification or recertification as a nurse aide are valid for a period of 180 days from the issuance of the qualification notice. If full certification is not obtained by the 180th day following the issuance of the notice of qualification, a new criminal history report must be obtained. The previous notice of qualification is deemed expired and invalid.

(d) Notwithstanding (c) above, criminal background clearance notifications issued to a CNA or CNA candidate between November 1, 2019 and March 31, 2020 are valid for a period of 270 days from the date of issuance of the notice of qualification. If full certification is not obtained by the 270th day following the issuance of the notice of qualification, the notice shall expire, and a new criminal history report must be obtained.

(e) Notwithstanding (c) and (d) above, criminal background clearance notifications issued to CNAs and CNA candidates between November 1, 2019 and June 30, 2020 are valid until March 19, 2021. If full certification is not obtained by March 19, 2021, the notice shall expire, and a new criminal history report must be obtained.

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



12/10/20

DATE

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

WAIVER CONTROL NUMBER: 20 – N.J.A.C. 8:43I-2.9