

## **EXECUTIVE DIRECTIVE NO. 20-004 (REVISED)**

### **Authorization for Long Term Care Facilities to Hire Out-of-State Certified Nurse Aides**

**WHEREAS**, Coronavirus disease 2019 (“COVID-19”) is a contagious, and at times fatal, respiratory disease caused by the SARS-CoV-2 virus; and

**WHEREAS**, on March 9, 2020, Governor Philip D. Murphy issued Executive Order No. 103, declaring the existence of a Public Health Emergency, pursuant to the Emergency Health Powers Act, N.J.S.A. 26:13-1 et seq., and a State of Emergency, pursuant to the Disaster Control Act, N.J.S.A. App A:9-33 et seq., in the State of New Jersey for COVID-19; and

**WHEREAS**, under the declared public health emergency, the Commissioner of the Department of Health was empowered, pursuant to N.J.S.A. 26:13-18(b), to appoint and prescribe the duties of out-of-state emergency health care providers as was reasonable and necessary to respond to the public health emergency, including waiving State licensing requirements concerning medical professional practice in New Jersey of health care providers from other jurisdictions; and

**WHEREAS**, during the public health emergency, the Department of Health recognized that long-term care facilities required the ability and flexibility to maximize staffing capabilities to care for and treat all of their residents, including those who may be affected by COVID-19, to ensure they receive appropriate and necessary medical care; and

**WHEREAS**, to ensure that long-term care facilities were able to enhance their staffing capabilities, particularly their certified nurse aide staff as they provide direct, hands-on care and support to the residents of these facilities, the Department of Health issued Executive Directive 20-004 on March 27, 2020, which authorized long-term care facilities to use certified nurse aides whose certification was in good standing in another State, and issued a rule waiver on April 14, 2020, which created a process for individuals to become temporary nurse aides and permitted long-term care facilities to use temporary nurse aides in their facilities; and

**WHEREAS**, in response to the COVID-19 public health emergency, the Centers for Medicare and Medicaid Services (CMS) enacted several temporary emergency declaration blanket waivers, including a modification of the nurse aide training requirements and the time limits in which a long-term care facility could employ a nurse aide who did not meet the certification requirements, which were intended to provide health care providers with extra flexibilities required to respond to the COVID-19 pandemic; and

**WHEREAS**, the Public Health Emergency was extended multiple times by Governor Murphy pursuant to various Executive Orders; and

**WHEREAS**, on June 4, 2021, Governor Murphy signed Assembly Bill No. 5820 into law as P.L.2021, c.103, and issued Executive Order No. 244, which terminated the Public Health Emergency declared in Executive Order No. 103 (2020); and

**WHEREAS**, P.L.2021, c.103 sought to enable the State to bring an end to its prior Public Health Emergency while still allowing for an orderly continuation of the Administration's ability to order certain public health measures relating to COVID-19, including but not limited to vaccine distribution, administration, and management, COVID-19 testing, health resource and personnel allocation, data collection, and implementation of recommendations of the Centers for Disease Control and Prevention ("CDC") to prevent or limit the transmission of COVID-19, including in specific settings; and

**WHEREAS**, P.L.2021, c.103 explicitly maintained the State of Emergency declared in Executive Order No. 103 (2020), and stated it would in no way diminish, limit, or impair the powers of the Governor to respond to any of the threats presented by COVID-19 pursuant to the Disaster Control Act; and

**WHEREAS**, in addition to leaving the prior State of Emergency in effect, nothing in P.L.2021, c.103 prevented the Governor from declaring any new public health emergency under the Emergency Health Powers Act, N.J.S.A. 26:13-1 et seq., should the evolving circumstances of COVID-19 require such a declaration; and

**WHEREAS**, on January 11, 2022, Governor Murphy issued Executive Order No. 280, declaring the existence of a new Public Health Emergency, pursuant to the Emergency Health Powers Act, N.J.S.A. 26:13-1 et seq., and continuing the State of Emergency declared in Executive Order No. 103 (2020) pursuant to the Disaster Control Act, N.J.S.A. App. A:9-33 et seq., in the State of New Jersey due to the surge of cases and hospitalizations tied to the new variants of COVID-19; and

**WHEREAS**, on January 11, 2022, Governor Murphy also issued Executive Order No. 281, which extended various Executive Orders and State Agency waivers and directives to ensure that the State continued to have the necessary resources in place to respond to the new variants of COVID-19; and

**WHEREAS**, P.L. 2021, c. 326, as amended by P.L. 2021, c. 368, effective January 12, 2022, provides a pathway for a temporary nurse aide to gain full certification as a nurse aide; and

**WHEREAS**, the Department of Health's Executive Directive 20-004 was included in the list of administrative directives extended under Executive Order No. 281; and

**WHEREAS**, on February 10, 2022, Governor Murphy issued Executive Order No. 288, which declared that the Public Health Emergency declared in Executive Order No. 280 (2022) continued to exist; and

**WHEREAS**, through Executive Order No. 288 (2022), Governor Murphy declared that all Executive Orders issued and actions taken by any Executive Branch department and agency, in whole or in part in response to the COVID-19 Public Health Emergency, remained in full force and effect; and

**WHEREAS**, because of the progress the State made and the decisive decrease in key statistics, such as the number of hospitalized patients in the State, the number of daily positive COVID-19 cases, spot positivity, and the rate of transmission, Governor Murphy issued Executive Order No. 292, which lifted the Public Health Emergency declared in Executive Order No. 280 (2022); and

**WHEREAS**, under Executive Order No. 292, the Governor found it critical to continue the Executive Orders and Administrative Orders, Directives, and Waivers issued in response to the COVID-19 Emergency to ensure that an orderly transition to the next phase of the State's COVID-19 recovery was done in a measured and thoughtful manner and, consequently, ordered that all actions taken by any Executive Branch departments and agencies in whole or in part to respond to the Public Health Emergency presented by the COVID-19 outbreak, and extended pursuant to Executive Order No. 281 (2022) and attached in the Appendix thereto, including but not limited to any Administrative Orders, Directives, and Waivers, remained in full force and effect pursuant to the Disaster Control Act, N.J.S.A. App. A:9-33 et seq, until revoked or modified by the department or agency head, or until the State of Emergency is no longer in effect, whichever is sooner; and

**WHEREAS**, in April and May 2022, CMS issued notices advising that its blanket nurse aide waivers regarding training and certification were terminated; however, CMS provided those individuals who were working as nurse aides under its blanket waivers with flexibility to remain employed as nurse aides until they became certified, if certain conditions and requirements were met; and

**WHEREAS**, to ensure that long-term care facilities have the necessary resources to meet their nurse aide staff requirements and to avoid confusion regarding the avenues provided to temporary nurse aides by both the Department and CMS to gain full certification as nurse aides and remain employed at facilities while they gain certification; I find that Executive Directive 20-004 remains necessary during the current phase of the COVID-19 response, as modified below.

**NOW, THEREFORE, I, JUDITH PERSICILLI**, Commissioner of the Department of Health, hereby **ORDER** and **DIRECT** the following:

**TEMPORARY NURSE AIDES:**

In accordance with Centers for Medicare & Medicaid Services (CMS) QSO-22-15 -NH & NLTC & LSC, and CMS QSO-22-17-NH, an individual may be employed as a temporary nurse aide, and may be qualified to be certified as a nurse aide, if:

a. between the first day of the public health emergency declared in response to COVID-19 and January 11, 2022:

- (1) the temporary nurse aide successfully completed a training program and competency assessment authorized under a New Jersey waiver due to COVID-19 which included an online training component and an online examination, and, if so required, such additional training as may be required to satisfy the requirements of

42 C.F.R. s.483.152 or any other provision of federal law or regulation; and

(2) the temporary nurse aide worked a minimum of 80 hours under the supervision of a licensed professional nurse, and the temporary nurse aide's adequate competency during that period is established by a certification or letter from the director of nursing attesting to the temporary nurse aide's adequate competency; and

b. between the first day of the public health emergency declared in Executive Order No. 103 (2020) in response to COVID-19 and October 4, 2022, or the termination of any federal Waiver of the CMS requirements for the Training and Certification of Nurse Aides for SNF/NFs – 42 CFR SS483.35(d), whichever is later, the individual temporary nurse aide successfully completed:

(1) the criminal history record background check required pursuant to N.J.S.A.26:2H-83, except that, as permitted by N.J.S.A. 26:2H-84, an applicant for certification may be issued conditional certification and may be employed as a nurse aide conditionally for a period not to exceed 60 days, pending completion of a criminal history record background check if the person submits to the commissioner a sworn statement attesting that the person has not been convicted of any disqualifying crimes or disorderly persons offenses;

(2) a State-approved nurse aide written examination in no more than three attempts; and

(3) a State-approved clinical skills competency examination.

**CERTIFIED NURSE AIDE RECIPROCITY:**

1. Notwithstanding the provisions of N.J.S.A. 26:2H-87.1 and N.J.A.C. 8:39-43.9 addressing equivalency and reciprocity for certified nurse aides, long-term care facilities are authorized to use certified nurse aides whose certification is in good standing in another state.

2. Long-term care facilities must verify the validity of the out-of-state certification and maintain documentation of the verification, such as maintaining on file a print-out of an on-line verification.

3. Facilities are expected to maintain and offer out-of-state certified nurse aides a basic orientation addressing fire safety, infection control, and abuse as well as maintain relevant supervision requirements for the nurse aides.

This Executive Directive supersedes Executive Directive 20-004 issued on March 27, 2022. The provisions of this Executive Directive shall remain in full force and effective in accordance with Executive Order No. 292 (2022), unless otherwise modified, supplemented, superseded and/or rescinded.



Date: July 6, 2022

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Judith M. Persichilli, R.N., B.S.N., M.A.  
Commissioner