HEALTH

HEALTH SYSTEMS BRANCH

DIVISION OF CERTIFICATE OF NEED AND LICENSING

Standards for Licensure of Long-Term Care Facilities

Certification of Nurse Aides in Long-Term Care Facilities

Proposed Amendment: N.J.A.C. 8:39-43.10

Authorized By: Kaitlan Baston, MD, MSc, DFASAM, Commissioner, Department of

Health, with the approval of the Health Care Administration Board.

Authority: N.J.S.A. 26:2H-1 et seq., particularly 26:2H-5.

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

requirement.

Proposal Number: PRN 2025-046.

Submit written comments electronically to www.nj.gov/health/legal/ecomments.shtml by

July 4, 2025, or by regular mail postmarked by July 4, 2025, to:

> Kimberly Jenkins, Director
>
> Office of Legal and Regulatory Compliance
>
> Office of the Commissioner
>
> New Jersey Department of Health
>
> PO Box 360
>
> Trenton, NJ 08625-0360

The agency proposal follows:

Summary

Pursuant to N.J.A.C. 8:39-43.1(a), certification as a nurse aide (CNA) is a condition of a nurse aide's employment in a New Jersey licensed long-term care facility (LTCF). N.J.A.C. 8:39-43.10(n) establishes the minimum qualifications for individuals to serve as evaluators of a CNA candidate's performance of the clinical skills demonstration part of the competency evaluation for certification as a CNA. Existing N.J.A.C. 8:39-43.10(n) requires a nurse aide training program evaluator to be currently licensed in New Jersey as a registered professional nurse; possess at least three years of full-time or full-time equivalent experience working in a licensed health care facility; possess at least one year of full-time or full-time equivalent experience as a registered professional nurse in a licensed LTCF within the five years immediately preceding submission of the evaluator resume to the Certification Program of the Department of Health (Department) for approval; and have successfully completed a training workshop offered by the Department.

On November 17, 2022, the Department received a petition for rulemaking from Theresa Edelstein, Senior Vice President, Center for Partnerships Transforming Health, New Jersey Hospital Association, Princeton, NJ (petitioner) (see 55 N.J.R. 219(a) (notice of receipt of petition for rulemaking)). The petitioner requested that the Department amend the Standards for Licensure of Long-Term Care Facilities at N.J.A.C. 8:39-43.10(n), relating to nurse aide evaluators. Specifically, the petitioner requested that the Department amend N.J.A.C. 8:39-43.10(n) to mirror the nurse aide program evaluator requirements that the Centers for Medicare and Medicaid Services (CMS) have established, which are set forth at 42 CFR 483.154(c)(4)(ii) (Federal

regulation). *Id*. The Federal regulation requires a nurse aide training program evaluator to be currently licensed as a registered professional nurse and have at least one year of experience in providing care for the elderly or the chronically ill of any age.

In accordance with applicable law, the Department published a notice of action announcing that the Department had reviewed, and determined to grant, the petition and initiate rulemaking (See 56 N.J.R. 923(b)). Accordingly, and for the reasons set forth in the notice of action on the petition for rulemaking, the Department, with the approval of the Health Care Administration Board, proposes to amend N.J.A.C. 8:39-43.10(n), in accordance with the petition for rulemaking, as described above. That is, the Department proposes to amend N.J.A.C. 8:39-43.10(n) to require a nurse aide training program evaluator to have a New Jersey license as a registered professional nurse and at least one year of experience in providing care for the elderly or chronically ill of any age.

The Department is providing a 60-day comment period for this rulemaking. Therefore, the notice of proposal is excepted from the rulemaking calendar requirement, pursuant to N.J.A.C. 1:30-3.3(a)5.

Social Impact

The proposed amendment would have a positive social impact on New Jersey-licensed LTCFs because changing the requirements to mirror those in the Federal regulation, especially by deleting the requirement that the evaluator's LTCF experience is within the five years immediately preceding the submission of an evaluator resume to the Department, would make more individuals eligible to become program evaluators. Consistency with the Federal regulation, which permits evaluations to be administered

and evaluated by a registered nurse with experience in providing care for the elderly or the chronically ill of any age, would also increase the number of individuals eligible to become program evaluators.

The proposed amendment would have a positive social impact by helping to ensure the continuing availability of qualified evaluators of nurse aide training programs and, thus, allow more nurse aides to be trained and certified for employment in New Jersey's long-term care facilities as CNAs.

Economic Impact

The Department believes the proposed amendment would have no economic impact on taxpayers. The proposed amendment should have a positive economic impact on county colleges, vocational-technical schools, and long-term care facilities because these organizations would be able to recruit from a larger pool of evaluators while offering more instructional opportunities to CNA candidates.

The proposed deletion of the existing requirement that the Department conduct training workshops for potential evaluators would result in cost savings to the Department. The Department currently convenes CNA evaluator training workshops approximately twice annually. Each evaluator workshop consists of three eight-hour days, taught by a State employee who is a registered professional nurse. The post-course work for evaluators, which consists of preparation of a proposed lesson plan for the nurse aide course, requires the State employee to review and provide feedback to the candidate. Additionally, the State employee who is a registered professional nurse spends several hours of preparatory time prior to each workshop to review the course

material. Removing this requirement will allow the Department to deploy its personnel and economic resources to address other matters.

Federal Standards Statement

The proposed amendment would meet, but not exceed, the applicable Federal standard at 42 CFR 483.154(c)(4) for qualification of a person to serve as a CNA candidate evaluator. The proposed amendment would be consistent with the Federal regulation; therefore, a Federal standards analysis is not required.

Jobs Impact

The proposed amendment would not result in the loss of any jobs. The Department expects that the proposed amendment would result in the generation of new jobs because more individuals would be eligible to work as CNA candidate evaluators, which would also result in the training of additional CNA candidates.

Agriculture Industry Impact

The proposed amendment would address the standards for CNA training program evaluators and would have no impact on the agriculture industry.

Regulatory Flexibility Statement

As the proposed amendment would lessen the requirements to become certified as a nurse aide in long-term care facilities, the rule does not impose any new reporting, recordkeeping, or other compliance requirements on small businesses, and, therefore, a regulatory flexibility analysis pursuant to N.J.A.C. 1:30-5.1 is not necessary.

Housing Affordability Impact Analysis

The proposed amendment would have no impact on the affordability of housing in New Jersey, nor would it evoke a change in the average costs associated with housing because the proposed amendment would address the standards for CNA candidate evaluators in nurse aide training programs and would have no bearing on housing construction costs.

Smart Growth Development Impact Analysis

The proposed amendment would not have an impact on the achievement of smart growth, nor would it evoke a change in housing production in Planning Areas 1 or 2, or within designated centers, pursuant to the State Development and Redevelopment Plan in New Jersey because the proposed amendment would address the standards for CNA candidate evaluators in nurse aide training programs and would have no bearing on development or housing production.

Racial and Ethnic Community Criminal Justice and Public Safety Impact

The Department has evaluated this rulemaking and determined that it will not have an impact on pretrial detention, sentencing, probation, or parole policies concerning adults and juveniles in the State. Accordingly, no further analysis is required.

Full text of the proposal follows (additions indicated in boldface **thus**; deletions indicated in brackets [thus]):

SUBCHAPTER 43. CERTIFICATION OF NURSE AIDES IN LONG-TERM CARE FACILITIES

8:39-43.10 Approval of a nurse aide in long-term care facilities training program—nurse aide training program instructor/evaluator

(a)-(m) (No change.)

(n) Each nurse aide training program evaluator shall:

1. Be [currently] licensed in New Jersey as a registered professional nurse; **and**

[2. Possess at least three years of full-time or full-time equivalent experience in a licensed health care facility;

3. Possess at least one year of full-time or full-time equivalent experience as a registered professional nurse in a licensed long-term care facility, within the five years immediately preceding submission of the evaluator resume to the Certification Program of the Department for approval; and

4. Have successfully completed a training workshop offered by the Department for evaluators.]

2. Possess at least one year of full-time or full-time equivalent experience as a registered professional nurse providing care for the elderly or the chronically ill of any age.

(o)-(r) (No change.)