

PUBLIC NOTICE

HEALTH

HEALTH SYSTEMS BRANCH

CERTIFICATE OF NEED AND LICENSING DIVISION

Notice of Action on Petition for Rulemaking

Standards for Licensure of Long-term Care Facilities

Certification of Nurse Aides In Long-term Care Facilities

Approval of a Nurse Aide in Long-term Care Facilities Training Program - Nurse

Aide Training Program Instructor/Evaluator

Evaluator Eligibility Criteria

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

Petitioner: Theresa Edelstein, Senior Vice President, Center for Partnerships

Transforming Health, on behalf of the New Jersey Hospital Association, Princeton, NJ.

Take notice that the Department of Health (Department) has determined to grant the petition for rulemaking that is described below.

On November 17, 2022, the Department received a petition for rulemaking from the above petitioner requesting that the Department make certain amendments to N.J.A.C. 8:39-43.10(n). A notice acknowledging receipt of the petition was published in the New Jersey Register on February 6, 2023, at 55 N.J.R. 219(a).

N.J.A.C. 8:39-43.10(n) sets forth the minimum qualifications for individuals to serve as evaluators of the clinical skills demonstration part of the competency evaluation for certified nurse aide (CNA) candidates. Certification as a nurse aide is a condition of employment in licensed long-term care facilities in New Jersey. The

petitioner requested that the Department relax the requirements at N.J.A.C. 8:39-43.10(n) to mirror the nurse aide evaluator requirement at 42 CFR 483.154(c)(4)(ii) (CMS Regulation). The CMS Regulation requires a nurse aide evaluator to be a registered nurse with at least one year of experience in providing care for the elderly or the chronically ill of any age. The petitioner further asserted that there is a shortage of clinical skills evaluators and that the requirements at N.J.A.C. 8:39-43.10(n) make the operation of the nurse aide training programs and clinical skills evaluation of candidates more difficult, with no apparent added value or benefit to the nurse aide candidates, the training programs, or the nursing homes. By conforming N.J.A.C. 8:39-43.10(n) to the CMS Regulation, more individuals would be eligible to work as nurse aide evaluators and help alleviate the shortage of these individuals.

The Acting Commissioner reviewed the petition pursuant to law and determined to grant the petition to amend the New Jersey rule to conform to the CMS Regulation, because the Department has already moved to conform with CMS standards, by approving a previous petition for rulemaking regarding qualifications for instructors.

In accordance with the Administrative Procedure Act and N.J.A.C. 1:30-4.2, the Department will initiate a rulemaking within 90 days of granting this petition.

A copy of this notice has been mailed to the petitioner in accordance with N.J.A.C. 1:30-4.2.