

**ADOPTIONS SECTION**

**HEALTH**

**OFFICE OF THE COMMISSIONER**

**OFFICE OF LEGAL AND REGULATORY COMPLIANCE**

**CRIMINAL INVESTIGATION UNIT**

**Notice of Readoption**

**Criminal Background Investigations: Nurse Aides, Personal Care Assistants, and Assisted Living Administrators**

**Readoption: N.J.A.C. 8:43I**

Authority: N.J.S.A. 26:2H-7.21 and 26:2H-86.

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

Effective Date: January 17, 2024.

New Expiration Date: January 17, 2031.

**Take notice** that pursuant to N.J.S.A. 52:14B-5.1, the Department of Health (Department) hereby readopts the rules at N.J.A.C. 8:43I, Criminal Background Investigations: Nurse Aides, Personal Care Assistants, and Assisted Living Administrators, which were scheduled to expire on March 17, 2024.

N.J.A.C. 8:43I implements the Department's rulemaking obligations pursuant to N.J.S.A. 26:2H-7.21 and 26:2H-86, by establishing standards for criminal history record background checks of nurse aides, personal care assistants, and assisted living administrators. N.J.A.C. 8:43I requires an applicant for certification or recertification as a nurse aide, a personal care assistant, or an assisted living administrator to submit to a

criminal history record background check process, and establishes a process for obtaining a determination of rehabilitation, if the individual has been convicted of a disqualifying offense. Subchapter 1, General Provisions, establishes the scope and applicability of the chapter, declares the statutory authority for the chapter, defines words and terms the chapter uses, identifies the method of obtaining materials such as applications and forms from the Department, and provides a statement of compliance with the Privacy Act of 1974 regarding the submission of Social Security numbers.

Subchapter 2, Nurse Aides, establishes the criminal history record background check investigation process for the certification and recertification of nurse aides, including the application and fingerprinting process, the disqualifying offenses set forth by category, the process for obtaining a determination of rehabilitation if an applicant has been convicted of a disqualifying offense, the circumstances in which the Department may issue conditional certification, the process by which the Department will respond to notification that an applicant is convicted of a disqualifying offense after the Department issues initial clearance, the hearing rights of a person whom the Department denies certification or recertification, the penalties for the submission of a false sworn statement, the conditions that an applicant must meet to obtain full certification, the conditions under which the Department will extend the existing certification period of an applicant for recertification, and the circumstances under which the Department will suspend the criminal history record background check of any applicant.

Subchapter 3, Personal Care Assistants, establishes the criminal history record background check investigation process for the certification and recertification of

personal care assistants, including the application and fingerprinting process, the disqualifying offenses set forth by category, the process for obtaining a determination of rehabilitation if an applicant has been convicted of a disqualifying offense, the circumstances in which the Department may issue conditional certification, the process by which the Department will respond to notification that an applicant is convicted of a disqualifying offense after the Department issues initial clearance, the hearing rights of a person whom the Department denies certification or recertification, the penalties for the submission of a false sworn statement, the conditions that an applicant must meet to obtain full certification, the conditions under which the Department will extend the existing certification period of an applicant for recertification, and the circumstances under which the Department will suspend the criminal history record background check of any applicant.

Subchapter 4, Assisted Living Administrators, establishes the criminal history record background check investigation process for the certification and recertification of assisted living administrators. Assisted living administrators are persons the Department certifies to serve as administrators of assisted living facilities or assisted living programs. The subchapter establishes standards for the application and fingerprinting processes, the disqualifying offenses set forth by category, the process for obtaining a determination of rehabilitation if an applicant has been convicted of a disqualifying offense, the circumstances in which the Department may issue conditional certification, the process by which the Department will respond to notification that an applicant is convicted of a disqualifying offense after the Department issues initial clearance, the hearing rights of a person whom the Department denies certification or

recertification, the penalties for the submission of a false sworn statement, the conditions that an applicant must meet to obtain full certification, the conditions under which the Department will extend the existing certification period of an applicant for recertification, the circumstances under which the Department will suspend the criminal history record background check of any applicant, and the Department's withholding of the result of a criminal history record background check if the required fees are not paid.

Subchapter 5, Criminal Background Investigation Registry, establishes standards for the Department's maintenance of the central criminal history record background check registry pursuant to N.J.S.A. 26:2H-84, lists the data elements that are part of that registry, identifies the information that is not part of the publicly available registry content, and identifies the statutes that preclude the disclosure of this information.

The Department is developing a rulemaking to revise, update, and reorganize existing N.J.A.C. 8:43I, and anticipates filing this rulemaking with the Office of Administrative Law for processing in the ordinary course. However, this rulemaking will not be finalized prior to the expiration of existing N.J.A.C. 8:43I. The Department has reviewed N.J.A.C. 8:43I and determined, pursuant to Executive Order No. 66 (1978), that, pending the completion of the rulemaking in development, the chapter remains necessary, adequate, reasonable, efficient, understandable, and responsive to the purposes, described above, for which the Department promulgated it, and should be readopted. Therefore, pursuant to N.J.S.A. 52:14B-5.1.c(2), N.J.A.C. 8:43I is readopted and shall continue in effect for seven years.