

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: Judith M. Persichilli, R.N., B.S.N., M.A., Commissioner, Department of Health, in consultation with 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 2022-153.

Submit written comments by February 3, 2023, electronically to

www.nj.gov/health/legal/ecomments.shtml or by regular mail postmarked on or before

February 3, 2023, to:

Joy L. Lindo, 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

The Department of Health (Department) is proposing to amend N.J.A.C. 8:39-43.10(m), in response to a petition for rulemaking. On March 29, 2021, the Department received a petition for rulemaking from Theresa Edelstein, Senior Vice President, Center for Partnerships Transforming Health, New Jersey Hospital Association, Princeton, NJ; Andrew Aronson, President and CEO, Health Care Association of New Jersey, Hamilton, NJ; James McCracken, President and CEO, LeadingAge New Jersey and Delaware, Hamilton, NJ; Chrissy Buteas, Chief Government Affairs Officer, New Jersey Business and Industry Association, Trenton, NJ; Aaron R. Fichtner, Ph.D., President, New Jersey Council of County Colleges, Trenton, NJ; and Judy Savage, Executive Director, New Jersey Council of County Vocational-Technical Schools, Trenton, NJ (petitioners). 53 N.J.R. 1866(a) (November 1, 2021) (notice of receipt of petition for rulemaking). The petitioners requested that the Department amend the Standards for Licensure of Long-Term Care Facilities at N.J.A.C. 8:39-43.10(m), as it relates to instructors. N.J.A.C. 8:39-43.10(m) establishes the eligibility criteria for one to serve as an instructor or evaluator of nurse aides in a long-term care facility (LTCF) training program, by which one can obtain the certified nurse aide (CNA) credential. *Id.* Pursuant to N.J.A.C. 8:39-43.1(a), certification is a condition of employment at licensed LTCFs in New Jersey.

Specifically, the petitioners requested that the Department amend N.J.A.C. 8:39-43.10(m), as it relates to instructors, to mirror the nurse aide instructor requirements that the Centers for Medicare and Medicaid Services (CMS) have established, which are set forth at 42 CFR 483.152(a)(5) (Federal regulation). *Id.* N.J.A.C. 8:39-43.10(m)

sets forth the minimum qualifications for registered nurses to provide Department-approved training to candidates for certification as nurse aides.

Existing N.J.A.C. 8:39-43.10(m) requires a nurse aide training instructor or 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; 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 instructor or evaluator registration form and resume to the Certification Program of the Department for approval; and have successfully completed a training workshop offered by the Department.

The petitioners requested that the Department amend N.J.A.C. 8:39-43.10(m) to require a nurse aide training instructor to be currently licensed in New Jersey as a registered professional nurse; have at least two years of nursing experience; have at least one year of experience as a registered professional nurse in a licensed LTCF; have successfully completed a course in teaching adults or have experience either teaching adults or supervising nurse aides. Further, in a facility-based program, the requested amendment would permit the training of nurse aides to be performed pursuant to the general supervision of the director of nursing for the facility, who is prohibited from performing the actual training, as is specified at 42 CFR 483-152(a)(5)(iii). Lastly, the requested amendment would permit personnel from other health professions as identified at 42 CFR 483.152(a)(5)(iv) to supplement the instructor, provided that these supplemental personnel be required to have at least one year of experience in their respective fields.

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. 54 N.J.R. 284(a) (February 7, 2022). Accordingly, and for the reasons set forth in the notice of action on the petition for rulemaking, the Department proposes to amend N.J.A.C. 8:39-43.10(m) in accordance with the petition for rulemaking, as described above.

Additionally, although existing N.J.A.C. 8:39-43.10(m) also establishes the minimum qualifications of persons who are eligible to serve as evaluators in training programs for persons seeking to become certified nurse aides (CNAs); the petitioners made no request with regard to nurse aide evaluators. As such, the Department proposes to retain the existing language for nurse aide evaluators; however, the evaluator language is proposed to be set forth at N.J.A.C. 8:39-43.10(n) and existing subsections (n) through (q) are proposed to be recodified as (o) through (r), respectively, without change.

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 social impact on New Jersey-licensed LTCFs because changing the requirements to mirror those set forth in the Federal regulation, especially deleting the requirement that the instructor's LTCF experience is within the five years immediately preceding the submission of a registration form and

resume to the Department, would permit more individuals to be eligible to become instructors. This, in turn, would help alleviate the shortage of instructors, which, in turn, has led to a shortage of qualified CNAs to serve in LTCFs. The Federal regulation, which permits instruction to be supplemented by other experienced personnel, such as pharmacists, psychologists, gerontologists, occupational therapists, and resident rights experts, will also add to the depth and breadth of CNA candidates' education.

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

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 instructors and offer more instructional opportunities to CNA candidates.

The proposed amendment deleting the existing requirement that the Department conduct training workshops for potential instructors would result in cost savings to the Department. The Department holds training workshops approximately twice annually for instructors. Each instructor workshop consists of three eight-hour days, taught by a State employee who is a registered professional nurse. The post-course work for instructors, 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 Department to deploy its personnel economic resources to address other matters.

Federal Standards Statement

The proposed amendment would not impose standards on LTCFs in New Jersey that exceed those contained in applicable Federal standards, which may be found at 42 CFR 483.152(a)(5), for long-term care facilities. In fact, the proposed amendment would track closely those standards set forth at 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 instructors, which would also result in the training of additional CNA candidates.

Agriculture Industry Impact

The proposed amendment would not have an impact on the agriculture industry in New Jersey.

Regulatory Flexibility Analysis

The proposed amendment would impose requirements on vocational technical schools, training centers, technical and career institutes, and LTCFs that offer certified nurse aide training programs. The Summary above describes these requirements, and the Economic Impact above describes the costs of compliance. Some of these entities may be small businesses within the meaning of the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. Compliance necessarily requires retention of professionals in the fields of nursing and the other professions in which the proposed amendment would authorize supplemental instructors to have expertise and experience.

The Department is proposing no lesser or differing standards for small businesses because the Department has determined that the proposed amendment would establish the minimum standard necessary to ensure that persons who would serve as instructors of candidates for certification as nurse aides are qualified to provide that instruction. The appropriate training of candidates is necessary to ensure the health and safety of LTCF residents.

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 affect the standards for instructors of nurse aides in long-term care facilities 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, under the State Development and Redevelopment Plan in New Jersey because the proposed amendment would affect the standards for instructors of nurse aides in long-term care facilities 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]):

CHAPTER 39. STANDARDS FOR LICENSURE OF LONG-TERM CARE FACILITIES
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)-(l) (No change.)

(m) Each nurse aide training program [instructor/evaluator] **instructor** shall:

1. (No change.)

2. Possess at least [three] **two** years of [full-time or full-time equivalent] **nursing** 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 instructor/evaluator resume to the Certification Program of the Department for approval]; [and]

4. Have successfully completed a training workshop [offered by the Department for instructors/evaluators;] **in teaching adults or have experience in teaching adults or supervising nurse aides;**

5. **In a facility-based program, the training of nurse aides may be performed pursuant to the general supervision of the director of nursing for the facility who is prohibited from performing the actual training, pursuant to 42 CFR 483.152(a)(5)(iii); and**

6. **Professionals identified at 42 CFR 483.152(a)(5)(iv) who have at least one year of experience in their field may supplement the training of the instructor.**

(n) Each nurse aide training program evaluator shall:

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

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.

Recodify existing (n)-(q) as **(o)-(r)** (No change in text.)