

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

8:39-43.1 Nurse aide competency

(a) An individual who meets any of the following criteria shall be considered by the Department to be competent to work as a nurse aide in a licensed long-term care facility in New Jersey:

1. Has a currently valid nurse aide in long-term care facilities certificate and is registered in good standing on the New Jersey Nurse Aide Registry; or
2. Has been employed for less than 120 days and is currently enrolled in an approved nurse aide in long term care facilities training course and scheduled to complete the competency evaluation program (skills and written/oral examination) within 120 days of employment; or
3. Has been employed for no more than 120 days, has completed the required training specified in (a) 2, above, and has been granted a conditional certificate by the Department while awaiting clearance from the criminal background investigation conducted in accordance with N.J.A.C. 8:43I.

8:39-43.2 Requirements for nurse aide certification

(a) An applicant for certification as a nurse aide in long-term care facilities shall:

1. Successfully complete a nurse aide in long-term care facilities training program that has been approved by the Department; and
2. Provide evidence that he or she is of good moral character, including, but not limited to, compliance with the requirements of the Criminal Background Investigation Program in accordance with N.J.A.C. 8:43I; and
3. Pass both the Department's clinical skills competency exam and written/oral exam.

(b) An applicant shall fulfill the requirements in (a) above in order to be listed on the New Jersey Nurse Aide Registry.

8:39-43.3 Exceptions

(a) The following persons may take the Department's written/oral examination without first completing a nurse aide training course and clinical skills evaluation approved in accordance with N.J.A.C. 8:39-43.10:

1. Students, graduate nurses, or foreign licensed nurses, pending licensure, who submit evidence of successful completion of a course in the fundamentals of nursing;
2. Persons who submit evidence of the successful completion of a course in the fundamentals of nursing within the 12 months immediately preceding application to take the written/oral competency examination, including:
 - i. Persons certified as a nurse aide in long term care facilities in another state by a state governmental agency and listed on that state's nurse aide registry, who do not meet the requirements for equivalency specified at N.J.A.C. 8:39-43.3 (a) 1, above; and
 - ii. Persons who have had training and experience as a nurse aide in a military service, equivalent to that of a nurse aide; and

3. Persons who are certified as homemaker-home health aides by the New Jersey Board of Nursing, in accordance with N.J.A.C. 13:37-14, as amended and supplemented, and who successfully complete the Long-Term Care Module of the Core Curriculum for Unlicensed Assistive Personnel approved by the Department; and

4. Persons who successfully complete the Core Curriculum for Unlicensed Assistive Personnel approved by the Department and the New Jersey Board of Nursing, and the Long-Term Care Module of the Core Curriculum for Unlicensed Assistive Personnel approved by the Department.

8:39-43.4 Certificates

(a) A nurse aide in long term care facilities certificate shall be valid for a period of two years from the date of issue.

(b) A nurse aide certificate shall not be retained by an employer for any reason.

(c) A nurse aide certificate is not transferable by sale, gift, duplication, or other means and shall not be forged or altered.

8:39-43.5 Revocation and suspension of certificates

(a) A certificate issued to a nurse aide in accordance with this subchapter shall be revoked in the following cases:

1. Finding of abuse, neglect or misappropriation of property of a resident of a long-term care facility or assisted living residence, or of a patient, resident, or client of any other facility or agency licensed by the Department;

2. Conviction or guilty plea as specified at N.J.A.C. 8:39-9.3(b) or other crime or offense as specified at N.J.A.C. 8:43I-2.1 (b); or

3. Sale, purchase, or alteration of a certificate; use of fraudulent means to secure the certificate, including filing false information on the application; or forgery, imposture, dishonesty, or cheating on an examination.

(b) The Commissioner or his or her designee may summarily suspend the certificate of a nurse aide when the continued certification of an individual poses an immediate threat to the health, safety or welfare of the public, including residents and patients of long term care facilities, assisted living facilities and other licensed health care facilities or agencies. An individual whose certificate is summarily suspended shall have the right to appeal to the Commissioner for an expedited hearing at the Office of Administrative Law, which shall be conducted pursuant to the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., and N.J.S.A. 52:14F-1 et seq., and the Uniform Administrative Procedure Rules, N.J.A.C. 1:1. If the summary suspension is upheld at the Office of Administrative Law, the individual whose certificate has been summarily suspended shall have the right to apply for injunctive relief in the Superior Court of New Jersey. Nothing in this subsection shall be construed to prevent the Commissioner from thereafter revoking the license in accordance with (a) above.

8:39-43.6 Recertification

(a) The Department shall require the renewal and updating of a nurse aide listing on the registry at least once every two years on a schedule established by the Department.

(b) In order to be recertified, an individual shall have a currently valid nurse aide in long term care facilities certificate and shall have been employed performing nursing or nursing-related services for at least seven hours for pay, in a licensed health care facility or for an agency licensed by the Department, within the past 24 months from the date of expiration as specified on the nurse aide certificate, and shall

not have had his or her certificate revoked in accordance with N.J.A.C. 8:39-43.5 (a), and shall not have his or her certificate suspended in accordance with N.J.A.C. 8:39-43.5 (b).

(c) The designated facility representative shall verify such employment by signing the individual's recertification data mailer upon request of the individual.

(d) Any individual who does not meet the recertification requirement listed in (b) above and who wishes to be recertified, shall repeat the requirements for certification at N.J.A.C. 8:39-43.2, unless the original date of issue of the certificate is within the five years prior to the expiration date listed on the certificate and the nurse aide successfully completes the skills evaluation and written/oral examination.

1. Any individual who has allowed his or her certificate to expire must undergo a criminal background investigation as required by N.J.A.C. 8:43I, regardless of whether the person must complete a training program.

8:39-43.7 Nurse aide registries

(a) The Department shall establish and maintain a nurse aide registry in accordance with 42 CFR 483.156, as supplemented and amended.

(b) The Department shall establish and maintain a nurse aide abuse registry in accordance with 42 CFR 483.156, as supplemented and amended.

1. The nurse aide abuse registry shall include the names of individuals who are found to have abused, neglected or misappropriated the property of any resident while working in a long-term care facility as an uncertified nurse aide.

8:39-43.8 Hearings for resident abuse, resident neglect, or misappropriation of resident property

(a) Prior to entering a finding on the nurse aide abuse registry, the Department shall provide an opportunity of at least 30 days notice to the certified nurse aide or uncertified nurse aide, identifying the intended action, the factual basis and source of the finding, and the individual's right to a hearing.

(b) If a hearing is requested, it shall be conducted by the Office of Administrative Law or by a hearing officer of the Department in accordance with hearing procedures established by the Administrative Procedure Act., N.J.S.A. 52:14B-1 et seq., and 52:14F-1 et seq., and the Uniform Administrative Procedure Rules, N.J.A.C. 1:1.

(c) No further right to an administrative hearing shall be offered to a certified nurse aide or uncertified nurse aide who has been afforded a hearing before a state or local administrative agency or other neutral party, or in a court of law, at which time the nurse aide received adequate notice and an opportunity to testify and to confront witnesses, and where there was an impartial hearing officer who issued a written decision verifying the findings of abuse, neglect, or misappropriation of property of a resident. The individual shall have a right to enter a statement to be included in the registry contesting such findings.

8:39-43.9 Equivalency for nurse aides registered in other states

(a) A nurse aide certificate received in another state or territory of the United States may be entered on the registry, provided that the following conditions are satisfied:

1. The Department receives documentation from the state's or U.S. territory's registry that such nurse aide has completed a training and competency evaluation program at least equal to that required in New Jersey;

2. The nurse aide has not been convicted of any crimes and has no documented findings of abuse, neglect, or misappropriation of resident property on the registry; and

3. The nurse aide complies with the requirements for a criminal background investigation as required by N.J.A.C. 8:43I.

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

(a) Written approval of the Department is required prior to enrollment of students and the commencement of a training program in an educational institution, a facility, or a proprietary program. Training program approval, when granted, shall be granted for a 24-month period.

(b) An approved training program for nurse aides shall consist of 90 hours of training. This shall include 50 hours of classroom instruction and 40 hours of clinical experience in a New Jersey licensed long-term care facility. All training programs shall use the curriculum approved by the Department, in accordance with (c) below.

(c) The New Jersey Curriculum for Nurse Aide Personnel in Long Term Care Facilities ("the curriculum"), which has been approved by the Department, shall be the approved curriculum for a 90 hour training program. The entire content of the curriculum shall be taught. A copy of the curriculum and the form needed to apply for approval of a training course may be obtained by contacting the following office:

Certification Program
New Jersey Department of Health and Senior Services
P.O. Box 367
Trenton, NJ 08625-0367

(d) The New Jersey competency evaluation shall consist of both a skills examination and a written/oral examination.

(e) A facility-based approved training program and the New Jersey competency evaluation shall be scheduled so as to be completed within 120 days of the starting date of employment for a nurse aide.

(f) A training program offered in an educational institution to train and test certified nurse aides shall be approved by the Department.

(g) No resident care unit shall serve as the site of clinical instruction for more than one training program at a time.

(h) The training program for nurse aides shall not be used as a substitute for staff orientation or staff education programs.

(i) Classroom and clinical instruction for particular tasks or procedures shall be scheduled concurrently to the extent practicable.

(j) The Department may request submission of additional information or require the redesign and/or revision of the program materials. Redesign or revision of the program application does not ensure that approval will be granted.

(k) Any changes in a training program, such as changes in location, dates, times or instructors, shall be reported in writing, to the Certification Program at least 30 working days prior to the planned change. No change shall be implemented without the written approval of the Certification Program.

(l) The facility or educational institution conducting a training program shall maintain on file a copy of the lesson plans for the course. Each lesson plan shall state, at a minimum, the following:

1. The objective(s) of the lesson;
2. The content of the lesson;
3. A description of clinical activities for each lesson, consistent with the objectives in the curriculum;
4. The hours of instruction;
5. Methods of presentation and teacher strategies; and
6. Methods for evaluation of students with respect to their classroom and clinical performance in the facility.

(m) Each nurse aide training program instructor/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 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.

(n) The student-to-instructor ratio for classroom instruction shall not exceed a ratio of 20 students to one instructor.

(o) The student-to-instructor ratio for clinical instruction shall not exceed a ratio of 10 students to one instructor.

(p) Each student shall be under the supervision of the registered professional nurse instructor at all times when providing resident care as part of the student's clinical experience in the facility. The registered professional nurse instructor shall be responsible for evaluating the student's classroom and clinical performance.

(q) The resume of each nurse instructor/evaluator currently teaching the training program shall be available in the facility or educational institution.

8:39-43.11 Evaluation of training programs

(a) The facility or educational institution conducting a training program shall develop, implement, and document a process for evaluating the effectiveness of the training program. The evaluation process shall include, at a minimum, the following:

1. Assignment of responsibility for the evaluation process;
2. An annual written evaluation report, including findings, conclusions, and recommendations;

3. A written evaluation by the facility or educational institution of the performance of instructors/evaluators;
4. Written evaluations, by students, of the training program; and
5. Statistical data that shall be maintained on file in the facility or educational institution. The statistical data shall include, at a minimum, the following for each course:
 - i. The beginning and ending dates;
 - ii. The number of students enrolled;
 - iii. The number and percentage of students who satisfactorily completed the course;
 - iv. The number and percentage of students who failed the course;
 - v. The number and percentage of students who passed the New Jersey Nurse Aide Competency Evaluation Program, including written/oral examination and skills; and
 - vi. The number and percentage of students who failed the New Jersey Nurse Aide Competency Evaluation Program, including written/oral examination and skills.

(b) The facility or training program shall retain all evaluation reports for at least three years and shall submit a report to the Department upon request.

8:39-43.12 Student records

(a) Each facility or educational institution that conducts a training program shall establish a student record for each student. The student record shall include, at a minimum, the following:

1. The beginning and ending dates of the training program;
2. An attendance record;
3. A signed skills competency task form; and
4. An evaluation of the student's classroom and clinical performance, completed by the student's instructor.

(b) The facility shall retain the records specified at (a) above for at least four years.

(c) The facility or educational institution conducting a training program shall ensure that a student who is absent receives a reasonable and timely opportunity to obtain the classroom and/or clinical instruction missed, as documented in the student's record.

8:39-43.13 Denial or termination of a nurse aide in long-term care facilities training program

(a) The Department shall conduct unannounced site visits of a nurse aide in long-term care facilities training program.

(b) The Department may deny, suspend, or withdraw approval if it determines that a nurse aide training program fails to follow the application as submitted to, and approved by, the Department.

(c) Approval of a nurse aide training program offered by or in a facility that participates in the Medicare or Medicaid Programs shall be denied in accordance with 42 CFR 483.151 (b).

(d) Suspension or withdrawal of training program approval shall not affect currently enrolled students, who shall be permitted to complete the training program unless the Department determines that continuation of the program would jeopardize the health or safety of residents in any long-term care facility.

(e) If a nurse aide training program is discontinued for any reason, but the facility or educational institution continues to operate, the facility or educational institution shall be responsible for maintaining the records of students and graduates.

(f) If a nurse aide training program is discontinued for any reason and the facility or educational institution ceases to operate, the records of students and graduates shall be transferred to an agency acceptable to the Department. The Department shall be advised, in writing, of the arrangements made to safeguard the records.

(g) If a nurse aide training program is discontinued for any reason, the facility or educational institution shall:

1. Assist in the transfer of students to other approved nurse aide training programs;
2. Provide the Department with a list of the students who have transferred to another training program, and the dates on which the students were transferred; and
3. Notify the Department that the requirements for closing have been fulfilled and provide notice of final closing.

(h) If a facility or educational institution plans to voluntarily discontinue a nurse aide training program, the facility or educational institution shall:

1. Provide the Department with a written statement of the rationale and plan for the intended closing;
2. Continue the program until the class established for currently enrolled students has been completed; and
3. Notify the Department, in writing, of the closing date of the program at least 90 days prior to that date.

8:39-43.14 Responsibilities of Administrator

(a) The licensed nursing home administrator or administrator of the educational institution conducting the training program shall be responsible for implementation of the training program in accordance with the rules in this subchapter. This responsibility shall include, but not be limited to, ensuring that:

1. The curriculum is implemented in accordance with the application as submitted and approved by the Certification Program of the Department;
2. Resident care provided by the student does not exceed the tasks and procedures that the student has satisfactorily demonstrated, as documented by the registered professional nurse on a skills competency task form; and
3. Job descriptions are established indicating the responsibilities of each nurse instructor/evaluator.

8:39-43.15 Employment of a nurse aide

(a) No licensed long term care facility shall employ a person as a nurse aide without making inquiry to the New Jersey nurse aide registry at 1-800-274-8970, and to any other state where the facility believes the nurse aide is registered.

(b) The facility shall have a system in place to document compliance with (a) above.

(c) The facility shall maintain records sufficient to verify the previous employment of nurse aides who are not currently working but whose employment at the facility makes him or her eligible for recertification in accordance with N.J.A.C. 8:39-43.6(c).

8:39-43.16 Nurse aide functions

The nurse aide shall function under the supervision and direction of a registered professional nurse and shall perform tasks that are delegated in accordance with the provisions of N.J.A.C. 13:37-6.2.

8:39-43.17 Mandatory nurse aide education and training

(a) A program of individualized orientation of each nurse aide shall be conducted by a registered professional nurse. The orientation program shall include resident care training and demonstrations in basic nursing skills, followed by an internship of two to five days, depending on experience.

(b) Each nurse aide shall receive, at a minimum, 12 hours of regular in-service education per year, the content of which shall be based on the outcome of performance reviews of every nurse aide, which are completed at least once every 12 months. (The 12 hours may include topics that are covered under OBRA requirements, Pub. L. 100-239 (1989) which overlap or are duplicative of those required at N.J.A.C. 8:39-13.4 (b), up to a maximum of six hours of in-service training per year.)

8:39-43.18 Fees

(a) In accordance with 42 CFR 483.154, as amended and supplemented, fees may be charged by the testing agency for the following:

1. Clinical skills and written examination;
2. Clinical skills and oral examination;
3. Clinical skills and Spanish oral examination;
4. Written examination only;
5. Clinical skills examination only;
6. Oral examination only;
7. Spanish oral examination only;
8. Duplicate or updated certificate, which shall be charged to the individual; and

9. Recertification certificate, which shall be charged to the individual if the individual is neither currently employed nor has been offered employment by a long-term care facility.

(b) The fee charged by the Department for a two-year approval of a training program shall be \$75.00.

(c) The Department shall provide timely notice of any changes in fees specified in (a) above in the Public Notices section of the New Jersey Register.

(d) A nurse aide who is employed by, or who has received an offer of employment from, a facility on the date on which the aide begins a nurse aide training and competency evaluation program may not be charged for any portion of the program identified in (a) above, including tuition and testing, and fees for textbooks or other required course materials.

(e) If a nurse aide who is not employed, or does not have an offer to be employed as a nurse aide becomes employed by, or receives an offer of employment from, a licensed long term care facility not later than 12 months after completing a nurse aide training and competency evaluation program, the facility shall provide for the reimbursement of reasonable costs incurred in completing the program. Such costs include, but are not limited to, tuition, testing, and fees for textbooks or other required course materials.

(f) A nurse aide shall be reimbursed the costs of certification within one year of the successful completion of a reasonable probationary period established by the long-term care facility.

(g) No nurse aide shall be required, as a condition of employment, to pay the cost of the training program in the event of voluntary or involuntary termination of employment.

(h) All fees referenced at (a) and (b) above are non-refundable.