

STATE OF NEW JERSEY
DEPARTMENT OF HEALTH
NOTICE OF RULE WAIVER/MODIFICATION
PURSUANT TO EXECUTIVE ORDER NO. 103 (MURPHY)(MARCH 9, 2020)
AND EXECUTIVE ORDER 119 (MURPHY) (APRIL 7, 2020)
COVID-19 STATE OF EMERGENCY

Temporary Rule **WAIVER/MODIFICATION OF N.J.A.C. 8:39-43.1 – NURSE AIDE COMPETENCY**, adopted by **THE COMMISSIONER OF THE DEPARTMENT OF HEALTH**

Date: **April 15, 2020**

Authority: N.J.S.A. 26:13-1 to -31, N.J.S.A. App.A:9-45 & App. A:9-47; Executive Order No. 103 (Murphy)(“EO 103”); Executive Order No. 119 (Murphy)(“EO 119”)

Effective Date: **April 15, 2020**

Expiration Date: Concurrent with end of the Public Health Emergency.

This is an emergency adoption of a temporary rule waiver/modification of N.J.A.C. 8:39-43.1 governing nurse aide competency. Section 6 of EO 103, which was extended by EO 119, issued in response to the COVID-19 pandemic, authorizes agency heads to waive, modify or suspend any existing rule, where the enforcement of the rule would be detrimental to the public welfare during the emergency, notwithstanding the provisions of the Administrative Procedure Act or any law to the contrary. EO 119 extends this authority. Pursuant to that authority, as well as the Emergency Health Powers Act, N.J.S.A. 26:13-1 to -31, and with the approval of the Governor and in consultation with the State Director of Emergency Management, the Commissioner of the Department of Health is waiving its rules as follows:

COVID-19 is a contagious, and at times fatal, respiratory disease that is responsible for the 2019 novel coronavirus outbreak. The Centers for Disease Control and Prevention (CDC) expects that additional cases of COVID-19 will be identified in the coming days, including more cases in the United States, and that person-to-person spread is likely to continue to occur. As of April 9, 2020, there were at least 51,027 positive cases of COVID-19 in New Jersey, with at least 1,700 of those cases having resulted in death. If COVID-19 continues to spread in New Jersey at a rate comparable to the rate of spread in other affected areas, it will greatly strain the health care professionals charged with caring for patients ill with COVID-19 and may become too large in scope to be handled by New Jersey’s currently certified health care professionals. Staffing shortages have already been reported at long-term care facilities throughout New Jersey.

N.J.A.C. 8:39-43.1 sets forth certain criteria for an individual to qualify to work as a Certified Nurse Aide (CNA) in a licensed long-term care facility in New Jersey. In order to increase the number of direct care staff available to work at long-term care facilities, the Department is modifying the requirements of N.J.A.C. 8:39-43.1. Pursuant to this rule waiver/modification, Personal Care Assistants (PCA) and Certified Medical Assistants (CMA) are temporarily permitted to function in the role of a CNA in licensed long-term care facilities within New Jersey so long as the PCA or CMA meet the following conditions: (1) the CMA or PCA must complete the Temporary Nurse Aide training course at <https://educate.ahcancal.org/products/temporary-nurse-aide> prior to functioning as a CNA; (2) the facility shall provide staff a basic orientation addressing fire safety, infection control, and abuse prevention prior to allowing them to perform any duties in the facility; and (3) the facility shall maintain relevant supervision requirements for CMAs and PCAs functioning as CNAs. The remaining provisions set forth in N.J.A.C. 8:39-43.1 shall remain in effect.

Long-term care facilities that take action under the terms of this waiver/modification must also provide a written report to the Department regarding the facility's implementation. This waiver is effective only during the period of Public Health Emergency declared by Governor Philip D. Murphy in Executive Order Nos. 103 and 119. Within 45 days after the Public Health Emergency has ended, PCAs and CMAs will no longer be permitted to function in the role of a CNA and anyone wishing to act as a CNA will be required to satisfy the competency requirements set forth in N.J.A.C. 8:39-43.1. Long-term care facilities will also be required to resume operating in accordance with all licensure standards within 45 days after the Public Health Emergency has ended.

Full Text of the affected regulations follows, with additional terms and conditions indicated in boldface:

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;
 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.
- (b) **Notwithstanding the above requirements, Personal Care Assistants (PCA) and Certified Medical Assistants (CMA) are temporarily permitted to function in the role of a Certified Nurse Aide (CNA) in licensed long-term care facilities within New Jersey as long as the PCA or CMA meet the following conditions:**

1. The CMA or PCA must complete the Temporary Nurse Aide training course at <https://educate.ahtcanal.org/products/temporary-nurse-aide> prior to functioning as a CNA;
 2. The facility shall provide staff a basic orientation addressing fire safety, infection control, and abuse prevention prior to allowing them to perform any duties in the facility; and
 3. The facility shall maintain relevant supervision requirements for CMAs and PCAs functioning as CNAs.
- (c) Long-term care facilities shall provide a written report to the Department detailing the extent to which the facility implemented the terms of this provision by indicating the number of PCAs and/or CMAs that it permitted to function in the role of CNAs, the length of time they served in those roles, and any adverse outcomes attributable to these actions. The facilities shall also provide confirmation to the Department that it provided the mandatory training set forth at NJAC 8:39-43.1(b).
- (d) Within 45 days after the Public Health Emergency has ended, PCAs and CMAs will no longer be permitted to function in the role of a CNA and anyone wishing to act as a CNA will thereafter be required to satisfy all competency requirements as set forth in N.J.A.C. 8:39-43.1(a). Long term care facilities will be required to resume operating in accordance with all licensure standards within 45 days after the Public Health Emergency has ended.

I find that waiver/modification of the rule above is necessary because enforcement of the existing rule would be detrimental to the public welfare during this emergency.

4/15/20

DATE

BY: 
JUDITH M. PERSICHILLI, RN, BSN, MA
COMMISSIONER
DEPARTMENT OF HEALTH

WAIVER CONTROL NUMBER: 20 – N.J.A.C. 8:39-43.1