

CHAPTER 43I

**CRIMINAL BACKGROUND INVESTIGATIONS:
NURSE AIDES, PERSONAL CARE ASSISTANTS
AND ASSISTED LIVING ADMINISTRATORS**

Authority

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

Source and Effective Date

R.2004 d.428, effective November 15, 2004.
See: 36 N.J.R. 3041(a), 36 N.J.R. 5120(a).

Chapter Expiration Date

Chapter 43I, Criminal Background Investigation: Nurse Aides, Personal Care Assistant and Assisted Living Administrators, expires on November 15, 2009.

Chapter Historical Note

Chapter 43I, Criminal History Record Background Checks of Applicants for Nurse Aide and Personal Care Assistant Certification, was adopted as R.1999 d.121, effective April 19, 1999. See: 30 N.J.R. 3428(a), 31 N.J.R. 1096(a).

Chapter 43I, Criminal History Record Background Checks of Applicants for Nurse Aide and Personal Care Assistant Certification, was extended by gubernatorial directive from April 19, 2004 to October 19, 2004. See: 36 N.J.R. 2421(a). Chapter 43I expired on October 19, 2004.

Chapter 43I, Criminal Background Investigations; Nurse Aide and Personal Care Assistant Certification, was adopted as new rules by R.2004 d.428 effective November 15, 2004. See: Source and Effective Date.

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SUBCHAPTER 1. GENERAL PROVISIONS

8:43I-1.1 Scope and authority

(a) This chapter sets forth the procedure by which persons seeking certification as a nurse aide, personal care assistant and/or certified assisted living administrator obtain the criminal background check mandated by law. The chapter also sets forth the procedure that currently certified nurse aides, personal care assistants and assisted living administrators must complete in order to renew their respective certifications for another two-year period.

(b) This chapter provides for conditional certification for prospective nurse aides, personal care assistants and assisted living administrators.

(c) This chapter provides for a fair hearing process, in compliance with the Administrative Procedures Act, N.J.S.A. 52:14B-1 et seq., for those individuals who are denied a determination of rehabilitation after the submission of clear and convincing evidence attesting to rehabilitation as defined by this chapter.

(d) The Criminal Investigation Unit of the Department is authorized and empowered to perform all duties consistent with this chapter and N.J.S.A. 26:2H-83 through 87 and 26:2H-7.17 through 7.21.

8:43I-1.2 Definitions

The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise:

"Applicant" means any person making application to the Department for certification as a nurse aide, personal care assistant or assisted living administrator, or any person seeking to renew a certificate as a certified nurse aide, certified personal care assistant or certified assisted living administrator.

"Assisted living administrator" means a person certified by the Department pursuant to N.J.A.C. 8:36-1.5 to oversee the daily operations of an assisted living program or residence as defined by N.J.S.A. 26:2H-7.15, but does not include a person licensed as a licensed nursing home administrator pursuant to N.J.S.A. 30:11-20 et seq.

"Commissioner" means the Commissioner of Health and Senior Services or his or her designee.

"Conditional certification" means a temporary certification of a nurse aide, personal care assistant or assisted living administrator subject to the scope and limitations established by this chapter.

"Criminal history record" means information obtained from, but not limited to, the Division of State Police, the Federal Bureau of Investigation, courts, law enforcement and correctional agencies, and other governmental agencies pertaining to arrests and convictions for violation of any law.

"Criminal history record background check" means the information obtained during an investigation of an applicant for certification including the data described in the definition of "criminal history record" above.

"Criminal Investigation Unit" means a unit within the Department charged with performing criminal history record background checks and performing the tasks required of the Department by this chapter and State law.

"Department" means the New Jersey Department of Health and Senior Services.

"Disqualified" means that an individual seeking certification shall be barred from such certification. In the case of an individual seeking to renew a certification, the person shall be barred from renewing such certification which shall have the effect of revocation of such certification. In the case of an individual who is currently certified and who is the subject of a conviction of any disqualifying offense subsequent to their last criminal record history background check, the term means revocation of any such certification.

"Disqualifying offense" means those offenses and crimes which preclude an individual from certification or continued certification, as specifically defined by this chapter.

"Elderly patient, resident or client" means any person, 60 years of age or older, who is receiving care, treatment or services in or by any health care facility utilizing any personnel covered by this chapter, in any aspect.

"Employer" means a health care facility utilizing any person in the capacity of nurse aide, personal care assistant or assisted living administrator.

"NATCEP" means a nurse aide training and competency evaluation program approved by the Department.

"Nurse aide" means a person who has completed a mandatory training program and is certified by the Department to perform such duties as required by N.J.A.C. 8:39-43.

"PCATCEP" means a personal care assistant training and competency evaluation program approved by the Department.

"Personal care assistant" means a person who has completed a mandatory training program and is certified by the Department to provide care in an assisted living residence or program, a comprehensive personal care home, or through a program authorized by the Department's Community Care Programs.

"Qualified" means a person who has been determined to either have no disqualifying convictions, or has been granted a determination of rehabilitation in accordance with this chapter.

"Regular contact" means the provision of a service by persons to a patient, resident, client or group of patients, residents or clients that involves one or more of the following as part of the person's job description:

1. Coordination of, direct supervision of, or provision of personal care, nursing or health related services;
2. Routine physical contact, such as hands-on physical assistance;
3. Activity that requires the person, while providing personal care, nursing, health related services, or hands-on physical assistance to be routinely alone with patients, residents or clients and to routinely have access to patients', residents', or clients' personal property; or
4. Any routine service or activity designated by the facility or employer as regular contact. This may be through job descriptions, policy and procedure or actual practice.

"Unsupervised contact" means any contact with an elderly patient, resident or client that occurs without direct supervision by a person licensed, certified or authorized to perform the duties required of the person.