

CHAPTER 43I

CRIMINAL HISTORY RECORD BACKGROUND CHECKS OF APPLICANTS FOR NURSE AIDE AND PERSONAL CARE ASSISTANT CERTIFICATION

Authority

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

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Chapter Historical Note

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SUBCHAPTER 1. GENERAL PROVISIONS

8:43I-1.1 Scope and purpose

(a) This chapter establishes procedures for obtaining, reviewing and transmitting criminal history record checks of all persons applying for certification as a nurse aide or personal care assistant.

(b) This chapter provides for the qualification and disqualification of applicants for certification based upon an objective review of information contained in the applicant's criminal history record background check provided by the State Bureau of Identification in the Division of State Police and/or the Federal Bureau of Investigation.

(c) This chapter provides for a hearing and appeals process whereby disqualified applicants may contest their disqualification and/or demonstrate their rehabilitation.

(d) The purpose of this chapter is to protect the safety and welfare of persons being cared for by certified nurse aides and/or certified personal care assistants by ensuring that persons with a disqualifying criminal history who have not been rehabilitated do not receive certification.

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 for certification as a nurse aide or personal care assistant.

“Commissioner” means the Commissioner of the Department of Health and Senior Services or his or her designee.

“Conditional certification” means a temporary certification of a nurse aide or personal care assistant for a period of up to 60 days in situations where an applicant would ordinarily qualify for certification except that the results of the Federal criminal history record background check have not yet been determined.

“Criminal history record” means information received, compiled and issued by the Division of State Police and/or the Federal Bureau of Investigation, and other state, local and Federal law enforcement agencies, or information provided by the applicant. This information includes, but is not limited to, fingerprints, records of arrest, the nature and disposition of criminal charges, sentencing, confinement and release.

“Criminal history record background check” means a review of the criminal history record as provided for by this chapter.

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

"Elderly patient, resident or client" means any person, 60 years of age or older, who is receiving treatment or care in or by any health facility in all its aspects, including, but not limited to, admission, retention, confinement, commitment, period of residence, transfer, discharge and any instances directly related to such status.

"NATCEP" means a Nurse Aide Training and Competency Evaluation Program.

"PCATCEP" means a Personal Care Assistant Training and Competency Evaluation Program.

"Regular contact" means the provision of a service by a certified or uncertified person to a patient, resident or 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, within the facility's or employer's policies and procedures, as regular contact by the employer.

"Unsupervised contact" means any contact with an elderly patient, resident or client that is not under authoritative procedural guidance, with initial direction and periodic on-site inspection of the actual act of accomplishing a function or activity, by a qualified person for the accomplishment of a function or activity within the qualified person's sphere of competence.

SUBCHAPTER 2. GENERAL REQUIREMENTS

8:43I-2.1 Qualification and disqualification of applicants

(a) The Commissioner shall not issue a nurse aide or personal care assistant certification, other than a conditional certification as set forth at N.J.A.C. 8:43I-3.3, to any applicant until the Commissioner determines that no criminal history record information exists for that applicant which disqualifies that applicant from being certified, or that the applicant meets the standards for rehabilitation in accordance with N.J.A.C. 8:43I-4 despite a criminal history record.

(b) Unless an applicant has been determined rehabilitated by the Commissioner pursuant to N.J.A.C. 8:43I-4, the applicant shall be disqualified from certification as a nurse aide or personal care assistant if that person's criminal history record background check reveals a conviction for:

1. In New Jersey, any crime or disorderly person offense governed by:
 - i. N.J.S.A. 2C:11-1 et seq. (Criminal Homicide);
 - ii. N.J.S.A. 2C:12-1 et seq. (Assault, Reckless Endangerment, Threats);
 - iii. N.J.S.A. 2C:13-1 et seq. (Kidnapping and Related Offenses);
 - iv. N.J.S.A. 2C:14-1 et seq. (Sexual Offenses);
 - v. N.J.S.A. 2C:15-1 et seq. (Robbery and Carjacking);
 - vi. N.J.S.A. 2C:24-1 et seq. (Offenses Against the Family, Children and Incompetents);
 - vii. N.J.S.A. 2C:20-1 et seq. (Theft and Related Offenses); or
 - viii. N.J.S.A. 2C:35-1 et seq. (Controlled Dangerous Substances) except that a conviction pursuant to N.J.S.A. 2C:35-10a(4) shall not disqualify a person from certification as a nurse aide or personal care assistant; or
2. In any other state or jurisdiction, conduct which, if committed in New Jersey, would constitute any of the crimes or disorderly persons offenses described in (b)1 above.

(c) In addition to (b) above, if an applicant refuses to cooperate in the criminal history record background check process by failing to consent to the securing of information, intentionally providing inaccurate information, or otherwise, the Commissioner shall not issue a nurse aide or personal care assistant certification, and shall notify the applicant, and the applicant's employer or prospective employer, if known, of denial.

(d) An applicant who intentionally submits a false sworn statement shall be disqualified from certification as a nurse aide or personal care assistant, shall be subject to fines described at N.J.A.C. 8:43I-7 and shall not have an opportunity to establish rehabilitation pursuant to N.J.A.C. 8:43I-4.

(e) If an applicant has been convicted of any crime listed in (b)1 or 2 above, the applicant shall affirmatively notify his or her employer or prospective employer and the Department of the conviction.

1. The Department shall have the obligation of informing the applicant of his or her right to seek rehabilitation from the Commissioner in accordance with the provisions at N.J.A.C. 8:43I-4.