

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.

**Source and Effective Date**

R.1999 d.121, effective April 19, 1999.  
See: 30 N.J.R. 3428(a), 31 N.J.R. 1096(a).

**Chapter Expiration Date**

The expiration date of 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 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: Source and Effective Date.

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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.

## SUBCHAPTER 3. APPLICATION PROCESS

**8:43I-3.1 Exchange of data**

(a) The Commissioner shall initiate a criminal history record background check upon receipt of all of the following from an applicant, or the employer or prospective employer, or NATCEP or PCATCEP on behalf of an applicant, as appropriate:

1. The applicant's fingerprints on standard fingerprint cards completed by a State or municipal law enforcement agency; and
2. The processing fee required by N.J.A.C. 8:43I-6.1, submitted in the form of a certified check or money order, for the costs required by the Department to conduct the criminal history record background check.

(b) Upon receipt of the required fingerprints and fees, the Commissioner shall forward the fingerprints, along with a request for a criminal history record background check and specified fees, to the State Police.

**8:43I-3.2 Notification of employer and applicant**

(a) Within no more than 20 business days following receipt of an applicant's criminal history record information from the FBI and the State Police, the Commissioner shall notify the applicant, the employer or prospective employer, and, where applicable, NATCEP or PCATCEP, in writing, of the applicant's qualification or disqualification for certification.

(b) The Commissioner shall specify in the notice of disqualification provided to the applicant the conviction(s) which constitute(s) the basis for the disqualification, but the Commissioner shall not identify the conviction(s) in the notice of disqualification provided to the employer or prospective employer, NATCEP or PCATCEP.

(c) The notice of disqualification provided to the applicant by the Commissioner shall include a statement setting forth the applicant's right to petition for a determination of rehabilitation in accordance with N.J.A.C. 8:43I-4, to file a petition which challenges the accuracy of the criminal history record information, and the applicant's right, in cases where the accuracy of the criminal history record information is challenged, to continue employment under the provisions of conditional certification as described at N.J.A.C. 8:43I-3.3.

**8:43I-3.3 Conditional certification**

(a) In accordance with Federal requirements for long term care facilities, specifically those addressing nurse aide competency, an applicant may not be employed as a nurse aide for more than 120 days, on a full-time basis, unless he or she is competent to provide nursing and nursing related services, and he or she has completed a State-approved training and competency evaluation program.

(b) If needed, a conditional certification shall be issued, following the 120 days of initial employment prior to certification, for up to 60 days when the following conditions are met:

1. The applicant submits to the Commissioner a sworn statement attesting that the applicant has not been convicted of any crime or disorderly persons offense as described at N.J.A.C. 8:43I-2.1;
2. The results of the Federal criminal history record background check have not yet been determined; and
3. Either the applicant's State criminal history record background check reveals that no disqualifying conviction exists, or the applicant's State criminal history record background check reveals a disqualifying conviction, but the applicant has filed a petition with the Commissioner to dispute the accuracy of the criminal history record information.

## SUBCHAPTER 4. REHABILITATION AND PETITIONS FOR REVIEW

**8:43I-4.1 Rehabilitation**

(a) An applicant who has a criminal history record that may disqualify him or her from certification may request a determination of rehabilitation from the Commissioner on each of the three occasions set forth below. Subsections (b) through (d) below shall apply to each type of request.

1. An applicant who has good faith reason to believe that his or her criminal history record may disqualify him or her from certification shall submit documentation of rehabilitation to the Department within 20 business days from the time of submission of the completed fingerprint card.
2. An applicant who is disqualified following consideration of his or her application may submit a petition for determination of rehabilitation within 30 days of the date of written notice of the disqualification. The Commissioner shall accept or reject the applicant's demonstration of rehabilitation within 20 business days following the date that the Commissioner receives a petition to determine rehabilitation;
3. An applicant who is disqualified following consideration of his or her petition may request a hearing. The applicant shall have 30 days from the date of the written notice of disqualification to request a hearing.

(b) In determining whether an applicant has affirmatively demonstrated rehabilitation, the Commissioner shall consider the following factors:

1. The nature and responsibility of the employment position;

2. The nature and seriousness of the offense(s) for which the person has been convicted;
  3. The circumstances under which the offense(s) occurred;
  4. The date of the offense(s);
  5. The age of the person when the offense(s) occurred;
  6. Whether the offense(s) occurred as an isolated incident or repeated incidents;
  7. The social conditions of the person which may have contributed to the offense(s); and
  8. Any evidence of rehabilitation of the person following conviction for the offense(s), including:
    - i. Good conduct in prison or in the community;
    - ii. Counseling or psychiatric treatment received;
    - iii. Acquisition of additional academic or vocational schooling;
    - iv. Successful participation in correctional work-release programs; and
    - v. The recommendation(s) of those who have had the person under their supervision.
- (c) The applicant has the burden of proving to the Commissioner that the applicant has been satisfactorily rehabilitated in accordance with the criteria at (b) above. The applicant's application, petition, or hearing presentation shall include documentation which supports as many of the factors listed in (b)1 through 8 above as are applicable.
- (d) The Commissioner shall render the determination of rehabilitation in writing, and shall specify:
1. The reasons for accepting or denying the applicant's demonstration of rehabilitation; and
  2. With respect to a denial of the demonstration of rehabilitation, a statement that the applicant may either file a petition or request a hearing in accordance with N.J.A.C. 8:43I-5, or appeal to a court of competent jurisdiction.

(e) An applicant who has requested a determination of rehabilitation from the Commissioner in accordance with (a)1 above may remain employed at the health facility, where applicable, until the Commissioner renders a decision on the application, but, the facility shall not permit the applicant to have regular contact or unsupervised contact with elderly patients, residents or clients.

#### 8:43I-4.2 Accuracy

(a) An applicant may, within 30 days from the date of the written notice of disqualification, petition the Commissioner for a hearing pursuant to the Administrative Procedure Act, N.J.S.A. 52:14B and 14F et seq., to dispute the accuracy of the applicant's criminal history record information.

(b) If the applicant has filed a petition with the Commissioner to dispute the accuracy of the criminal history record information, the applicant may remain employed at the health facility, where applicable, until the Commissioner renders a decision on the petition, but the facility shall not permit the applicant to have unsupervised contact with patients, residents or clients who are 60 years of age or older.

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### SUBCHAPTER 5. HEARING PROCESS

#### 8:43I-5.1 Hearings

(a) The Commissioner shall notify the employer or prospective employer, where applicable, of the request for a hearing within five business days following the receipt of the request from the applicant.

(b) The hearing shall be conducted by the Office of Administrative Law 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) Final disposition of a hearing, which shall be the final agency decision, shall be provided in writing to the applicant and the employer or prospective employer, where applicable, and shall state whether the applicant is qualified or disqualified for certification as a nurse aide or personal care assistant.

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### SUBCHAPTER 6. FEES AND COSTS

#### 8:43I-6.1 Fees

(a) The Department may collect and transmit those fees associated with the criminal background check process by the State Police Bureau of Identification and the Federal Bureau of Investigation, as such fees are established by those agencies.

(b) The employer or prospective employer may assume the cost of the criminal history record background check. If the employer or prospective employer does not assume the cost of the criminal history record background check, it shall not charge the applicant more than the actual cost of the fees established by the Department and required at the time of application.

(c) The employer or prospective employer shall disclose to the applicant, at the time of application, the amount of all required fees regardless of whether the employer or prospective employer assumes responsibility for the fees, in whole or in part, or requires the applicant to assume responsibility for the fees, in whole or in part.

(d) A facility which assumes responsibility for the fees, in whole or in part, and seeks reimbursement for the cost of those fees from either the Medicare or Medicaid program shall not be entitled to collect those fees from the applicant as a condition of voluntary or involuntary termination of employment.

(b) The information identified at (a)2, 3, 5, 6 and 7 above shall not be subject to disclosure under the Open Public Records Act, N.J.S.A. 47:1A-1.

(c) State and Federal criminal history record information is confidential. Notices or information shall only be used for the purposes described in these rules. The Department shall only disclose to the employer, prospective employer, NATCEP or PCATCEP whether an applicant is qualified or disqualified for certification.

(d) The Department shall maintain, through a State Police tracking system, updated criminal history record information for all persons receiving nurse aide and/or personal care assistant certification subsequent to a criminal history record background check conducted in accordance with this chapter.

## SUBCHAPTER 7. PENALTIES

### 8:43I-7.1 Penalty for submitting a false sworn statement

An applicant intentionally submitting a false sworn statement pursuant to N.J.A.C. 8:43I-2.1(d) shall be subject to a fine of up to \$1,000.

## SUBCHAPTER 8. REGISTRY

### 8:43I-8.1 Criminal history background check registry

(a) The Department shall establish and maintain a criminal history record background check registry. The registry shall include, but not be limited to, the following information for each applicant:

1. The name of each applicant;
2. The applicant's home address;
3. The identifying number assigned by the State Police;
4. The date(s) of application;
5. The date(s) of conditional certification as described at N.J.A.C. 8:43I-3.3, where applicable;
6. The date the criminal history record background check was requested;
7. The date results of criminal history record background check were received from the State Police and/or the FBI;
8. Whether a hearing or petition for determination of rehabilitation was requested by applicant;
9. The final disposition of the hearing, petition, or determination of rehabilitation; and
10. The date of certification.

1. If the Department becomes aware that a certified nurse aide or personal care assistant has been convicted of a crime which would disqualify him or her from certification under the provisions of this chapter, the Department shall notify the certified nurse aide or personal care assistant and the employer, if known, that the certified nurse aide or personal care assistant has been convicted of a disqualifying crime.

2. If a facility at which a certified nurse aide or personal care assistant is employed becomes aware that the certified nurse aide or personal care assistant has been convicted of any crime listed in N.J.A.C. 8:43I-2.1(b)1 or 2 during the period of employment, the facility shall notify the Department and shall remove the certified nurse aide or personal care assistant from any position having regular contact or unsupervised contact with patients, residents or clients until such time that the Commissioner determines that the certified nurse aide or personal care assistant has demonstrated rehabilitation.

3. The certified nurse aide or personal care assistant shall have the right to request a determination of rehabilitation or to dispute the accuracy of the updated criminal history record information through the filing of a petition in accordance with N.J.A.C. 8:43I-4.1(a)2, and, if necessary, a hearing in accordance with N.J.A.C. 8:43I-4.1(a)3. Such request shall be made within three business days of notification.

4. A certified nurse aide or personal care assistant who has been notified of a conviction in accordance with (d)1 above and who has filed a petition to dispute the accuracy of the information, or requested a determination of rehabilitation in accordance with (d)2 above, may remain employed at a facility, at the option of the facility, until the Commissioner issues a final decision, but the facility shall not permit the nurse aide or personal care assistant to have regular or unsupervised contact with elderly patients, residents or clients.

5. If a request for determination of rehabilitation is not made or a petition disputing the accuracy of the

updated criminal history record is not filed in accordance with (d)3 above, the certification shall become invalid.