

(f) If a language other than English is the exclusive language spoken by at least 10 percent of a facility's residents, the facility shall translate the Resident Care Staffing Report into that language and post the forms both in English and the other language.

(g) All facilities shall establish procedures to provide a copy of the completed Resident Care Staffing Report at no charge to any member of the public upon request.

(h) Each facility shall retain and store the completed daily Resident Care Staffing Reports for a period of three years.

8:39-41.3 Reporting requirements

(a) Each long-term care facility shall report the following information to the Department once a month on a web-based interface to be developed and communicated by the Department, which shall include the use of the information already collected on the Resident Care Staffing Report, as set forth as chapter Appendix G:

1. Broken down by shift, the average of the previous month's daily ratios of staff-to-residents for each category of direct resident care staff.

(b) The public may obtain the quarterly report, which the Department is required to complete pursuant to N.J.S.A. 26:2H-5g(d), through the following methods:

1. Electronically at the Certificate of Need and Healthcare Licensure Program's webpage at www.nj.gov/health/healthcarequality; and
2. Upon written request to:

Director
Certificate of Need and Healthcare Facility
Licensure Program
New Jersey Department of Health and Senior
Services
PO Box 358
Trenton, New Jersey 08625-0358

8:39-41.4 Penalty

If the Commissioner determines that a facility has violated any provision of this subchapter, the Department may issue an enforcement action pursuant to P.L. 2005, c. 21, §2(e), N.J.S.A. 26:2H-5g(e), and N.J.A.C. 8:43E-3.

SUBCHAPTER 42. (RESERVED)

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;
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;
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 (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;

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, 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.

Case Notes

Nurse aide's certification was revoked for one year and an entry on the Nurse Aide Registry was ordered for a period of one year, where the aide was properly charged with neglect because she failed to use a Hoyer lift rather than a one-man lift to lift a resident, who had suffered a stroke that left her with limited mobility. The aide was further properly charged with neglect because once the resident fell, the aide failed to provide her charge nurse with the information as to what had occurred so that the resident could be properly treated. N.J. Dep't of Health & Senior Services v. Cator, OAL Dkt. No. HLT 8230-07, 2008 N.J. AGEN LEXIS 179, Initial Decision (March 8, 2008).

Certified nurse aide's act of throwing a balled-up sheet at a resident of a long-term care facility and spinning the resident around in her wheelchair constituted abuse. N.J. Dep't of Health & Senior Services v. Jean, OAL Dkt. No. HLT 10885-06, 2007 N.J. AGEN LEXIS 419, Initial Decision (June 7, 2007).

Nurse aide's name was to be listed on the Nurse Aid Registry and her certificate revoked, where evidence showed that (1) while being showered, a resident asked repeatedly to use the bathroom, but the aide refused to allow her to do so despite being in immediate proximity to a facility and instead, the aide required the resident to void into a plastic garbage bag, causing the resident to experience embarrassment and mental distress; (2) the aide jammed the shower wand between the resident's legs and moved it back and forth, causing injury to the resident's labia in the form of abrasions resulting in harm, pain, and mental anguish; and (3) the aide left the resident in her room covered only by a sheet and when the sheet fell off, the resident was exposed to the view of workmen and others in the hall, causing the resident to be denied privacy and to experience embarrassment and mental anguish. N.J. Dep't of Health & Senior Services v. Badio, OAL Dkt. No. HLT 9591-06, 2007 N.J. AGEN LEXIS 41, Initial Decision (January 22, 2007).

Ordering revocation of a nurse aide's certification and permanent placement of her name on the Nurse Aide Registry, where credible evidence supported the finding that the aide struck the resident with a shoe after the resident kicked the aide in the stomach when the resident did not want to get out of bed, and the aide's action caused swelling and a large bruise. N.J. Dep't of Health & Senior Services v. Lacrete, OAL Dkt. No. HLT 7560-04, 2006 N.J. AGEN LEXIS 818, Initial Decision (September 26, 2006).

Adopting Initial Decision (2005 N.J. AGEN LEXIS 568) and ordering that a finding of misappropriation of a resident's property be placed next to a nursing aide's name on the Nurse Aide Registry and her certificate revoked, where evidence showed that the aide took the checkbook of a former resident of a specialty care center to the aide's home, and failed to report the taking to the resident, to the center, or to the police. N.J. Dep't of Health & Senior Services v. Williams, OAL Dkt. No. HLT 8937-04, 2005 N.J. AGEN LEXIS 1315, Final Decision (November 1, 2005).

Initial Decision (2005 N.J. AGEN LEXIS 642) adopted, which found that a nurse aide did not act with malice in blocking a patient's access to the elevator, but rather, was trying to protect the resident from harm, and that the nurse aide merely acted in self-defense when she grabbed the resident's arm after the resident was pulling the aide's hair; thus, the nurse aide did not commit abuse. "Abuse" cannot involve conduct that is simply accidental or inadvertent. Dep't of Health & Senior Services v. Jarda, OAL Dkt. No. HLT 11114-04, 2005 N.J. AGEN LEXIS 1309, Final Decision (October 20, 2005).

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.

Case Notes

Adopting Initial Decision (2007 N.J. AGEN LEXIS 813) and ordering that a finding of neglect be entered on the Nurse Aide Registry, where although the certified nurse aide's testimony claiming her innocence of the charge appeared to be credible based upon her demeanor, the testimony of other witnesses and the objective physical evidence preponderated in favor of a finding of guilt. It was indisputable that the aide was responsible for the care of an elderly, incontinent resident, that the resident got out of her bed and her doing so was not detected because the tabs monitor was not attached as required by the Kardex care plan, that the resident's diaper and clothing were soaked with urine and soiled with feces, that the resident suffered a serious injury to her left hip and leg, and that the aide admitted to the risk manager at the care center and to the director of nursing that she had not examined or checked the resident from approximately 1:30 a.m. until she was found at approximately 5:30 a.m. in contravention of the aide's responsibility to toilet the resident every two hours. N.J. Dep't of Health & Senior Services v. Pawlowska, OAL Dkt. No. HLT 6659-07, 2008 N.J. AGEN LEXIS 146, Final Decision (January 18, 2008).

Initial Decision (2007 N.J. AGEN LEXIS 787) adopted, which concluded that the evidence was insufficient to warrant placing a certified nurse aide on the Nurse Aide Registry for allegedly having verbally abused a resident under her care. N.J. Dep't of Health & Senior Services v. Lewis, OAL Dkt. No. HLT 7747-07, 2008 N.J. AGEN LEXIS 147, Final Decision (January 18, 2008).

Certified nurse aide committed an act of abuse when a resident was splashed with hot tea; despite the aide's claim that warm tea was accidentally spilled, witnesses who were actually present in the room when the incident occurred agreed that the resident was becoming agitated and further agreed that the aide did have a cup of hot tea in her hand and did throw the hot tea at the resident in response to the resident's agitation, and an examination of the resident shortly after the incident showed that the resident's chest was red from the tea (adopting in part and modifying in part 2007 N.J. AGEN LEXIS 788). N.J. Dep't of Health & Senior Services v. Snowden, OAL Dkt. No. HLT 7842-07, 2008 N.J. AGEN LEXIS 148, Final Decision (January 18, 2008).

Initial Decision (2007 N.J. AGEN LEXIS 487) adopted, which concluded that a certified nurse aide neglected and abused a resident in a long-term care facility where the resident, an alert and oriented woman, testified that the aide had hit her face on the left side rail of the bed as she was helping the resident during the night; the resident further testified that when the resident told the aide what she, the aide, had done, the aide responded "good" and advised her to shut up, the resident was not changed until 2:00 a.m. that morning, and that was all the assistance and care that she had received for that night shift. N.J. Dep't of Health & Senior Services v. Adams, OAL Dkt. No. HLT 3783-07, 2007 N.J. AGEN LEXIS 929, Final Decision (August 20, 2007).

Initial Decision (2007 N.J. AGEN LEXIS 487) adopted, which concluded that a certified nurse aide neglected a resident in a long-term care facility where the resident, who could not toilet herself at the time in question, testified that she could not move fast enough when she was turning over on her left side during the night and the aide was rough in turning her, that she thereafter tried to help herself and called for help, that she could not remember how long she waited for help before she took her diaper off and threw it on the floor, and that the aide had told her she would be back to change her in a short time but the aide never returned to change her. N.J. Dep't of Health & Senior Services v. Adams, OAL Dkt. No. HLT 3783-07, 2007 N.J. AGEN LEXIS 929, Final Decision (August 20, 2007).

Adopting Initial Decision (2007 N.J. AGEN LEXIS 453) and ordering that a finding of verbal abuse be entered on the Nurse Aide Registry, where credible evidence established that a patient approached the aide and several other aides and interrupted their conversation, that as a result of this interruption, the aide told the patient that no one was talking to her and that, because of similar prior conduct of the patient, "That's why my mother is alive and . . . your mother is dead," and the aide's remark upset the resident to an extent not seen previously. N.J. Dep't of Health & Senior Services v. Jenkins, OAL Dkt. No. HLT 4964-06, 2007 N.J. AGEN LEXIS 930, Final Decision (August 9, 2007).

Initial Decision (2007 N.J. AGEN LEXIS 452) adopted, which found, on conflicting evidence, that a certified nurse aide transferred a stroke victim resident from the resident's wheelchair to the bed in a rough manner, pulled on the resident's paralyzed arm, thereby causing the resident pain, failed to communicate with the resident upon the resident's expression of pain, and threw a towel at the resident, and concluded that these acts did not rise to the level of abuse, but did constitute neglect, justifying an entry on the Nurse Aide Registry. N.J. Dep't of Health & Senior Services v. Armand, OAL Dkt. No. HLT 1343-07, 2007 N.J. AGEN LEXIS 966, Final Decision (August 9, 2007).

Adopting Initial Decision (2007 N.J. AGEN LEXIS 418) and ordering that a finding of misappropriation of a resident's property be placed on the Nurse Aide Registry, where it appeared that a certified nurse aide used the telephone of a long-term care facility resident on several occasions. Although the aide raised her absence of understanding, and therefore requisite intent, it was not believable to argue in her defense that a long-experienced certified nursing aide, over the course of three separate days, could have made calls in all innocence from a phone she