

ASSEMBLY, No. 2845

STATE OF NEW JERSEY

219th LEGISLATURE

INTRODUCED FEBRUARY 20, 2020

Sponsored by:
Assemblyman GARY S. SCHAER
District 36 (Bergen and Passaic)

SYNOPSIS

Revises requirements for certification of homemaker-home health aides, including establishing timeframe requirements for issuance of conditional and final certifications.

CURRENT VERSION OF TEXT

As introduced.



1 AN ACT concerning the certification of homemaker-home health
2 aides and amending P.L.1947, c.262 and P.L.1997, c.100.

3

4 **BE IT ENACTED** *by the Senate and General Assembly of the State*
5 *of New Jersey:*

6

7 1. Section 2 of P.L.1947, c.262 (C.45:11-24) is amended to
8 read as follows:

9 2. a. The board; appointment; terms. In addition to the
10 members appointed to represent the interests of the public pursuant
11 to section 2 of P.L.1971, c.60 **[(C.45:1-2.1 et seq.)]** (C.45:1-2.2),
12 the New Jersey Board of Nursing shall consist of 12 members, six
13 of whom shall be registered professional nurses, two of whom shall
14 be licensed practical nurses, two of whom shall be nurse educators,
15 one of whom shall be an advanced practice nurse, and one of whom
16 shall be an additional public member, all to be appointed by the
17 Governor. Appointments to the board shall be for terms of five
18 years or for the unexpired portion of a term in the case of a vacancy
19 for any cause within a term, and until a successor shall be appointed
20 and qualified. In making appointments the Governor shall give due
21 consideration to, but shall not be bound by, recommendations
22 submitted by the various nurses' professional associations of this
23 State. Upon notice and hearing, the Governor may remove from
24 office any member of the board for neglect of duty, incompetency,
25 unprofessional or dishonorable conduct.

26 b. Qualifications for appointment. The advanced practice nurse
27 member shall be a resident of this State, shall be a graduate of an
28 accredited advanced practice nurse program, shall have had at least
29 five years' experience in professional nursing, shall at the time of
30 appointment be actively working as an advanced practice nurse,
31 and, except for the member first appointed, shall hold a certification
32 as an advanced practice nurse pursuant to P.L.1991, c.377 (C.45:11-
33 45 et al.). Each registered professional nurse member of the board
34 shall be a citizen of the United States and a resident of this State;
35 shall be a graduate of an accredited school of nursing within the
36 United States; shall be a registered nurse in this State; shall have
37 had at least five years' experience in professional nursing following
38 graduation from an accredited school of nursing; and shall at the
39 time of appointment be actively engaged in nursing or work relating
40 thereto. The licensed practical nurse members of the board shall be
41 citizens of the United States and residents of this State; shall hold a
42 valid license to practice practical nursing in this State; shall have
43 had at least three years' experience in practical nursing; and shall at
44 the time of appointment be actively engaged in practical nursing or
45 work related thereto. Each nurse educator member of the board

EXPLANATION – Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.

1 shall be a resident of this State, shall be a registered nurse in this
2 State, shall have at least five years' experience in professional
3 nursing, and shall have been active as an educator or administrator
4 in an approved program to train registered nurses.

5 c. Oath or affirmation of office. Within 30 days after receipt of
6 the commission, each appointee shall take, subscribe and file in the
7 office of the Secretary of State the oath or affirmation prescribed by
8 law.

9 d. Duties and powers. The board shall have the following
10 duties and powers:

11 (1) It shall hold annual meetings and such other meetings as it
12 may deem necessary at such times and places as the board shall
13 prescribe and a majority of the board including one officer shall
14 constitute a quorum.

15 (2) It shall elect from its members and prescribe the duties of a
16 president and secretary-treasurer, each of whom shall serve for one
17 year and until a successor is elected.

18 (3) It shall appoint and prescribe the duties of an executive
19 secretary to the board who need not be a member thereof but who
20 shall be a citizen of the United States, a graduate of a college or
21 university with a major in nursing education, a registered nurse of
22 this State with at least five years' experience in teaching or
23 administration or both in an accredited school of professional
24 nursing, or have equivalent qualifications as determined by the
25 board. The executive secretary shall hold office during the will and
26 pleasure of the board.

27 (4) It shall employ and prescribe the duties of such persons as in
28 its judgment shall be necessary for the proper performance and
29 execution of the duties and powers of the board.

30 (5) It shall determine and pay reasonable compensation and
31 necessary expenses of the executive secretary and all employees of
32 the board.

33 (6) It shall pay to each member of the board the compensation
34 hereinafter provided.

35 (7) It shall have a common seal, keep an official record of all its
36 meetings, and through its secretary-treasurer report annually to the
37 Governor the work of the board.

38 (8) It shall examine applicants for a license or renewals thereof,
39 issue, renew, revoke and suspend licenses, as hereinafter provided.

40 (9) It shall in its discretion investigate and prosecute all
41 violations of provisions of this act.

42 (10) It shall keep an official record which shall show the name,
43 age, nativity and permanent place of residence of each applicant and
44 licensee and such further information concerning each applicant and
45 licensee as the board shall deem advisable. The record shall show
46 also whether the applicant was examined, licensed or rejected under
47 this and any prior act. Copies of any of the entries of the record or
48 of any certificate issued by the board may be authenticated by any

1 member of the board under its seal and when so authenticated shall
2 be evidence in all courts of this State of the same weight and force
3 as the original thereof. For authenticating a copy of any entry or
4 entries contained in its record the board shall be paid a fee of \$3.00,
5 but such authentication, if made at the request of any public agency
6 of this or any other jurisdiction, may be without fee.

7 (11) In its discretion it may publish at such times as it shall
8 determine a list of nurses licensed under this act, a list of schools of
9 nursing accredited or approved under this act, and such other
10 information as it shall deem advisable.

11 (12) It shall prescribe standards and curricula for schools of
12 nursing and evaluate and approve courses for affiliation.

13 (13) It shall hear and determine applications for accreditation of
14 schools of professional nursing, conduct investigations before and
15 after accreditation of such schools and institutions with which they
16 are affiliated, and issue, suspend or revoke certificates of
17 accreditation as hereinafter provided.

18 (14) It shall approve schools of practical nursing which shall
19 conform to the standards, curricula, and requirements prescribed by
20 the board, and suspend or revoke approval for violations thereof;
21 provided, that this power shall not extend to schools operated by
22 any board of education in this State.

23 (15) It may consult with the Medical Society of New Jersey and
24 the New Jersey Hospital Association with respect to any matter
25 relating to the administration of this act and shall consult with those
26 associations with respect to standards and curricula and any change
27 thereof for schools of nursing.

28 (16) It shall issue subpoenas for the attendance of witnesses and
29 production of documents at any hearing before the board authorized
30 by this act and any member of the board shall administer an oath or
31 affirmation to persons appearing to give testimony at such hearings.

32 (17) It may conduct any investigations, studies of nursing and
33 nursing education and related matters, and prepare and issue such
34 publications as in the judgment of the board will advance the
35 profession of nursing and its service to the public.

36 (18) It shall perform all other functions which are provided in
37 this act to be performed by it or which in the judgment of the board
38 are necessary or proper for the administration of this act.

39 (19) It shall from time to time prescribe rules and regulations not
40 inconsistent with this act.

41 (20) It shall prescribe standards and curricula for homemaker-
42 home health aide education and training programs which a
43 homemaker-home health aide shall complete in order to work in this
44 State.

45 (21) It shall review applications to provide homemaker-home
46 health aide training programs and shall issue, suspend or revoke
47 program approval.

1 (22) It shall establish and maintain a registry of all individuals
2 who have successfully completed a homemaker-home health aide
3 training and competency evaluation program. The board shall
4 provide for the inclusion in the registry of information about the
5 disqualification of any person from certification as a homemaker-
6 home health aide pursuant to sections 7 through 13 of P.L.1997,
7 c.100 (C.45:11-24.3 through C.45:11-24.9), including the specific
8 documented findings constituting the basis for that disqualification;
9 except that the information shall indicate that the person was
10 convicted of a crime or disorderly persons offense as described in
11 section 7 of P.L.1997, c.100 (C.45:11-24.3), but shall not identify
12 the conviction or convictions which constitute the basis for the
13 disqualification.

14 (23) It shall prescribe standards and requirements for a
15 competency evaluation program resulting in certification of the
16 homemaker-home health aide, and the renewal, revocation, and
17 suspension of that certification.

18 (24) It shall review applications for homemaker home-health
19 aide certification; shall review and determine conditional
20 certification eligibility and issue a conditional certification within
21 10 business days of receipt of a completed application where the
22 applicant meets all eligibility requirements of conditional
23 certification; shall have 120 days from the date of the issuance of
24 the conditional certification to issue the final certification; and shall
25 issue, suspend, revoke, or fail to renew certifications and conduct
26 investigations pursuant to the provisions of P.L.1978, c.73 (C.45:1-
27 14 et seq.).

28 (25) It shall require that nursing school curricula include, and
29 shall prescribe standards for, the training of registered professional
30 nurses in the supervision of, and the delegation of nursing tasks to,
31 unlicensed assistive personnel, and shall further prescribe standards
32 establishing the criteria for determining those tasks which registered
33 professional nurses may delegate to unlicensed assistive personnel
34 working under their supervision and the type of supervision
35 required with respect to those personnel.

36 (26) It shall prescribe standards and requirements for unlicensed
37 assistive personnel, including initial education and continuing
38 education and a competency evaluation program, which these
39 personnel shall satisfy in order to work in this State. As used in this
40 paragraph and in paragraph (25) of this subsection, "unlicensed
41 assistive personnel" means any unlicensed or uncertified personnel
42 employed by a licensed health care facility that perform nursing
43 tasks which do not require the skill or judgment of a registered
44 professional nurse and which are assigned to them by, and carried
45 out under the supervision of, a registered professional nurse.

46 (27) It may require licensees to meet continuing education
47 requirements as a condition of relicensure.

1 e. Compensation. Each member of the board shall receive
2 \$15.00 per day for each day in which such member is actually
3 engaged in the discharge of duties and traveling and other expenses
4 necessarily incurred in the discharge of duties.

5 f. Advisory council. Within three months following the
6 effective date of P.L. , c. (C.) (pending before the
7 Legislature as this bill), the board shall create an advisory
8 committee comprised of stakeholders in the homemaker home-
9 health care industry, as the board may identify, including
10 representatives from homemaker home-health care provider
11 agencies, home care associations, and homemaker home-health care
12 aides to address the problem of delays in processing completed
13 applications for homemaker home-health aide certifications and for
14 issuing conditional certifications.

15 g. Streamlined application and conditional certification
16 process. The board shall establish and implement, through the
17 promulgation of regulations, at the recommendation of the council,
18 and at its discretion, a more efficient and streamlined application
19 and conditional certification process that shall include, but not be
20 limited to:

21 (1) the development of standards that contain board staffing
22 ratios appropriate to process every application and issue conditional
23 certifications pursuant to subparagraph (24) of subsection d. of this
24 section; and

25 (2) the establishment of an Internet site for the submission of
26 online applications within one year following the effective date of
27 P.L. , c. (C.) (pending before the Legislature as this bill).

28 (cf: P.L.2017, c.125, s.1)
29

30 2. Section 8 of P.L.1997, c.100 (C.45:11-24.4) is amended to
31 read as follows:

32 8. a. An applicant for homemaker-home health aide
33 certification, or a certified person who is required to undergo a
34 criminal history record background check pursuant to section 7 of
35 P.L.1997, c.100 (C.45:11-24.3), shall submit to the New Jersey
36 Board of Nursing that individual's name, address and fingerprints
37 taken on standard fingerprint cards by a State or municipal law
38 enforcement agency. The board is authorized to exchange
39 fingerprint data with, and receive criminal history record
40 information from, the Federal Bureau of Investigation and the
41 Division of State Police for use in making the determinations
42 required by sections 7 through 13 of P.L.1997, c.100 (C.45:11-24.3
43 through C.45:11-24.9).

44 b. Upon receipt of the criminal history record information for a
45 person from the Federal Bureau of Investigation or the Division of
46 State Police, the New Jersey Board of Nursing shall immediately
47 notify, in writing, the applicant, and the applicant's employer if the
48 applicant is conditionally employed as provided in subsection d. of

1 this section or the applicant's prospective employer, if known, or
2 the certified person who is required to undergo a criminal history
3 record background check pursuant to section 7 of P.L.1997, c.100
4 (C.45:11-24.3) and that person's employer, as applicable, of the
5 person's qualification or disqualification for homemaker-home
6 health aide certification under sections 7 through 13 of P.L.1997,
7 c.100 (C.45:11-24.3 through C.45:11-24.9). If the person is
8 disqualified, the conviction or convictions which constitute the
9 basis for the disqualification shall be identified in the notice to the
10 person, but shall not be identified in the notice to the person's
11 employer or prospective employer.

12 c. The person who is the subject of the background check shall
13 have 30 days from the date of the written notice of disqualification
14 to petition the New Jersey Board of Nursing for a hearing on the
15 accuracy of the person's criminal history record information or to
16 establish the person's rehabilitation under subsection b. of section 7
17 of P.L.1997, c.100 (C.45:11-24.3). The board shall notify the
18 person's employer or prospective employer of the person's petition
19 for a hearing within five days following the receipt of the petition
20 from the person. Upon the issuance of a final decision upon a
21 petition to the board pursuant to this subsection, the board shall
22 notify the person and the person's employer or prospective
23 employer as to whether the person remains disqualified from
24 certification under sections 7 through 13 of P.L.1997, c.100
25 (C.45:11-24.3 through C.45:11-24.9).

26 d. An applicant for certification may be issued conditional
27 certification and may be employed as a homemaker-home health
28 aide conditionally for a period not to exceed **[60]** 120 days,
29 pending completion of a criminal history record background check
30 required under sections 7 through 13 of P.L.1997, c.100 (C.45:11-
31 24.3 through C.45:11-24.9) by the Division of State Police in the
32 Department of Law and Public Safety based upon an examination of
33 its own files in accordance with section 14 of P.L.1997, c.100
34 (C.53:1-20.9a), and the board shall have the discretion to grant an
35 extension of the applicant's conditional certification for an
36 additional period not to exceed 60 days pending completion of a
37 criminal history record background check by federal authorities as
38 arranged for by the Division of State Police pursuant to section 14
39 of P.L.1997, c.100 (C.53:1-20.9a), if the person submits to the New
40 Jersey Board of Nursing a sworn statement attesting that the person
41 has not been convicted of any crime or disorderly persons offense
42 as described in section 7 of P.L.1997, c.100 (C.45:11-24.3). A
43 person who submits a false sworn statement shall be disqualified
44 from certification as a homemaker-home health aide and shall not
45 have an opportunity to establish rehabilitation pursuant to
46 subsection b. of section 7 of P.L.1997, c.100 (C.45:11-24.3).

47 A conditionally employed person, or an employed person
48 certified as a homemaker-home health aide, who disputes the

1 accuracy of the criminal history record information and who files a
2 petition requesting a hearing pursuant to subsection c. of this
3 section may remain employed by that person's employer until the
4 board rules on the person's petition but, pending the board's ruling,
5 the employer shall not permit the person to have unsupervised
6 contact with patients or clients who are 60 years of age or older.

7 e. (1) A home care services agency that has received an
8 application from or conditionally employed an applicant for
9 homemaker-home health aide certification, or has employed a
10 certified homemaker-home health aide, and

11 (a) receives notice from the board that the applicant or certified
12 homemaker-home health aide, as applicable, has been determined
13 by the board to be disqualified from certification as a homemaker-
14 home health aide pursuant to sections 7 through 13 of P.L.1997,
15 c.100 (C.45:11-24.3 through C.45:11-24.9); or

16 (b) terminates its employment of a conditionally employed
17 applicant for homemaker-home health aide certification or a
18 certified homemaker-home health aide because the person was
19 disqualified from employment at the home care services agency on
20 the basis of a conviction of a crime or disorderly persons offense as
21 described in section 7 of P.L.1997, c.100 (C.45:11-24.3) after
22 commencing employment at the home care services agency;
23 shall be immune from liability for disclosing that disqualification or
24 termination in good faith to another home care services agency.

25 (2) A home care services agency which discloses information
26 pursuant to paragraph (1) of this subsection shall be presumed to be
27 acting in good faith unless it is shown by clear and convincing
28 evidence that the home care services agency acted with actual
29 malice toward the person who is the subject of the information.

30 f. (1) A home care services agency, upon receiving notice from
31 the board that a person employed by it as a homemaker-home health
32 aide, including a conditionally employed person, has been convicted
33 of a crime or disorderly persons offense as described in section 7 of
34 P.L.1997, c.100 (C.45:11-24.3) after commencing employment at
35 the home health care agency or other entity, shall:

36 (a) immediately terminate the person's employment as a
37 homemaker-home health aide; and

38 (b) report information about the conviction and termination to
39 the board in a manner prescribed by the board, which shall
40 thereupon deem the person to be disqualified from certification as a
41 homemaker-home health aide, subject to the provisions of
42 paragraph (3) of this subsection.

43 (2) A home care services agency shall be immune from liability
44 for any actions taken in good faith pursuant to paragraph (1) of this
45 subsection and shall be presumed to be acting in good faith unless it
46 is shown by clear and convincing evidence that the home care
47 services agency acted with actual malice toward the employee.

1 (3) The person terminated from employment pursuant to
2 paragraph (1) of this subsection shall have 30 days from the date of
3 the termination to petition the board for a hearing on the accuracy
4 of the information about the conviction reported to the board or to
5 establish why the person should not be terminated from
6 employment, and disqualified from certification, as a homemaker-
7 home health aide. The board shall notify the person's employer of
8 the person's petition for a hearing within five days following the
9 receipt of the petition from the person. Upon the issuance of a final
10 decision upon a petition to the board pursuant to this paragraph, the
11 board shall notify the person and the person's employer as to
12 whether:

13 (a) the person is to be reinstated in his employment as a
14 homemaker-home health aide and retain his certification; or

15 (b) the person's termination from employment as a homemaker-
16 home health aide stands and the person remains disqualified from
17 certification.

18 (cf: P.L.2000, c.20, s.6)

19
20 3. This act shall take effect immediately.
21
22

23 STATEMENT

24
25 This bill revises the requirements for the certification of
26 homemaker-home health aides. Specifically, the New Jersey Board
27 of Nursing will be required to review and determine conditional
28 certification eligibility for homemaker-home health aide applicants
29 and issue a conditional certification within 10 business days of
30 receipt of a completed application, provided that the applicant
31 meets the eligibility requirements for conditional certification. The
32 board will additionally be required to issue a final certification
33 within 120 days from the date of the issuance of the conditional
34 certification.

35 The board will be required to establish an advisory committee
36 comprised of stakeholders in the homemaker home-health care
37 industry, including representatives from homemaker home-health
38 care provider agencies, home care associations, and homemaker
39 home-health care aides, to address the problem of delays in
40 processing applications for homemaker home-health aide
41 certifications and for issuing conditional certifications.

42 The board will be required to establish and implement, through
43 regulations, on the recommendation of the advisory council created
44 under the bill, and at its discretion, a more efficient and streamlined
45 application and conditional certification process for homemaker-
46 home health aides that is to include: developing board staffing
47 ratios at levels appropriate to meet the certification timeframe
48 requirements established under the bill; and, within one year of the

1 effective date of the bill, establishing an Internet website for the
2 online submission of homemaker-home health aide certification
3 applications.

4 The bill also increases from 60 days to 120 days the maximum
5 period during which an applicant for certification as a homemaker-
6 home health aide may be issued a conditional certification and be
7 conditionally employed as a homemaker-home health aide; the bill
8 does not revise the board's discretion under current law to extend a
9 conditional certification for up to 60 additional days pending
10 completion of the criminal history record background check.