

[First Reprint]
SENATE, No. 2036

STATE OF NEW JERSEY
217th LEGISLATURE

INTRODUCED APRIL 18, 2016

Sponsored by:

Senator ROBERT M. GORDON

District 38 (Bergen and Passaic)

Senator JIM WHELAN

District 2 (Atlantic)

SYNOPSIS

Requires issuance of conditional certifications for homemaker-home health aides within seven days and issuance of final certification within 120 days.

CURRENT VERSION OF TEXT

As reported by the Senate Health, Human Services and Senior Citizens Committee on May 2, 2016, with amendments.



(Sponsorship Updated As Of: 5/3/2016)

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 P.L.1971, c.60 **[as amended by P.L.1977, c.285]** (C.45:1-2.2) the
12 New Jersey Board of Nursing shall consist of 10 members, six of
13 whom shall be registered professional nurses, two of whom shall be
14 licensed practical nurses, one of whom shall be an advanced
15 practice nurse, and one of whom shall be an additional public
16 member, all to be appointed by the Governor. Appointments to the
17 board shall be for terms of five years or for the unexpired portion of
18 a term in the case of a vacancy for any cause within a term, and
19 until a successor shall be appointed and qualified. In making
20 appointments the Governor shall give due consideration to, but shall
21 not be bound by, recommendations submitted by the various nurses'
22 professional associations of this State. Upon notice and hearing, the
23 Governor may remove from office any member of the board for
24 neglect of duty, incompetency, unprofessional or dishonorable
25 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.

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.

Matter enclosed in superscript numerals has been adopted as follows:

¹Senate SHH committee amendments adopted May 2, 2016.

1 c. Oath or affirmation of office. Within 30 days after receipt of
2 the commission, each appointee shall take, subscribe and file in the
3 office of the Secretary of State the oath or affirmation prescribed by
4 law.

5 d. Duties and powers. The board shall have the following
6 duties and powers: (1) It shall hold annual meetings and such other
7 meetings as it may deem necessary at such times and places as the
8 board shall prescribe and a majority of the board including one
9 officer shall constitute a quorum. (2) It shall elect from its members
10 and prescribe the duties of a president and secretary-treasurer, each
11 of whom shall serve for one year and until a successor is elected.
12 (3) It shall appoint and prescribe the duties of an executive
13 secretary to the board who need not be a member thereof but who
14 shall be a citizen of the United States, a graduate of a college or
15 university with a major in nursing education, a registered nurse of
16 this State with at least five years' experience in teaching or
17 administration or both in an accredited school of professional
18 nursing, or have equivalent qualifications as determined by the
19 board. The executive secretary shall hold office during the will and
20 pleasure of the board. (4) It shall employ and prescribe the duties of
21 such persons as in its judgment shall be necessary for the proper
22 performance and execution of the duties and powers of the board.
23 (5) It shall determine and pay reasonable compensation and
24 necessary expenses of the executive secretary and all employees of
25 the board. (6) It shall pay to each member of the board the
26 compensation hereinafter provided. (7) It shall have a common seal,
27 keep an official record of all its meetings, and through its secretary-
28 treasurer report annually to the Governor the work of the board. (8)
29 It shall examine applicants for a license or renewals thereof, issue,
30 renew, revoke and suspend licenses, as hereinafter provided. (9) It
31 shall in its discretion investigate and prosecute all violations of
32 provisions of this act. (10) It shall keep an official record which
33 shall show the name, age, nativity and permanent place of residence
34 of each applicant and licensee and such further information
35 concerning each applicant and licensee as the board shall deem
36 advisable. The record shall show also whether the applicant was
37 examined, licensed or rejected under this and any prior act. Copies
38 of any of the entries of the record or of any certificate issued by the
39 board may be authenticated by any member of the board under its
40 seal and when so authenticated shall be evidence in all courts of this
41 State of the same weight and force as the original thereof. For
42 authenticating a copy of any entry or entries contained in its record
43 the board shall be paid a fee of \$3.00, but such authentication, if
44 made at the request of any public agency of this or any other
45 jurisdiction, may be without fee. (11) In its discretion it may
46 publish at such times as it shall determine a list of nurses licensed
47 under this act, a list of schools of nursing accredited or approved
48 under this act, and such other information as it shall deem
49 advisable. (12) It shall prescribe standards and curricula for schools

1 of nursing and evaluate and approve courses for affiliation. (13) It
2 shall hear and determine applications for accreditation of schools of
3 professional nursing, conduct investigations before and after
4 accreditation of such schools and institutions with which they are
5 affiliated, and issue, suspend or revoke certificates of accreditation
6 as hereinafter provided. (14) It shall approve schools of practical
7 nursing which shall conform to the standards, curricula, and
8 requirements prescribed by the board, and suspend or revoke
9 approval for violations thereof; provided, that this power shall not
10 extend to schools operated by any board of education in this State.
11 (15) It may consult with the Medical Society of New Jersey and the
12 New Jersey Hospital Association with respect to any matter relating
13 to the administration of this act and shall consult with those
14 associations with respect to standards and curricula and any change
15 thereof for schools of nursing. (16) It shall issue subpoenas for the
16 attendance of witnesses and production of documents at any hearing
17 before the board authorized by this act and any member of the board
18 shall administer an oath or affirmation to persons appearing to give
19 testimony at such hearings. (17) It may conduct any investigations,
20 studies of nursing and nursing education and related matters, and
21 prepare and issue such publications as in the judgment of the board
22 will advance the profession of nursing and its service to the public.
23 (18) It shall perform all other functions which are provided in this
24 act to be performed by it or which in the judgment of the board are
25 necessary or proper for the administration of this act. (19) It shall
26 from time to time prescribe rules and regulations not inconsistent
27 with this act. (20) It shall prescribe standards and curricula for
28 homemaker-home health aide education and training programs
29 which a homemaker-home health aide shall complete in order to
30 work in this State. (21) It shall review applications to provide
31 homemaker-home health aide training programs and shall issue,
32 suspend or revoke program approval. (22) It shall establish and
33 maintain a registry of all individuals who have successfully
34 completed a homemaker-home health aide training and competency
35 evaluation program. The board shall provide for the inclusion in
36 the registry of information about the disqualification of any person
37 from certification as a homemaker-home health aide pursuant to
38 sections 7 through 13 of P.L.1997, c.100 (C.45:11-24.3 through
39 24.9), including the specific documented findings constituting the
40 basis for that disqualification; except that the information shall
41 indicate that the person was convicted of a crime or disorderly
42 persons offense as described in section 7 of P.L.1997,
43 c.100 (C.45:11-24.3), but shall not identify the conviction or
44 convictions which constitute the basis for the disqualification. (23)
45 It shall prescribe standards and requirements for a competency
46 evaluation program resulting in certification of the homemaker-
47 home health aide, and the renewal, revocation, and suspension of
48 that certification. (24) It shall review applications for homemaker
49 home-health aide certification **'[.]:'** shall review and determine

1 conditional certification eligibility and issue a conditional
2 certification within ¹[seven] 10¹ business days of receipt of ¹[an] a
3 completed¹ application where the applicant meets all eligibility
4 requirements for conditional certification ¹[.];¹ shall have 120 days
5 from the date of the issuance of the conditional certification to issue
6 the final certification ¹[.];¹ and shall issue, suspend, revoke, or fail
7 to renew certifications and conduct investigations pursuant to the
8 provisions of P.L.1978, c.73 (C.45:1-14 et seq.). (25) It shall
9 require that nursing school curricula include, and shall prescribe
10 standards for, the training of registered professional nurses in the
11 supervision of, and the delegation of nursing tasks to, unlicensed
12 assistive personnel, and shall further prescribe standards
13 establishing the criteria for determining those tasks which registered
14 professional nurses may delegate to unlicensed assistive personnel
15 working under their supervision and the type of supervision
16 required with respect to those personnel. (26) It shall prescribe
17 standards and requirements for unlicensed assistive personnel,
18 including initial education and continuing education and a
19 competency evaluation program, which these personnel shall satisfy
20 in order to work in this State. As used in this paragraph and in
21 paragraph (25) of this subsection, "unlicensed assistive personnel"
22 means any unlicensed or uncertified personnel employed by a
23 licensed health care facility that perform nursing tasks which do not
24 require the skill or judgment of a registered professional nurse and
25 which are assigned to them by, and carried out under the
26 supervision of, a registered professional nurse. (27) It may require
27 licensees to me

28 e. Compensation. Each member of the board shall receive
29 \$15.00 per day for each day in which such member is actually
30 engaged in the discharge of duties and traveling and other expenses
31 necessarily incurred in the discharge of duties.

32 f. Advisory council. Within three months following the
33 effective date of P.L. , c. (C.) (pending before the
34 Legislature as this bill), the board shall create an advisory
35 committee comprised of stakeholders in the homemaker home-
36 health care industry, as the board may identify, including
37 representatives from homemaker home-health care provider
38 agencies, home care associations, and homemaker home-health care
39 aides to address the problem of delays in processing ¹completed¹
40 applications for homemaker home-health aide certifications and for
41 issuing conditional certifications.

42 g. Streamlined application and conditional certification
43 process. The board shall establish and implement, through the
44 promulgation of regulations, at the recommendation of the council,
45 and at its discretion, a more efficient and streamlined application
46 and conditional certification process that shall include, but not be
47 limited to:

48 (1) the development of standards that contain board staffing
49 ratios appropriate to process every application and issue conditional

1 certifications pursuant to subparagraph (24) of subsection d^{1.1} of
2 this section; and

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

7 (cf: P.L.2000, c.20, s.4)

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

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

23 b. Upon receipt of the criminal history record information for a
24 person from the Federal Bureau of Investigation or the Division of
25 State Police, the New Jersey Board of Nursing shall immediately
26 notify, in writing, the applicant, and the applicant's employer if the
27 applicant is conditionally employed as provided in subsection d. of
28 this section or the applicant's prospective employer, if known, or
29 the certified person who is required to undergo a criminal history
30 record background check pursuant to section 7 of P.L.1997,
31 c.100 (C.45:11-24.3) and that person's employer, as applicable, of
32 the person's qualification or disqualification for homemaker-home
33 health aide certification under sections 7 through 13 of P.L.1997,
34 c.100 (C.45:11-24.3 through 24.9). If the person is disqualified, the
35 conviction or convictions which constitute the basis for the
36 disqualification shall be identified in the notice to the person, but
37 shall not be identified in the notice to the person's employer or
38 prospective employer.

39 c. The person who is the subject of the background check shall
40 have 30 days from the date of the written notice of disqualification
41 to petition the New Jersey Board of Nursing for a hearing on the
42 accuracy of the person's criminal history record information or to
43 establish the person's rehabilitation under subsection b. of section 7
44 of P.L.1997, c.100 (C.45:11-24.3). The board shall notify the
45 person's employer or prospective employer of the person's petition
46 for a hearing within five days following the receipt of the petition
47 from the person. Upon the issuance of a final decision upon a
48 petition to the board pursuant to this subsection, the board shall
49 notify the person and the person's employer or prospective

1 employer as to whether the person remains disqualified from
2 certification under sections 7 through 13 of P.L.1997,
3 c.100 (C.45:11-24.3 through 24.9).

4 d. An applicant for certification may be issued conditional
5 certification and may be employed as a homemaker-home health
6 aide conditionally for a period not to exceed ~~60~~ 120 days,
7 pending completion of a criminal history record background check
8 required under sections 7 through 13 of P.L.1997, c.100 (C.45:11-
9 24.3 through 24.9) by the Division of State Police in the
10 Department of Law and Public Safety based upon an examination of
11 its own files in accordance with section 14 of P.L.1997, c.100
12 (C.53:1-20.9a), and the board shall have the discretion to grant an
13 extension of the applicant's conditional certification for an
14 additional period not to exceed 60 days pending completion of a
15 criminal history record background check by federal authorities as
16 arranged for by the Division of State Police pursuant to section 14
17 of P.L.1997, c.100 (C.53:1-20.9a), if the person submits to the New
18 Jersey Board of Nursing a sworn statement attesting that the person
19 has not been convicted of any crime or disorderly persons offense
20 as described in section 7 of P.L.1997, c.100 (C.45:11-24.3). A
21 person who submits a false sworn statement shall be disqualified
22 from certification as a homemaker-home health aide and shall not
23 have an opportunity to establish rehabilitation pursuant to
24 subsection b. of section 7 of P.L.1997, c.100 (C.45:11-24.3).

25 A conditionally employed person, or an employed person
26 certified as a homemaker-home health aide, who disputes the
27 accuracy of the criminal history record information and who files a
28 petition requesting a hearing pursuant to subsection c. of this
29 section may remain employed by that person's employer until the
30 board rules on the person's petition but, pending the board's ruling,
31 the employer shall not permit the person to have unsupervised
32 contact with patients or clients who are 60 years of age or older.

33 e. (1) A home care services agency that has received an
34 application from or conditionally employed an applicant for
35 homemaker-home health aide certification, or has employed a
36 certified homemaker-home health aide, and

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

42 (b) terminates its employment of a conditionally employed
43 applicant for homemaker-home health aide certification or a
44 certified homemaker-home health aide because the person was
45 disqualified from employment at the home care services agency on
46 the basis of a conviction of a crime or disorderly persons offense as
47 described in section 7 of P.L.1997, c.100 (C.45:11-24.3) after
48 commencing employment at the home care services agency;

1 shall be immune from liability for disclosing that disqualification or
2 termination in good faith to another home care services agency.

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

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

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

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

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

26 (3) The person terminated from employment pursuant to
27 paragraph (1) of this subsection shall have 30 days from the date of
28 the termination to petition the board for a hearing on the accuracy
29 of the information about the conviction reported to the board or to
30 establish why the person should not be terminated from
31 employment, and disqualified from certification, as a homemaker-
32 home health aide. The board shall notify the person's employer of
33 the person's petition for a hearing within five days following the
34 receipt of the petition from the person. Upon the issuance of a final
35 decision upon a petition to the board pursuant to this paragraph, the
36 board shall notify the person and the person's employer as to
37 whether:

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

40 (b) the person's termination from employment as a homemaker-
41 home health aide stands and the person remains disqualified from
42 certification.

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

44

45 3. This act shall take effect immediately.