

## 50 N.J.R. 212(a)

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### RULE ADOPTIONS

#### Reporter

50 N.J.R. 212(a)

*NJ - New Jersey Register > 2018 > JANUARY > JANUARY 2, 2018 > RULE ADOPTIONS > LAW AND PUBLIC SAFETY -- DIVISION OF CONSUMER AFFAIRS*

#### Agency

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LAW AND PUBLIC SAFETY > DIVISION OF CONSUMER AFFAIRS > STATE BOARD OF NURSING

#### Administrative Code Citation

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Adopted Amendment: N.J.A.C. 13:37-14.9

#### Text

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#### Application for CHHA Certification

Proposed: May 1, 2017, at 49 N.J.R. 993(a).

Adopted: November 3, 2017, by the Board of Nursing, Barbara B. Blozen, Ed.D, MA, RN, President.

Filed: November 30, 2017 as R.2018 d.014, **without change**.

[page=213] Authority: N.J.S.A. 45:11-24.

Effective Date: January 2, 2018.

Expiration Date: June 13, 2018.

#### Summary of Public Comments and Agency Responses:

The official comment period ended June 30, 2017. The Board received five comments from the following individuals:

1. Andrea Sussman
2. Chris Capobianco, President & Owner, Twin Folks Inc.

3. Evelyn Baron

4. Joseph Maddaloni, Jr., Chief Executive Officer, Home Health Services Association of New Jersey

5. Christine Buteas, President & CEO, Home Care & Hospice Association of NJ

1. COMMENT: A commenter supports the changes to N.J.A.C. 13:37-14.9. The commenter believes the changes will enhance public safety and welfare.

RESPONSE: The Board thanks the commenter for her support.

2. COMMENT: Three commenters contend that there is a shortage of certified homemaker-home health aides (CHHAs) and believe that the amendments to N.J.A.C. 13:37-14.9 will delay the certification process. This would harm seniors and their families who rely on services from CHHAs. The commenters recommend that the Board undertake a study to determine the impact of ending the issuance of conditional certifications. The commenters point out that many health care service firms, which employ CHHAs, conduct comprehensive background and reference checks and that they are required to provide staff with orientations and supervision. The commenters request that the Board not adopt the proposed amendments to N.J.A.C. 13:37-14.9 and continue to issue conditional certifications to applicants.

RESPONSE: The Board disagrees that the amendments to N.J.A.C. 13:37-14.9 will delay the certification process for CHHAs. Ending the practice of issuing conditional certifications will not affect the time it takes to process a certification application. Ending this practice will ensure that individuals will not be able to provide services prior to completing a criminal history background check. The Board believes that the amendments will protect the health, safety, and welfare of seniors and families by ensuring that individuals do not have a criminal history prior to the Board authorizing them to provide CHHA services.

3. COMMENT: A commenter opposes the amendments to N.J.A.C. 13:37-14.9 and contends that ending the issuance of conditional certifications will not result in CHHA certifications being issued faster.

RESPONSE: The Board does not contend that ending the issuance of conditional certifications will result in CHHA certifications being issued faster. Ending the practice of issuing conditional certifications will ensure that individuals with criminal history backgrounds are not authorized by the Board to provide services in a home.

4. COMMENT: A commenter contends that there are lengthy delays in issuing CHHA certification and that this prevents home care agencies from providing CHHA services to patients. The commenter points out that the summary of the amendments in the notice of proposal indicates that CHHA certifications are often issued less than one week after fingerprinting has been completed. The commenter contends that this is not the case and that home care agencies lose employees due to the delay in issuing certifications.

RESPONSE: The Board's experience is that, as stated in the Summary of the notice of proposal, the advent of digital fingerprinting and computer processing of criminal history

background checks has reduced processing time for applications for certification to often less than one week after an applicant has been fingerprinted.

5. COMMENT: A commenter is concerned that applicants for CHHA certification who are in rural areas face greater delays in obtaining certification due to the limited sites for fingerprinting in such areas.

RESPONSE: The Board believes that there are adequate fingerprinting sites throughout New Jersey to accommodate all applicants, regardless of where they are located.

6. COMMENT: A commenter contends that ending the issuance of conditional certification will not ease the shortage of CHHAs. The commenter contends that the amendments to N.J.A.C. 13:37-14.9 will result in caregivers being unable to provide services to clients while their applications for CHHA certification are being processed.

RESPONSE: The commenter is correct that the amendments will not affect a purported CHHA shortage, as they will not increase the number of individuals who apply for or are qualified to obtain certification as a CHHA. The commenter is also correct that the amendments will prevent individuals from providing services while their applications are being processed. The Board believes that this is necessary to ensure that individuals do not provide services in the homes of the frail or elderly until they have passed criminal background checks.

7. COMMENT: A commenter requests that the Board work to shorten the application processing time for CHHAs. The commenter recommends that the Board adopt an online application in order to facilitate a quicker application process. The commenter also recommends that the Board issue instruction letters regarding fingerprinting for applicant criminal history background checks via e-mail to an applicant and the agency that provided his or her training.

RESPONSE: The Board is currently developing an online application for CHHAs. The Board anticipates that this will shorten application processing time. As part of that online application process, the Board intends to issue instruction letters to applicants via e-mail. At this time, it is not administratively feasible to issue instruction letters to agencies.

8. COMMENT: A commenter recommends that N.J.A.C. 13:37-14.9(f)5i be amended to include a timeframe of two days for the Board to notify an applicant and prospective employer as to the disposition of an application.

RESPONSE: The Board will not include such a timeframe in its rules. The Board endeavors to notify applicants as to the disposition of applications in a timely manner, but a deadline of two days would impose unnecessary administrative burdens on the Board.

9. COMMENT: A commenter contends that N.J.A.C. 13:37-14.9(f)5ii should not include the term "moral turpitude." The commenter contends that term is too subjective and should not be used to deny certification. Any offense that rises to the level of moral turpitude should be included in the definition of "disqualifying offense."

RESPONSE: The Board does not believe that the term "moral turpitude" is unduly subjective. The phrase is a legal term that is readily understood to cover conduct that violates standards of conduct. The Board will not change N.J.A.C. 13:47-14.9(f) as the commenter recommends.

## Federal Standards Statement

A Federal standards analysis is not required because there are no Federal laws or standards applicable to the adopted amendments.

## Regulations

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Full text of the adoption follows:

### **SUBCHAPTER 14. HOMEMAKER-HOME HEALTH AIDES**

#### **13:37-14.9 Application for CHHA certification**

**(a)-(c)** (No change.)

**(d)** When the results of a criminal history background check revealing a conviction for a crime or disorderly persons offense have been received by the Board, the applicant and the applicant's prospective employer, if known, shall be notified that the Board has made a preliminary determination that the applicant is disqualified. The notice provided to the applicant shall also set forth:

1. The basis for the preliminary determination that the applicant is disqualified;
2. The applicant's right to provide evidence to the Board, within 30 days of receipt of the notice, contesting the accuracy of the criminal history background check; and
3. In the event that the applicant truthfully disclosed the conviction in the application, the applicant's right to provide evidence to the Board, within 30 days of receipt of the notice, affirmatively demonstrating rehabilitation and an identification of the factors that the Board will consider in determining whether the applicant has clearly and convincingly demonstrated rehabilitation, as set forth at N.J.S.A. 45:11-24.3(b).

**(e)** If the applicant submits evidence contesting the accuracy of the criminal history background check or demonstrating rehabilitation, [page=214] notice of the submission shall be provided to the applicant's prospective employer, if known.

**(f)** Upon its review of the results of a criminal history background, and any evidence pertaining to accuracy or rehabilitation, if applicable, the Board shall render one of the following dispositions:

1. Issue a homemaker-home health aide certificate to the applicant, if the criminal history background check indicated that the applicant has never been convicted of any crime or disorderly persons offense;
2. Issue a homemaker-home health aide certificate to the applicant, if the Board determines that the applicant has submitted sufficient information to establish to the Board that the criminal history background check is inaccurate or to clearly and convincingly demonstrate rehabilitation;
3. Provide an applicant with additional time to supplement the evidence presented regarding rehabilitation, in writing or via an opportunity to be heard if there are material facts in dispute;

4. Provide an applicant with additional time to supplement the evidence relating to the accuracy of the criminal history background check, in writing or via an opportunity to be heard if there are material facts in dispute; or
  5. Deny the application for a homemaker-home health aide certificate, providing reasons for the denial and designating the period of time that the applicant will be barred from reapplication, if the Board determines that the applicant has failed to submit sufficient information to clearly and convincingly demonstrate rehabilitation and:
    - i. The criminal history background check accurately reflects that the applicant has been convicted of a disqualifying crime or disorderly persons offense, as set forth at N.J.S.A. 45:11-24.3.b; or
    - ii. The criminal history background check accurately reflects that the applicant has been convicted of a crime or offense, which has not been categorized as disqualifying, but otherwise involves moral turpitude or is related adversely to the activity regulated by the Board, pursuant to N.J.S.A. 45:1-21.f.
- (g) If the applicant fails to contest the accuracy of the criminal history background check or submit evidence of rehabilitation within 30 days of the notification pursuant to (d) above, the application will be considered abandoned.
- (h) If an applicant submits, as part of the application, a sworn statement asserting that he or she has not been convicted of a crime or disorderly persons offense that is false, he or she shall be disqualified from certification as a homemaker-home health aide and shall not have an opportunity to establish rehabilitation pursuant to N.J.S.A. 45:11-24.3 and may be subject to penalty, including a bar from reapplication for a period of time and a fine of up to \$ 1,000, pursuant to N.J.S.A. 45:11-24.9.
- (i) The Board shall notify the applicant and the applicant's prospective employer, if known, of the disposition on the application.