VOLUME 48, ISSUE 5
ISSUE DATE: **MARCH** 7, 2016

RULE ADOPTIONS
LAW AND PUBLIC SAFETY
DIVISION OF CONSUMER AFFAIRS
NEW JERSEY BOARD OF NURSING

Adopted Amendments: N.J.A.C. 13:37-5.5, 8.2, 8.3, 14.1, 14.2, 14.4, 14.5, 14.7, 14.10, and 14.15

Adopted Repeals and New Rules: N.J.A.C. 13:37-14.3, 14.6, 14.8, 14.12, 14.13, and 14.14

Adopted New Rules: N.J.A.C. 13:37-6.3, 6.4, 6.5, 6.6, 14.11, 14.15, and 14.17

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

Delegation and Certification; Homemaker-Home Health Aides

Proposed: February 2, 2015, at 47 N.J.R. 406(a) (see also 47 N.J.R. 2050(a)).

Adopted: November 6, 2015, by the State Board of Nursing, Patricia Ann Murphy, Ph.D, APN, President.

Filed: February 2, 2016, as R.2016 d.020, with non-substantial changes not requiring additional public notice and comment (see N.J.A.C. 1:30-3.6), and with proposed repeals and new rules N.J.A.C. 13:37-6.1 and 6.2 not adopted.

Authority: N.J.S.A. 45:11-24 and P.L. 2013, c. 182.

Effective Date: March 7, 2016

Expiration Date: December 15, 2017.

Summary of Public Comments and Agency Responses:

By this rule initiative the New Jersey Board of Nursing (the Board) had intended to clarify and offer guidance to the regulated community concerning its expectations for the delegation of nursing tasks to Licensed Practical Nurses (LPNs), Certified Homemaker Home Health Aides (CHHAs), and other assistive personnel. It received almost 250 comments and held a public hearing on the notice of proposal. The Board has long been reluctant to approach this rulemaking by creating a laundry list of those tasks that it deems to be delegable nursing tasks, those that are not delegable, and those that are not nursing tasks at all. The responsibilities involved in the provision of nursing care are varied and the stability and medical condition of individual patients invariably impacts on the determination as to the appropriateness of delegation. But in consideration of the comments submitted in writing, as well as the

testimony at the public hearing, the Board has been persuaded that the regulated community--nurses, CHHAs, and the agencies that place them in the homes of those in need--will benefit from the promulgation of common sense definitions of "nursing tasks" and "non-nursing tasks" as several commenters have suggested.

The Board embarks on this approach, now cognizant of the enactment of P.L. 2014, c. 29, which gives it some broad guideposts by which to differentiate "non-medical, basic supervision and socialization services" or "companion services" from "health care services" and "personal care services." The Board further recognizes that this legislation will necessitate a rulemaking by the Division of Consumer Affairs to extend registration requirements to employment agencies offering only companion services by amending N.J.A.C. 13:45B. The Board recognizes that there is value in assuring that the approach the Division takes with respect to employment agencies "placing or arranging for the placement" of personnel in the homes of those over the age of 60, or the disabled, is consonant with the Board's rules. Thus, there are a number of provisions in this rulemaking initiative that the Board has determined should be deferred at this time, refined, and reproposed in the future rulemaking. More specifically, the Board is electing to develop definitions for "nursing tasks" and "non-nursing tasks" and will forebear from adopting the proposed provisions that, at present, include those terms, without definition.

In declining to adopt proposed new N.J.A.C. 13:37-6.1 and 6.2, the Board will leave in place the general guidance pertaining to delegation [page=424] that is set forth in the existing rules (by not adopting the proposed repeal of these same sections). Some commenters have urged the adoption of the more specific delineation of the obligations associated with delegation, in the hopes that it will incentivize nurses to more fully embrace delegation in their practice. The Board reminds commenters and nurses throughout the State that delegation has always been and continues to be a recognized nurse authority. While the guidance afforded by proposed N.J.A.C. 13:37-6.2, 6.3, and 6.4(a) and (b) will not be immediately enforceable, it stands as a valid expression of Board expectations and is consistent with the algorithm that has long been available on the Board website to assist nurses in determining when a delegation is appropriate.

Significantly, the Board is adopting a very important reform that it believes will enhance the lives of at-home patients and their families who rely on the services of CHHAs. Existing N.J.A.C. 13:37-14.3 expressly prohibits CHHAs from administering medications. This prohibition is repealed and replaced by N.J.A.C. 13:37-14.3(c), which sets forth the specific obligations a CHHA has when a nurse delegates the administration of medication. The Board is also adopting those portions of N.J.A.C. 13:37-6.4, proposed at subsections (c), (d), and (e), that specifically delineate the nurse's responsibilities when delegating the administration of medication to LPNs, CHHAs, or other assistive personnel. Many commenters noted that these provisions make it possible for persons in need of such services to safely remain in their homes and avoid having to transfer to long-term care or assisted living facilities. The Board is not, by this rulemaking initiative, suggesting, as some commenters feared, that CHHAs and other assistive personnel are to be making the judgment about the medications to be administered, the dosages, or the routes of administration. Medications are to be prescribed by physicians, advanced practice nurses, or physician assistants, with the regimes being overseen by nurses. The Board encourages CHHA training programs to incorporate into their curricula additional topics relating to the administration of medication.

Numerous other provisions in this rulemaking initiative are also being adopted; some, but not all of which, generated public comment. The Board has summarized the comments and provides responses with respect to those rules that it is adopting at this time. With respect to those rules not being adopted at this time, the Board has summarized those comments but has noted in response that the specific provisions are not being adopted. The Board anticipates that it will repropose the provisions not adopted, with modifications in the near future.

Summary of Hearing Officer's Recommendations and Agency's Responses:

A public hearing on proposed amendments, recodifications, new rules, and repeals was held on September 30, 2015, at the Division of Consumer Affairs, 124 Halsey Street, Newark, New Jersey. Robert Campanelli, Esq. presided over the hearing. The hearing officer considered all written and oral testimony on the notice of proposal and made several recommendations. The hearing officer recommended that the Board:

1. Consider defining the phrase "verifying the credentials," which is used in proposed new N.J.A.C. 13:37-6.4;

2. Review the documentation requirements in N.J.A.C. 13:37-6.4(b); and

3. Require nurses to complete continuing education with respect to delegation rules.

The hearing officer believed that it may be appropriate for the Board to amend N.J.A.C. 13:37-6.1(c) to clarify that it should not be interpreted to make a registered professional nurse responsible for non-nursing care. The hearing officer also recommended that the Board establish and administer, or contract with a third-party vendor to establish and administer, a CHHA certification examination. He noted that the process of establishing such a certification examination would be lengthy and should not be part of the adoption of the proposed amendments, recodifications, new rules, and repeals.

The Board has considered the recommendations of the hearing officer and all of the public comments. Many of the recommendations relate to the provisions of the rules that the Board has determined to not adopt at this time. As the Board begins its reassessment of the sections at issue, it will have the opportunity to determine whether there could be refinements consistent with the hearing officer's recommendations. The hearing officer and a number of commenters may have assumed that the phrase "verifying the credentials" entailed a more extensive exercise than the Board had envisioned. The Board would expect a delegating nurse to check that a person is licensed, but that check could be accomplished in a number of ways. In reproposing N.J.A.C. 13:37-6.4, the Board can review documentation requirements as suggested, although the Board is inclined to conclude that those requirements provide for the minimum information necessary to ensure that a delegation has been performed properly. The Board will consider requiring nurses who choose to delegate tasks, particularly the administration of medication, to complete continuing education in delegation requirements and are hopeful that there will be an expansion of such educational offering going forward. However, the Board remains convinced that initial nursing education provides a sufficient foundation to permit nurses to undertake the necessary analysis that undergirds decisions to delegate, now and as before. The

clarification of nursing and non-nursing tasks that the Board intends to undertake should allay the concern that was expressed by the hearing officer and commenters regarding nurse responsibility for non-nursing tasks. Finally, the Board agrees that a Board-administered CHHA certification examination would be appropriate and believes that such a requirement should be the subject of a future rulemaking.

Summary of Public Comments and Agency Responses:

The official comment period ended April 3, 2015. The comment period was reopened when the Board published notice of the public hearing on September 8, 2015. This comment period ended on September 30, 2015. The Board received 247 comments from the following individuals:

1. Matthew Murphy, President and Chief Executive Officer, Griswold International, LLC

2. Chrissy Buteas, President and CEO, Home Care Association of NJ

3. Joseph Mandala, Sundance Home Care, Inc., Griswold Home Care Mercer/Middlesex Counties

4. Bernie Gerard, Vice-President, Health Professionals and Allied Employees

5. Evelyn Liebman, Associate State Director, AARP

6. Jim Dieterle, State Director, AARP

7. Douglas Johnston, Manager of Advocacy, AARP

8. David King

9. James Lane

10. Delia Ackerman, Griswold Home Care

11. Lauren Smith, Griswold Home Care

12. Dawn Blithe, Griswold Home Care

13. Sandra Palfy, Griswold Home Care

14. Kimberlie Wagner, Griswold Home Care

15. Idell Lindsay, Griswold Home Care

16. Kathleen Mason, Griswold Home Care

17. Stephen Rymal, Burlington County Office of Griswold Home Care

18. Jim Campolongo

19. Martha Ann Heinkel, MS, LCSW, Union County Homecare, Inc.

20. Paula Watkins

21. David Nugent

22. Julius N. Konschack

23. John Parvin, Griswold Home Care

24. Meryl Levitz, Griswold Home Care

25. Len Levitz, Griswold Home Care

26. Joanne Lafferty

27. Mary Kay

28. Theresa Edelstein, MPH, LNHA, Vice President, Post-Acute Care Policy & Special Initiatives, NJHA

29. Aline Holmes, DPN, MSN, RN, Senior Vice President, Clinical Affairs, Director, NJHA Institute for Quality & Patient Safety

30. Michele M. Kent, President & CEO, Leading Age NJ

31. Joseph Bachich, President, Llenroc Services, Inc.

32. Robert Pfeffer

33. Judy Franken

34. Barbara Conklin, MA, RN, Director of Practice, JNESO District Council 1 IUOE

35. Doris Schaffer

[page=425] 36. David Martin, AARP

37. Cecilia Martinez, AARP

38. Sarah Masucci, AARP

39. Patricia McGowan, AARP

40. Thomas Miksis, AARP

41. Addie Herring, AARP

42. Rose Candy

43. Hector Ortiz, AARP

44. Rich Ottenstroer, AARP

45. Joseph B. Young, Executive Director, Disability Rights New Jersey

46. Christopher Pain, AARP

47. Linda Raimondi, AARP

48. Richard Miller, AARP

49. Patricia Miller, AARP

50. David Mollen, AARP

51. Robert Moore, AARP

52. Brian Murray, AARP

53. Susan Murray, AARP

54. Brian Reynolds, AARP

55. Vinese Goldschmidt

56. Dilipkumar Ajbani, AARP

57. Phyllis Novick, AARP

58. Christine OConnell, AARP

59. Carle Oerke, Jr., AARP

60. Renee Oler-Davis, AARP

61. Annemarie Reid, RN, AARP

62. Caroline Oliveira, AARP

63. Sandra Riddick, AARP

64. Margaret O'Regan, AARP

65. Gloria Miller, AARP

66. Nicki Rios, AARP

67. Marie Anderson, AARP

68. Michael Armstrong, AARP

69. Charles Appel, AARP

70. Maura Rivero, AARP

71. John Bartram, AARP

72. James Surger, AARP

73. Satish Tamhankar, AARP

74. Geraldine Roache, AARP

75. Pat Bailey, AARP

76. Merri Robinson, AARP

77. Anne Baker, AARP

78. Lou Rotolo, AARP

79. John Ruhl, AARP

80. Bernard Schnaudt, AARP

81. Karen Tennenbaum, AARP

82. Mercedes Bell, AARP

83. Jenny Tolchje, AARP

84. John Schreiber, AARP

85. Henry Bermann, AARP

86. Perter Bohn, AARP

87. Larry Scott, AARP

88. Saul Schreier, AARP

89. Virginia Upton, AARP

90. Thomas Bonhag, AARP

91. Joan Selin, AARP

92. Armand Sella, AARP

93. Lee Varian, AARP

94. Edward Brittain, AARP

95. Sandra Sibdlinger, AARP

96. Larry Viig, AARP

97. Sylvia Wagner, AARP

98. Bruce Williams, AARP

99. Gerard Sims, Jr., AARP

100. Claire Busby, AARP

101. James Cahill, AARP

102. Eileen Slimm, LPN, AARP

103. Robert Smith, AARP

104. Jane Casale, AARP

105. Donald Yapczenski, AARP

106. Nancy Caterini, AARP

107. Helga Spector, AARP

108. Carl Chiavara, AARP

109. Charles Zeugner, AARP

110. Michale Craig, AARP

111. Harry Harmon, AARP

112. Betsy Cousins-Coleman, AARP

113. Eva Herink, AARP

114. Carl Hess, AARP

115. Alice Cunningham, AARP

116. Stan Dabrowksi, AARP

117. Michael Hill, AARP

118. Bonnie Devore, AARP

119. Donna Jones, AARP

120. Dennis Laspata, Sr., AARP

121. Janice Dlugosz, AARP

122. Leslie Keys, AARP

123. Susan Dumais, AARP

124. Anthony Liccese, AARP

125. Paul Dougherty, AARP

126. Kathreen Kenney, AARP

127. Richard Ferber, AARP

128. Susan Klaslo, AARP

129. Richard Field, AARP

130. Elisa Lauda, AARP

131. Bonnie Fine, AARP

132. Joseph Coughlin, AARP

133. Robert Markowitz, AARP

134. Francis Marone, AARP

135. Moh Madavi, AARP

136. Theresa Flanagan, AARP

137. Michael Fordice, AARP

138. Apolinary Galecki, AARP

139. Marie L. Frazilus, AARP

140. Elsa C. LeBlanc, AARP

141. Tracey Lawrence, AARP

142. Anita Gaschnig, AARP

143. Eliane Geren, AARP

144. Eugene Gorrin, AARP

145. Howard Iwahashi, AARP

146. L Grieder, AARP

147. Rose Jakubaszek, AARP

148. Joseph Stiener, AARP

149. Kathleen Sherwood Hari, AARP

150. Kent Johnson, AARP

151. Donald Pendely, New Jersey Hospice and Palliative Care Organization

152. Jodi Sturgeon, President and CEO, PHI

153. Norma L. Rodgers, BSN, RN, President, NJSNA

154. Judith Schmidt, MSN, RN, CEO, NJSNA/IFN

155. Stephen Rymal, Director, Griswold Home Care, Burlington County Office

156. Roland Berrebi, B & G Homecare Inc.

157. Gregg Villany

158. Walter Connors

159. Melvin Bickford

160. Shawn Kit

161. Eileen Johansen

162. Diana Timmons

163. Veronica Geraghty

164. Donald Johansen

165. Steven Polite

166. Andrew Sims

167. Warren Gordon

168. Mary Jennings

169. Sam Fisher

170. Diane Bickford

171. Erika Brown

172. Dorothy Buket

[page=426] 173. Beth Phillips

174. Elisa V. Nichols, RN, Griswold Home Care

175. Leslie Baruffi

176. Vanessa Rice

177. Elaine Sullivan

178. Henry Spreitzer

179. Adelarbe E. Hanerty

180. Judith Kelly

181. Robert Barr

182. Amber Smith

183. Karen Villany

184. Patricia Susan

185. Mildred Fleming

186. Cynthia Gleich

187. James Flatima

188. William LeBourueau

189. Dr. Jospeh A. Cordo

190. Hayes Young

191. Dan Bouties

192. Nancy Young

193. Barbara Kent

194. Patricia Luke

195. Robert Sevears

196. Jarret Went

197. Nancy Yeager

198. Richard Maurice

199. Julia Regan

200. Gloria Tecco

201. Donna Tecco

202. Jane Stahler

203. Jules Konschak

204. John Krutsick

205. Hazel Mogolosky

206. Diana Kathary

207. Marian MacPherson

208. Sarah Afifi

209. Jacqueline Lucillo

210. Beth DiCola

211. Lisa Mott

212. Jennifer Rish

213. Mariah Kubiak

214. Mary Kathryn Krattenmaker

215. Barbara Becker

216. Janice Fisher

217. Lily Mintz

218. Joan C. MacMurphy

219. Lynn Di Leo

220. Lillian Mulick

221. Elsie Scheele

222. Shirley Scott

223. Harriot Cetrone

224. Mildred Darmsteadter

225. Barbara Schwartz

226. Jose Garcia

227. Cheryl Horsey

228. Eleana Lombardo

229. Hilde Zylberberg

230. Barbara S. Hayden

231. Penny King-Probasco

232. Claire Miles

233. Joyce Coleman

234. Ruth Brauss

235. Lisa Rennie

236. Loius Stief

237. Patricia Simpson

238. David Jinks

239. Polixeni Katsanos, PT, DPT

240. Sophia Katsanos

241. Tom Katsanos

242. Mary Brice

243. Kathleen M. Gialanella

244. Doris Caprice

245. Catherine Beahan

246. Karl Loh

247. Deborah Bigos

1. COMMENT: Two commenters request that the Board hold a public hearing on the amendments and new rules.

RESPONSE: N.J.S.A. 52:14B-4 requires an agency to hold a public hearing if, within 30 days of the publication of the proposed rule in the New Jersey Register, sufficient public interest is shown in having a public hearing. N.J.A.C. 13:1E-4.3 defines sufficient public interest "as a submission of at least 50 written requests for a public hearing." Even though the commenters' requests for a public hearing were submitted on March 26, 2015 and April 3, 2015, past the 30-day deadline for public hearing requests set forth in N.J.S.A. 52:14B-4, and these two were the only requests for a public hearing, the Board determined that a public hearing should be held and did so on September 30, 2015, in order to hear the concerns of the public. The results of the hearing officer's recommendations are summarized above.

2. COMMENT: A commenter recommends that the Board amend N.J.A.C. 13:37-6.2 to include the following definition: "'Nursing tasks' means such tasks, other than non-nursing tasks and home-making activities, that a registered professional nurse, in his or her professional judgment, determines can be delegated to a licensed practical nurse, a CHHA, or an assistive person." The commenter contends that the requirements with which a registered professional nurse must comply when delegating as set forth in N.J.A.C. 13:37-6.4 are overly prescriptive and burdensome. The commenter believes this is mitigated by the recommended definition for "nursing tasks."

RESPONSE: As discussed at length above, the Board is not adopting those sections of this rulemaking

that include the term "nursing tasks," until such time as the Board can provide additional guidance to the regulated community. While the purpose of the rules in Subchapter 6 is to set forth standards for the delegation of nursing tasks, there may be a benefit in offering a framework to differentiate between nursing tasks and non-nursing tasks.

3. COMMENT: A commenter recommends that N.J.A.C. 13:37-6.2 be amended to include a definition for "non-nursing tasks." This definition would state: "'non-nursing tasks' means such tasks, including but not limited to activities of daily living, that are included in a plan of care, but in the judgment of a registered professional nurse, based on the stability and condition of the patient, the nature and complexity of the tasks and any preference expressed by the patient (including a preference for self-directing such tasks), do not require delegation or supervision by a registered professional nurse. These tasks are subject to evaluation every 90 days by a registered professional nurse." The commenter contends that the requirements with which a registered professional nurse must comply when delegating are overly prescriptive and burdensome. The commenter believes this is mitigated by the recommended definition for "non-nursing tasks."

RESPONSE: As discussed above, the Board will strive to define "non-nursing tasks" in a future rulemaking, although at the outset the Board notes that tasks encompassed in "providing assistance with activities of daily living," otherwise referred to as "personal care services" are often included and referenced in the nurse's "plan of care."

4. COMMENT: A large number of the commenters support the amendments and new rules. The commenters believe that the amendments and new rules permit nurses to delegate the administration of medications, which the commenters believe was prohibited by previous rules. The commenters point out that Rutgers University conducted a study that found that delegating the administration of medications did not lead to adverse health outcomes.

RESPONSE: The Board thanks the commenters for their support. Even with the decision to not adopt specific rules, delegation can and should be an important adjunct to nursing practice, facilitating the best use of health care resources. Existing section N.J.A.C. 13:37-6.1 and 6.2 will continue to authorize delegation, now augmented by an express recognition that nurses now can delegate the administration of medication to CHHAs. The Board points out that the delegation of the administration of medication to assistive personnel and family caregivers was not [page=427] prohibited by previous rules. But the prior prohibition precluding CHHAs from administering medications served to limit the registered professional nurse's authority to delegate in a manner that would best serve patients. This rulemaking initiative removes the prohibition on CHHAs, evening the playing field and expanding the services that can be offered by CHHAs placed by registered health care service firms.

5. COMMENT: Two commenters recommend that the Board develop an educational program on the amendments and new rules for stakeholders.

RESPONSE: The Board hopes that in the wake of this rulemaking, continuing education will be offered by association and private entities, and that nurses who elect to delegate and feel a need for additional training will avail themselves of those opportunities. At present, the Board does not have the resources

to develop an educational program as the commenters suggest. It will review whether there is a need to incorporate training into the CHHA curriculum or develop other training in the future.

6. COMMENT: A commenter recommends that all registered professional nurses be required to complete one hour of continuing education in delegation and the supervision of licensed practical nurses and assistive persons as a requirement for licensure renewal.

RESPONSE: The Board is confident that registered professional nurses are familiar with delegation and does not believe it is necessary to require the continuing education of all nurses as the commenter suggests. Completion of such courses that may be available will satisfy ongoing continuing education requirements.

7. COMMENT: Several commenters are concerned that the amendments and new rules will require them to pay for nursing care that they do not need. They receive assistance with personal care and activities of daily living.

RESPONSE: The current regulatory landscape envisions that if a patient is receiving assistance with personal care and activities of daily living from CHHAs, a registered professional nurse delegates the performance of these services to the CHHA. Thus, the Board would not have expected that the proposed rules would have resulted in an increase in costs to patients. As it undertakes to repropose those portions of the rulemaking not adopted herein, the Board will work to assure that there is a common-sense differentiation of nursing and non-nursing tasks that will assure patient safety.

8. COMMENT: A commenter contends that oversight by registered professional nurses required by the Board would negatively impact operations of health care service firms and the quality of care provided to patients by certified homemaker-home health aides (CHHAs). The commenter contends that common tasks would be subject to the approval, direction, and supervision of registered professional nurses, which would take these nurses away from other responsibilities. The commenter contends that non-nursing tasks would be subject to delegation and that this is an unwise use of nursing resources. The commenter is concerned that Board requirements for nursing supervision will result in additional staffing, which will increase costs for healthcare service firms and prices for consumers.

RESPONSE: As stated above, this issue will be addressed as the Board moves forward with a future rulemaking, with definitions for "nursing" and "non-nursing tasks." It should be noted that the new rule, at N.J.A.C. 13:37-14.3(b), in fact, does specifically recognize that the patient or the patient's family may ask an assigned CHHA to undertake home-making activities without delegation, thereby making clear that as to certain tasks no delegation or nurse oversight is necessary.

9. COMMENT: Several commenters contend that the proposed amendments and new rules fail to take into account the impact on health care service firms. The commenters represent health care service firms that provide non-medical home care and their clients do not have nursing care plans because the clients do not receive care based on delegations from nurses. The commenters are concerned that the amendments and new rules will require them to have nursing care plans and will require nurse supervision of their employees. This would burden these firms in that they would need to hire additional

staff to provide this supervision.

RESPONSE: The clarification that the Board will pursue in the future rulemaking should make clear that some services will not need to be included in a "plan of care," as they will be non-nursing tasks. The Board recognizes that very often agencies place uncertified personnel in a patients home to provide non-nursing tasks, and in these circumstances, there is no need for nurse oversight. The Board also recognizes that CHHAs most often may be called upon to perform a mix of delegated nursing tasks and non-nursing tasks. The Board has had a concern that when a health care service firm places a CHHA in a patient's home, over time, he or she will be asked to expand the services provided perhaps in response to deterioration in a patient's condition. Ongoing nursing assessments, in these circumstances, are in the patient's interest. The Board will address this balance in the future rulemaking.

10. COMMENT: Two commenters are concerned that the amendments and new rules will impose costs on patients who receive services in their homes.

RESPONSE: As noted in response to other comments and in the introductory information, this concern will be addressed in the future rulemaking.

11. COMMENT: Several commenters point out that health care service firms are regulated by the Division of Consumer Affairs. The commenters contend that the amendments and new rules infringe on the statutory and regulatory requirements governing health care service firms. The commenters contend that the amendments and new rules should not be adopted until such time as the Division proposes rules that conform to the amendments and new rules.

RESPONSE: The Board recognizes that health care service firms are regulated by the Division of Consumer Affairs. This rulemaking does not infringe on the statutory and regulatory requirements of the Division, but as noted in the introductory information above, the Board recognizes the value in assuring that its' rules are aligned with those of the Division of Consumer Affairs applicable to health care service firms, especially after the enactment of P.L. 2014, c. 29, codified at N.J.S.A. 34:8-45.1. The Board's decision to not adopt some of the provisions at this time will allow for a uniform approach, reducing the potentials for reconciliation in the future.

12. COMMENT: Several commenters contend that the Economic Impact statement in the notice of proposal did not provide the analysis of costs required by N.J.S.A. 52:14B-4(a)2. The commenters point out that this law requires agencies to utilize approaches that accomplish objectives while minimizing consequences to small businesses. The commenters contend that the Economic Impact statement did not address such consequences and is, therefore, legally insufficient. The commenters contend that the amendments and new rules require nursing supervision and delegation for all aspects of care provided by a health care service firm and that this will lead to increased staffing requirements and burdensome costs.

RESPONSE: The notice of proposal, as it appeared at 47 N.J.R. 406(a), including the Economic Impact Statement, satisfied the requirements of the Administrative Procedures Act, N.J.S.A. 52:14B-1 et seq., as well as the Rules for Agency Rulemaking, N.J.A.C. 1:30, promulgated by the Office of Administrative Law

and, therefore, the Board disagrees with the commenters' assertion that the rulemaking was "legally insufficient." The Board will address the economic impact of nursing supervision and delegation when it moves forward with the future rulemaking.

13. COMMENT: Several commenters contend that the Regulatory Flexibility Analysis in the notice of proposal was insufficient. They contend that the analysis did not quantify the number of health care service firms that would be impacted by the amendments and new rules, did not discuss the reporting or recordkeeping requirements imposed by the amendments and new rules, did not discuss the capital and annual costs to small businesses, and did not address implementation of the amendments and new rules that could minimize the impact on small business.

14. COMMENT: A commenter contends that the Regulatory Flexibility Analysis in the notice of proposal did not meet the requirements of N.J.S.A. 52:14B-19. The commenter points out that this statute requires an agency to describe the types and estimate the number of small businesses to which the rulemaking will apply, estimate the initial capital costs and estimate annual costs of complying with the rule, and indicate how the rule is designed to minimize impact on small businesses. The commenter contends that more analysis of the impact on [page=428] small businesses is required before the amendments and new rules can be adopted. This analysis should take into account registered professional nurse staffing availability in New Jersey. The commenter contends that there is a shortage of registered professional nurses in New Jersey and that this shortage will be exacerbated by the increased staffing requirements the amendments and new rules will impose.

RESPONSE TO COMMENTS 13 AND 14: The Regulatory Flexibility Analysis in the notice of proposal satisfied the requirements of the Administrative Procedures Act, N.J.S.A. 52:14B-1 et seq., as well as the Rules for Agency Rulemaking, N.J.A.C. 1:30, promulgated by the Office of Administrative Law. Specifically, the Regulatory Flexibility Analysis noted that the economic impact on small businesses, which could include entities that employ CHHAs, as well as the compliance, reporting, and recordkeeping requirements imposed pursuant to the proposed amendments, repeals, and new rules, were expressly delineated in the Economic Impact statement and Summary of the notice of proposal. The Board notes that future rulemaking will address whether there is any impact on health care service firms. The rules adopted in this rulemaking do impose recordkeeping requirements pertaining to the administration of medications by CHHAs; whatever costs may be associated with the removal of the current prohibition are intended to permit greater flexibility for CHHAs and convenience for families, while assuring safe practice by CHHAs. In addition, the Board notes that future rulemaking will address the economic impact of any proposed staffing requirements.

15. COMMENT: Several commenters support the amendments and new rules in N.J.A.C. 13:37-6. The commenters believe that the amendments and new rules will provide clear guidance for nurses to delegate nursing tasks. The commenters particularly appreciate provisions in N.J.A.C. 13:37-6.4 that establish clear guidance for the delegation of the administration of medication. The commenters believe the amendments and new rules will have a positive impact on the family caregivers.

RESPONSE: While some commenters did not find all of the amendments as clear, the Board thanks the commenters for their support - particularly the support for the provisions relating to the administration

of medication that are presently being adopted.

16. COMMENT: A commenter is concerned with provisions in N.J.A.C. 13:37-6.1 that make a registered professional nurse responsible for any task performed by a licensed practical nurse, CHHA, or assistive person, specifically with those tasks that have not been delegated by the registered professional nurse. The commenter contends that these provisions conflict with N.J.A.C. 13:37-14.3(b), which permits a CHHA to perform home-making activities assigned by a patient. The commenter is concerned that such tasks would become the responsibility of a registered professional nurse. The commenter recommends that the phrase "and provision of all care that has not been delegated" be deleted from N.J.A.C. 13:37-6.1(c). The commenter also recommends that the phrase "his or her decisions that affect" be inserted in N.J.A.C. 13:37-6.1(d), so that the rule would read: "... accountable for his or her decisions that affect the manner in which the task is performed and the outcomes of care."

RESPONSE: The Board disagrees. Proposed N.J.A.C. 13:37-6.1(c) was not intended to make a registered professional nurse responsible for all tasks performed by licensed practical nurses, CHHAs, or assistive persons, but only delegated nursing tasks. The regulation ensures that a registered professional nurse is aware that he or she is required to provide any nursing care tasks that he or she has determined should not be delegated. A registered professional nurse is not responsible for all services provided, but is responsible for any nursing task that has been delegated by him or her, as well as those to be personally undertaken. The intended future rulemaking will make this distinction clear. For now, it should be noted that home-making activities identified in N.J.A.C. 13:37-14.3(b) are defined in such a way as to differentiate these tasks from nursing tasks, including activities of daily living. As home-making tasks are not nursing tasks, they are not necessarily tasks that would be delegated by a registered professional nurse and would not become the responsibility of a registered professional nurse if a patient requests a CHHA to perform them.

17. COMMENT: Many commenters are concerned that N.J.A.C. 13:37-6.1(c) requires nurses to be responsible for any care that has not been delegated. The commenters believe that this is an overreach and strips individuals of the ability to make choices about their own care in non-medical situations. The commenters contend that this provision conflicts with N.J.A.C. 13:37-14.3(b), which permits a CHHA to perform home-making activities assigned by a client. Some of the commenters point out that the Fair Labor Standards Act defines "care" as "assistance with daily living" and distinguishes such care from medially related services. All of the commenters contend that Medicare recognizes a distinction between nursing and non-nursing care. The commenters recognize that some tasks should only be performed by nurses but contend that not every task needs to be done by nurses.

RESPONSE: As noted in the introductory information, the Board had not intended by the language of N.J.A.C. 13:37-6.1(c) to require a registered professional nurse to be accountable for nursing tasks that are not delegated but undertaken personally. Clarification will be provided in the future rulemaking.

18. COMMENT: Several commenters contend that N.J.A.C. 13:37-6.1 would increase the responsibility and accountability of nurses and that this will lead to increased costs for liability insurance.

RESPONSE: N.J.A.C. 13:37-6.1, as it was proposed, was not intended to increase a nurse's responsibility

or accountability as the commenters contend, a point that can be advanced in the future rulemaking.

19. COMMENT: A commenter recommends that the definition of "assessment" in N.J.A.C. 13:37-6.2 be amended to include the following phrase: "For these purposes, an assessment by a registered professional nurse of a patient's vital signs shall be sufficient unless the registered professional nurse determines, based on the stability and condition of the patient, that a more extensive evaluation is appropriate."

RESPONSE: While the Board is not adopting the proposed new definition section, the definition advanced by the commenter for "assessment" does not comport with the term understood by nurses throughout the State. While the scope of an "assessment" may be guided by patient stability, merely taking vital signs is insufficient to establish a patient's physical or functional status to determine if nursing tasks are implicated. The definition of "assessment" will be included in the future rulemaking.

20. COMMENT: Many commenters contend that the definition of "assessment" in N.J.A.C. 13:37-6.2 indicates that the Board has ignored clients and has characterized all individuals receiving care as patients, even if they do not have medical issues.

RESPONSE: The future rulemaking, with definitions of "nursing tasks" and "non-nursing tasks" should make clear that individuals who are not receiving nursing care are not affected by the amended rules addressing delegation of nursing care.

21. COMMENT: Many commenters are concerned that N.J.A.C. 13:37-6.2 does not include definitions for "patient" or "client." The commenters contend that this means that all individuals receiving care are patients that nurses will control.

RESPONSE: Proposed N.J.A.C. 13:37-6.2 had included definitions relevant to the delegation of nursing tasks. The future rulemaking including N.J.A.C. 13:37-6.2 will offer the opportunity to clarify the distinction that is of concern to the commenters.

22. COMMENT: A commenter recommends that the definition of "assistive person" in N.J.A.C. 13:37-6.2 be amended to clarify that a family member of a patient cannot be an assistive person and to provide examples of assistive persons, such as certified nurse's aides.

RESPONSE: In many instances, a nurse may delegate tasks to a family member serving as a caregiver, so in those instances an "assistive person" could be a family member. The subsequent rulemaking will make this clear.

23. COMMENT: Many commenters point out that nurses and CHHAs are not included in the definition of "assistive person" in N.J.A.C. 13:37-6.2 and contend that the use of the term "tasks" in the definition implies that everything performed for an individual must be supervised by nurses. The commenters contend that this supervision is meant to extend to family members and friends of those receiving services.

[page=429] RESPONSE: As noted in the introductory information, this section is not being adopted and will be proposed as a future rulemaking, which will include more clarity as requested by the commenters.

24. COMMENT: A commenter supports using the term "CHHA" as opposed to the term "certified homemaker home health aide" throughout the Board's regulations.

RESPONSE: The Board thanks the commenter for her support.

25. COMMENT: Many commenters contend that the definition of "delegation" in N.J.A.C. 13:37-6.2 makes a nurse accountable for overall care and that the definition of "supervision" indicates that the nurse is responsible for the oversight of all care. The commenters contend that there is no rationale for requiring nurse oversight and accountability for non-nursing tasks.

RESPONSE: As explained in the introductory information and in the responses to prior comments, the Board had not intended that the definitions would be read to make a nurse responsible for all services provided to an individual, but were intended to reflect the responsibility a registered professional nurse has when he or she delegates nursing tasks to individuals. The amendments and new rules were not intended to make registered professional nurses responsible for the provision of non-nursing tasks. The inclusion of definitions for "nursing tasks" and "non-nursing tasks" in the future rulemaking will assist in making this clear.

26. COMMENT: A commenter recommends that the definition of "plan of care" in N.J.A.C. 13:37-6.2 be amended to include the following phrase at the end of the definition: "and any non-nursing tasks or any home-making activities to be performed by a CHHA or an assistive person."

RESPONSE: It had not been the Board's intention to have the "plan of care" include non-nursing tasks as the commenter recommends. In the future rulemaking, the definition "plan of care" will be consistent with the proposed definitions of "nursing tasks" and "non-nursing tasks."

27. COMMENT: Many commenters are concerned with the definition of "plan of care" as their firms, or the firms from which they receive services, do not have plans of care as nurses do not delegate tasks. The commenters are concerned that the amendments and new rules will require nurse review of home-making activities performed by CHHAs.

RESPONSE: As noted in the introductory information, the future rulemaking will address this issue.

28. COMMENT: The definition of "plan of care" in N.J.A.C. 13:37-6.2 requires a plan of care to specify any nursing tasks to be delegated to a licensed practical nurse, CHHA, or assistive person. A commenter contends that this is not consistent with current documentation protocols. The commenter recommends that this provision be deleted from the definition of "plan of care" as such plans do not contain delegated tasks. A CHHA plan of care, which is created by a registered professional nurse, would contain any tasks delegated to a CHHA and any clinical documentation developed by a registered professional nurse would include tasks delegated to a licensed practical nurse, CHHA, or assistive

person.

RESPONSE: The Board believes that the nursing plan of care is the document in which all nursing care, including tasks that have been delegated by the registered professional nurse, should be recorded in order to safeguard the health, safety, and welfare of patients receiving nursing care. The Board's expectation with regard to documentation will be delineated in the future rulemaking at N.J.A.C. 13:37-6.2.

29. COMMENT: A commenter recommends that the definition of "supervision" in N.J.A.C. 13:37-6.2 be amended to include licensed practical nurses in the list of individuals who a registered professional nurse may supervise.

RESPONSE: N.J.S.A. 45:11-23 establishes that a licensed practical nurse works under the direction of a registered professional nurse. The definition of "direction" in N.J.A.C. 13:37-6.2 clarifies that the level of oversight provided to a licensed practical nurse is different than that provided to a CHHA or assistive person when a nursing task is delegated. As with all the other definitions, the term will be included in the future rulemaking.

30. COMMENT: A commenter points out that there is no employer-employee relationship when a registered professional nurse delegates to an assistive person and contends that this means a nurse could not supervise an assistive person. The commenter contends that a nurse is not delegating in this situation, only instructing the assistive person and that the Board cannot require a nurse to be responsible for the outcomes of such instructions.

RESPONSE: If a registered professional nurse cannot supervise the individual to whom a nursing task is delegated, the nurse should not delegate that task. Supervision of delegated tasks is essential to protect the health, safety, and welfare of the patient receiving care. The Board disagrees with the commenter's contention that an employment relationship is necessary in order for a nurse to supervise an assistive person.

31. COMMENT: N.J.A.C. 13:37-6.4(a)3 requires a registered professional nurse to evaluate the training, knowledge, and skills of a person prior to delegating a task to that person. A commenter recommends that this provision be amended so that a registered professional nurse would be responsible for determining the training, knowledge, and skill of a person to whom a task may be delegated. The registered professional nurse would be required to communicate this information to the entity that contracts with a patient to provide services. The entity would then be responsible for ensuring that it only assigns individuals to perform tasks who have the required skills and knowledge. The entity would assess a licensed practical nurse's or CHHA's competency to perform a task through documented training, and would assess an assistive person's competency through its policies and procedures, such as its credential verification protocol, or through direct observation of the assistive person.

RESPONSE: Only a registered professional nurse can delegate nursing tasks. The commenter's recommendations would create a situation by which an entity would be delegating nursing tasks. To permit otherwise, in the Board's view, would endanger patient safety. The definitions to be proposed in

the future rulemaking will help to address the commenters concern. In this context the Board will also address the extent to which a delegating nurse can rely on the competency assessments made by other nurses that are recorded in a firm's records.

32. COMMENT: Proposed N.J.A.C. 13:37-6.4(a)3 requires a registered professional nurse who delegates a task to assess the competency of an individual to whom the task is delegated. When the individual is an assistive person, this assessment is either through direct observation or through policies or procedures of an entity that address the knowledge and skill of the assistive person. A commenter contends that it is not safe to rely on policies and procedures to assess a person's competency. The commenter recommends that N.J.A.C. 13:37-6.4(a)3 be amended to remove language that permits assessment to be made based on policies and the procedures of an entity.

RESPONSE: The Board notes that it is not adopting this provision at this time, but it does believes it is safe to rely on the policies and procedures of an entity when such policies and procedures establish a base level competency for assistive persons, such as a policy that all assistive persons complete a course. A registered professional nurse may rely on the policies and procedures of an institution or agency only when those policies or procedures address the knowledge and skills of the assistive person. The Board points out that a nurse does not have to rely on policies and procedures of an entity when delegating to a CHHA or licensed practical nurse, as the education these certified or licensed individuals complete addresses whatever training policies and procedures that are established for unlicensed individuals.

33. COMMENT: A commenter contends that it would be onerous for a registered professional nurse to ensure that a CHHA or assistive person has the education, competency, and credentials to administer medication. The commenter recommends that N.J.A.C. 13:37-6.4(a)3 be amended to make it the responsibility of the CHHA's or assistive person's employer to ensure that the CHHA or assistive person is competent.

RESPONSE: As noted in the introductory information, this specific section is not being adopted at this time, but the Board would be loath to allow the competency assessment to be made by the employer and not a nurse. The delegation of the administration of medication, in particular, must be based on a registered professional nurse's assessment as to the competency of an individual to administer the medication effectively and safely. As noted in the introductory information, in the future rulemaking, the Board will consider language that addresses the extent to which a [page=430] delegating nurse can rely on another nurse's assessment of an individual's competencies as documented in an agency's records.

34. COMMENT: A commenter is concerned that N.J.A.C. 13:37-6.4(a)3 will require a registered professional nurse in every setting to assess the credentials of every licensed practical nurse or CHHA to whom he or she delegates a task. The commenter believes that the Board only intended to impose this burden in the home care setting. The commenter contends that registered professional nurses working in hospitals should be able to rely on representations from employers as to the abilities of licensed practical nurses or CHHAs and that they should not be required to personally establish credentials.

RESPONSE: As noted in the introductory information, the provision is not being adopted at this time, but it is worth noting that the Board intended for a registered professional nurse to check the credentials of a licensed practical nurse or CHHA in any setting in which the registered professional nurse delegates to a licensed practical nurse or CHHA. But the Board does not believe it will be burdensome for a registered professional nurse to establish that a licensed practical nurse or CHHA is licensed or certified prior to delegating a task in a hospital. The Board had envisioned that such verification could be accomplished by checking identification tags, which are required to be worn by every licensed practical nurse and CHHA. As such, this verification should be relatively easy to perform.

35. COMMENT: A commenter contends that the evaluation requirement in N.J.A.C. 13:37-6.4 will interfere with the non-medical home care that patients receive.

RESPONSE: The new clarifying definitions for "nursing task" and "non-nursing task" in the future rulemaking should allay the commenter's concern.

36. COMMENT: N.J.A.C. 13:37-6.4(a)4 and 6 require a registered professional nurse to communicate certain information directly to a person to whom he or she is delegating a task. N.J.A.C. 13:37-6.4(b)3 requires a registered professional nurse to provide feedback to an individual to whom the nurse has delegated a task. A commenter recommends that these provisions be amended so that communication and feedback could be indirectly provided through an entity that has contracted to provide services to a patient. If communication is provided indirectly through a contracting entity, that entity would be responsible for ascertaining that the information was understood by the person who performs the task.

RESPONSE: As noted in the introductory information, the specifics in N.J.A.C. 13:37-6.4(a) and (b) are not being adopted. But the Board fundamentally rejects the commenter's suggestion that communications between the nurse delegating nursing tasks and the individual to whom those tasks are delegated should be "indirectly" provided by the entity that has contracted to provide the services. The nurse who delegates a nursing task to an individual must communicate information and provide feedback to ensure that the person performing the delegated task is performing it in a safe and effective manner. It would be irresponsible on the part of a registered professional nurse to provide this communication and feedback through a third party. Development of these lines of communication is essential in assuring that patient needs and any changes are being appropriately handled.

37. COMMENT: N.J.A.C. 13:37-6.4(a)4 requires a registered professional nurse to make efforts to ascertain that directions regarding a task have been understood by the person to whom the nurse is delegating the task. A commenter recommends that the phrase "make efforts to ascertain" be replaced with "ensure."

RESPONSE: Although the Board is not adopting this section, it recognizes that there is no way to establish for certain that a person to whom a nursing task was delegated understands given directions. A registered professional nurse will be required to go through the required steps and make efforts to ascertain that those directions are understood. As it approaches the task of proposing the section in the future rulemaking, the Board will give consideration to the commenter's concern.

38. COMMENT: N.J.A.C. 13:37-6.4(b)1 includes the phrase "... has delegated and to whom and that the registered professional nurse ..." A commenter recommends that the phrase "and to whom" be deleted from this provision.

RESPONSE: The Board intended to require a registered professional nurse to document the individual to whom a task has been delegated. The phrase "to whom and" should have read: "to whom the task was delegated, and ..." When the Board proposes subsection (b) in the future rulemaking, it will bear this comment in mind in an effort to clarify this requirement.

39. COMMENT: A commenter contends that N.J.A.C. 13:37-6.4(b)1 imposes extensive paper work and documentation requirements and recommends that the rule be amended to streamline these requirements without compromising nursing care.

RESPONSE: Although N.J.A.C. 13:37-6.4(b) is not being adopted, and is not presently enforceable, the Board believes that these documentation requirements are the minimum necessary to ensure that a registered professional nurse is accurately recording a delegation of nursing tasks. The commenter has not provided any recommendations as to the streamlining. The future rulemaking will afford another opportunity for input on the documentation requirements.

40. COMMENT: N.J.A.C. 13:37-6.4(b)1 requires a registered professional nurse who delegates a task to document the delegation of the task in either facility or health care service firm patient records or in records kept by the registered professional nurse. A commenter contends that delegated tasks do not belong in facility records and recommends that the rule be amended so that nurses will be required to document this information in patient medical records.

RESPONSE: The Board disagrees with the commenter that it is inappropriate to document delegations in facility records. Sometimes, these records are the best place to record information regarding patient care. When the Board proposes N.J.A.C. 13:37-6.4(b)1 in the future rulemaking, it will seek, as it did with this rulemaking, to afford flexibility in the recordation of pertinent information pertaining to delegation.

41. COMMENT: A commenter contends that the documentation requirements of N.J.A.C. 13:37-6.4(b)1 is a major change to documentation requirements. The rule requires a registered professional nurse to document that he or she has gone through steps required by N.J.A.C. 13:37-6.4(a). The commenter contends that this requirement makes sense in the home care setting, but is inappropriate in other settings in which nurses delegate many tasks, such as in acute care.

RESPONSE: The Board does not view the N.J.A.C. 13:37-6.4(b) requirements as a "major change." The documentation requirements are consistent with good practice in any setting. Given the nature of care provided to patients in these settings, such as acute care, it is vital that accurate information is recorded as to the care patients receive, who provided this care, and the process that a registered professional nurse went through when he or she delegated such care. Proposed N.J.A.C. 13:37-6.4(b)1 offered several alternatives for documentation; as long as the delegation is documented, the requirements of the rule would have been satisfied. In undertaking its review for the future rulemaking, the Board will give consideration to whether there are other alternatives that will afford patients the necessary

safeguards.

42. COMMENT: N.J.A.C. 13:37-6.4(b)2 requires a registered professional nurse to evaluate patient outcomes after delegating a nursing task. A commenter recommends that this provision be amended to require this evaluation to occur every 90 days, or more frequently depending on the status of the patient.

RESPONSE: The Board recognizes that the frequency of the evaluation of patient outcomes is very fact-specific and that it should not dictate to a registered professional nurse how often this evaluation should be performed. Overall evaluations may occur over extended periods, but the delegating registered professional nurse should generally be in a position to be apprised of outcomes and problems. N.J.A.C. 13:37-6.4, when proposed in the future rulemaking, as in this rulemaking, will likely reflect this recognition.

43. COMMENT: N.J.A.C. 13:37-6.4(b) sets forth specific information that must be included in facility patient records or records maintained by a registered professional nurse. A commenter recommends that this rule be amended to require that this information be recorded in a patient's medical record.

RESPONSE: A nurse does not always have access to patient medical records and there are situations in which a task is delegated and no patient [page=431] medical records exist. In order to address these situations, N.J.A.C. 13:37-6.4(b) must allow nurses to record the required information in their own records. The regulation, in the future rulemaking, will likely continue to provide recordkeeping alternatives, some of which maybe more appropriate in a specific setting than in others.

44. COMMENT: A commenter opposes the amendments and new rules because she does not believe that registered professional nurses should be allowed to delegate the administration of medication.

RESPONSE: The Board points out that there has never been a general prohibition on registered professional nurses delegating the administration of medication to assistive persons (as contrasted with CHHAs). The Board believes that the requirements of N.J.A.C. 13:37-6.4(c) allow for registered professional nurses to continue to delegate the administration of medication, while ensuring that such delegations are performed properly and patient health, safety, and welfare is protected. The Board points out that nothing compels a registered professional nurse to delegate and if a nurse does not believe a person can safely perform a delegated task, or if nursing judgment is necessary to perform the task, the nurse should not delegate the task. The Board views the adoption of this provision as a critical improvement that will benefit patients and families alike.

45. COMMENT: Two commenters ask if the Board will require nurses to complete education on delegation prior to the adoption of N.J.A.C. 13:37-6.4. One of the commenters asks if CHHAs will be required to complete education on the administration of medication.

RESPONSE: The Board will not require all nurses to complete education in delegation as the Board believes that such education is part of a nurse's initial education. A registered professional nurse can take continuing education courses in delegation if he or she wishes to do so. The Board does not have

the authority to require currently certified CHHAs to complete continuing education. The Board will look into amending CHHA curriculum requirements to determine if education on the administration of medication should be included in the curriculum.

46. COMMENT: A commenter contends that allowing nurses to delegate the administration of medication will harm patients.

RESPONSE: The Board disagrees and points out that there has never been a general prohibition on nurses delegating the administration of medication. There is no evidence that the ongoing delegation of the administration of medications has endangered patient safety. Specifically, the Board points out, as noted by several commenters, that the Rutgers study referred to in Comment 4 found that outcomes were no different between nurse administration of medications and medications administered pursuant to delegations, and that medications administered pursuant to delegations did not lead to adverse patient outcomes.

47. COMMENT: A commenter asks if the term "medication" in N.J.A.C. 13:47-6.4(c) includes medications for light wound care and if the administration of such medications could, therefore, be delegated to a CHHA.

RESPONSE: The term "medication" is not limited in any way and would include any medication, including those identified by the commenter. The Board was not inclined to provide a specific listing of medications allowed, and those not. As with all delegations, a registered professional nurse must be satisfied that the administration will not be dependent on nursing judgment.

48. COMMENT: A commenter contends that she would not be comfortable delegating the administration of medication. The commenter contends that administering medication requires assessment and that she could not guarantee that another individual has the ability to safely administer medication. The commenter would not be comfortable with a CHHA administering medication.

RESPONSE: The Board points out that it has long held the view, as embodied in existing N.J.A.C. 13:37-6.1 and 6.2, that a registered professional nurse shall not delegate if he or she determines that a delegation is not consistent with standards of practice. If the commenter is not comfortable delegating the administration of medication, she should not do so. If a registered professional nurse determines that an assessment should be made prior to administration, the nurse properly should not delegate the administration of the medication.

49. COMMENT: A commenter believes that there should be standards for the delegation of the administration of epi-pen and glucagon in the school setting.

RESPONSE: Standards for the administration of medication in the school setting are within the purview of the Department of Education.

50. COMMENT: A commenter is concerned with the documentation requirements of N.J.A.C. 13:37-6.4(c). The commenter contends that these requirements are onerous for nurses working in acute, sub-

acute, and similar settings.

RESPONSE: The Board believes that the documentation required by N.J.A.C. 13:37-6.4(c) ensures that the delegation of the administration of medication is done in a proper and effective manner. This is especially important in the acute and sub-acute settings.

51. COMMENT: A commenter is concerned that N.J.A.C. 13:37-6.4(d)vii indicates that an assessment can be made by a licensed practical nurse, CHHA, or assistive person. The commenter contends that only a registered professional nurse can make an assessment regarding adverse reactions or side-effects to medication. The commenter recommends that this rule be amended so that a licensed practical nurse, CHHA, or assistive person would report when a patient demonstrates any reportable side effect that the registered professional nurse identifies as reportable, or if there is any change in a patient's condition.

RESPONSE: N.J.A.C. 13:37-6.4(d)vii does not indicate that a licensed practical nurse, CHHA, or assistive person can make an assessment. This provision requires a registered professional nurse to advise a licensed practical nurse, CHHA, or assistive person to report if a patient evidences any adverse reaction or side-effects to a medication. The licensed practical nurse, CHHA, or assistive person is reporting if a patient has conditions that the registered professional nurse has identified or has conditions that could be of concern.

52. COMMENT: A commenter recommends that N.J.A.C. 13:37-6.5 be amended so that a patient could direct his or her own care when a plan of care does not contain any nursing tasks. The commenter contends that the rule would otherwise prohibit self-directed care by a patient. The recommended change would add the following to the end of N.J.A.C. 13:37-6.5: "provided that this shall not prohibit a patient from determining the patient's own plan of care, where such plan consists entirely of non-nursing tasks and home-making activities, and a registered professional nurse or the patient's physician has determined, based on the stability and condition of the patient, that the patient is capable of self-directing such tasks."

RESPONSE: While the reference in N.J.A.C. 13:37-6.5 to N.J.A.C. 13:37-6.4(a) has been deleted in the instant notice of adoption because that provision is not being adopted at this time, the Board does not believe that the commenters concerns are well founded. Patients should not be developing "plans of care." They may identify home-making tasks that will make their lives more comfortable. The regulation makes clear, at N.J.A.C. 13:37-14.3(b) that the patient or the patient's family can self-direct such services. Ultimately, the inclusion of a definition of "non-nursing task" may assist in providing clarification.

53. COMMENT: A commenter recommends that N.J.A.C. 13:37-8.2(e) be amended to remove the phrase "a registered health care service firm who is." The commenter contends that nurses are required to wear identification tags in home health and hospice.

RESPONSE: N.J.A.C. 13:37-8.2(e) establishes that a nurse cannot be granted a waiver pursuant to N.J.A.C. 13:37-8.2(c) if he or she is required to wear an identification tag pursuant to N.J.S.A. 34:8-79. This law applies to individuals providing home-based services for a home care services agency. As the phrase the

commenter recommends for deletion is necessary to clarify that requirements of N.J.S.A. 34:8-79, the Board does not have the discretion to delete the phrase.

54. COMMENT: Two commenters recommend that the Board make education available to CHHAs that addresses the delegation process.

RESPONSE: The Board does not have the resources to develop educational material for CHHAs, but encourages health care service firms and licensed facilities to develop educational opportunities.

55. COMMENT: Several commenters suggest that the Board classify activities of daily living as non-medical care and that it create a new licensing class of "personal care attendants" who can provide this care. [page=432] This would allow the Board to regulate CHHAs as it deems appropriate without preventing firms from providing non-medical care.

RESPONSE: The Board does not have the authority to create a new licensing class. Activities of daily living will necessarily be addressed in the development of new definitions for "nursing tasks" and "non-nursing tasks" that the Board intends to propose in the future.

56. COMMENT: A commenter recommends that the definition of "CHHA" in N.J.A.C. 13:37-14.2 be amended to include reference to N.J.A.C. 13:37-6.2. The commenter had recommended that N.J.A.C. 13:37-6.2 be amended to provide definitions for "non-nursing tasks" and "nursing tasks" and the recommended changes to N.J.A.C. 13:37-14.2 would incorporate these new provisions into the definition of "CHHA."

RESPONSE: As discussed in the introductory information, the Board will undertake to provide greater clarification to the terms "nursing tasks" and "non-nursing tasks" in a future rulemaking. It is not adopting the defintion of "CHHA" in N.J.A.C. 13:37-14.2 in order to align this definition with the definition it intends to propose in that future rulemaking.

57. COMMENT: Several commenters contend that the new definitions in N.J.A.C. 13:37-14.2 insert the Board in the operations of home care service agencies, which are regulated under N.J.S.A. 34:8-43.

RESPONSE: The definitions in N.J.A.C. 13:37-14.2 address the Board's authority to regulate CHHAs. The definitions do not authorize the Board to regulate the operations of home care service agencies. Health care practitioner supervisors, as that term is set forth in the Division's health care service firm regulation, are generally registered professional nurses who are obliged to adhere to these rules.

58. COMMENT: A commenter recommends that the term "hospice" be added to the definition of "home care services agency" in N.J.A.C. 13:37-14.2.

RESPONSE: The definition of "home care services agency" is taken from N.J.S.A. 45:11-23.c. The Board does not have the authority to change this statutory definition by adding hospices to the definition as the commenter requests.

59. COMMENT: A commenter recommends that the phrase "the patient, the patient's family" be deleted from the definition of "home-making activities" in N.J.A.C. 13:37-14.2. The commenter contends that a CHHA takes direction from a registered professional nurse and referencing the patient or his or her family in this definition could place a CHHA in a difficult position if there is a conflict between a nurse's instructions and a patient's instructions.

RESPONSE: To the extent there is a conflict between a nurse's instruction and a patient's instruction, a CHHA should discuss it with the nurse who has delegated the nursing tasks.

60. COMMENT: Many commenters contend that N.J.A.C. 13:37-14.2 and 14.3 conflict with N.J.A.C. 13:45B-14.7(c), which allows a CHHA to perform tasks only if they have been assigned by a health care practitioner supervisor or the health care practitioner supervisor has directed the CHHA to perform the tasks. The commenters contend that this means a CHHA has to choose which supervisor he or she should accept a delegation from. The commenters contend that the Board does not have the authority to overrule the Division of Consumer Affairs' rules.

RESPONSE: The commenters have misinterpreted N.J.A.C. 13:37-14.2 and 14.3 and 13:45B-14.7(c). These rules do not conflict, as a health care practitioner supervisor is defined in N.J.A.C. 13:45B-14.1 as a "licensed physician, or a registered nurse ..." A health care practitioner supervisor who is a registered nurse would be the nurse who is delegating to the CHHA. The anticipated future rulemaking that will define "nursing tasks" and "non-nursing task" may assist in providing guidance in this regard.

61. COMMENT: Many commenters contend that N.J.A.C. 13:37-14.2 and 14.3 conflict with N.J.A.C. 13:45B-13.2, which permits health care service firms to provide health care or personal care services in the home or a care-giving facility. The commenters contend that the amendments and new rules ignore the fact that firms can provide health care or personal care services and that this is an attempt by the Board to assume responsibility for all care regardless of where it is provided.

RESPONSE: The Board disagrees that there is a conflict between N.J.A.C. 13:45B-13.2 and 13:37-14.2 and 14.3, but sees that the anticipated future rulemaking that it will undertake as an opportunity to assure that the rules can be harmonized going forward in the implementation of P.L. 2014, c. 29.

62. COMMENT: N.J.A.C. 13:37-14.3(a) states that a CHHA shall perform nursing tasks only if those tasks are delegated by a registered professional nurse. A commenter recommends that this rule be amended to allow a CHHA to perform tasks without a delegation if they are performed in accordance with recommended new definitions for "non-nursing tasks" and "nursing tasks" in N.J.A.C. 13:37-6.2.

RESPONSE: Because the term "nursing tasks" is used in N.J.A.C. 13:37-14.3(a), that subsection is not being adopted. As definitions for "nursing tasks" and "non-nursing tasks" are developed, the scope of N.J.A.C. 13:37-14.3 should become better understood.

63. COMMENT: Many commenters are concerned with N.J.A.C. 13:37-14.3(a), which states that a CHHA may only perform activities of daily living if they are delegated by a registered professional nurse. The commenters contend that these activities are not nursing tasks and do not require nursing assessments.

The commenters contend that this provision will interfere with their jobs, or the services provided by CHHAs in their homes, and will increase costs for families receiving care. The commenters are also concerned that this provision will require health care service firms to employ more nurses to supervise caregivers performing activities of daily living.

RESPONSE: As noted in the introductory information, the Board is not adopting this subsection at this time. The Board does believe that personal care services frequently involve the provision of services to those with health issues or disabilities, services that are often of an intimate nature, requiring skills and sensitivity. Services of such a nature should be addressed in the plan of care and delegated by a registered nurse.

64. COMMENT: Many commenters are concerned with the requirement that CHHAs meet with nurses prior to providing care in a home. The commenters contend that this only makes sense if there is medical treatment being provided; but when there is no medical care and the CHHA is only providing help with activities of daily living and home-making services, there is no need for a meeting with a nurse.

RESPONSE: As noted in the response to prior comments, the Board believes that assistance with activities of daily living often involves the provision of services to those with health issues or disabilities and are often of an intimate nature, requiring skills and sensitivity and direct physical contact with the patient. As such, these relate to nursing treatments and should be addressed in the plan of care and delegated. A nurse assessment is an important protection for the patient. The Board is not adopting N.J.A.C. 13:37-14.3(a) at this time in order to provide a more precise differentiation between "nursing tasks" and "non-nursing tasks."

65. COMMENT: A commenter points out that a program coordinator is required to hold a bachelor's degree in nursing but that a registered professional nurse delegating to a CHHA may not have a bachelor's degree.

RESPONSE: The commenter has accurately assessed the requirements of N.J.A.C. 13:37-14.7 and the fact that there is no educational degree requirement for a registered professional nurse to delegate to a CHHA.

66. COMMENT: A commenter recommends that the phrases "requested or" and "patient, the patient's family, or a" be deleted from N.J.A.C. 13:37-14.3(b). The commenter contends that a CHHA takes direction from a registered professional nurse. It is inappropriate to allow patients or family to assign tasks. If a patient or his or her family wishes a specific task to be performed, this should be communicated to the registered professional nurse who can incorporate this task in his or her plan of care.

RESPONSE: N.J.A.C. 13:37-14.3(b) specifically addresses home-making activities. As defined in N.J.A.C. 13:37-14.2, these activities do not require nursing expertise and, therefore, a patient or family member may ask a CHHA to perform such tasks, without delegation by a nurse.

67. COMMENT: A commenter points out that there may be more than one registered professional nurse

who is assigned to a patient in home care. The commenter asks what will happen if these nurses do not agree as to the competency of a CHHA assigned to the patient.

[page=433] RESPONSE: While there can be more than one nurse assigned to a patient, a nursing task should be delegated by only one nurse at a time. A nurse should not delegate a task to a CHHA if he or she believes that the CHHA cannot safely perform the task.

68. COMMENT: N.J.A.C. 13:37-14.3(c) requires a registered professional nurse to review a plan of care with a CHHA if the CHHA is assigned to a patient who has already been assessed by the nurse. A commenter recommends that this rule be amended to allow such review to be provided indirectly through the entity that contracts to provide services to the patient. The rule also requires a registered professional nurse to meet with a CHHA if the nurse determines that the CHHA is not adequately prepared to perform the tasks in the plan of care. The commenter recommends that this provision be amended so that this determination could be made by the entity that contracts to provide services to the patient.

RESPONSE: The commenter's recommended amendments would remove the nurse from the process of delegation. Nursing reviews and nursing determinations can only be made by a nurse, they cannot be made by an entity that employs CHHAs. The Board believes personal involvement of the delegating nurse is an essential protection for patients, assuring that the services to be provided are best tailored to their needs, and performed safely and competently. As noted in the responses to prior comments above, the Board does recognize that a delegating nurse may rely on the assessment of competencies by another nurse as documented in the firm's records, although communication between the delegating nurse and the individual performing the tasks remains an essential element of safe practice.

69. COMMENT: Many commenters believe that N.J.A.C. 13:37-14.3(c) requires a registered professional nurse to meet every caregiver face-to-face prior to scheduling a caregiver to provide services. The commenters contend that this is dangerous. They contend that non-medical home care routinely involves multiple caregivers and are concerned that, if a nurse is not available to provide face-to-face instruction on delegated tasks, patients will not receive the care they need.

RESPONSE: N.J.A.C. 13:37-14.3(c) does not require a registered professional nurse to meet every caregiver face-to-face. In order to protect patient safety, the rule requires a registered professional nurse to meet a CHHA face-to-face if the nurse determines, after reviewing a plan of care with the CHHA, that the CHHA is not adequately prepared to perform tasks delineated in the plan of care. A comma is being added to N.J.A.C. 13:37-14.3(c) to provide further clarification.

70. COMMENT: Two commenters thank the Board for revising delegation regulations to permit the delegation of the administration of medications to CHHAs.

RESPONSE: The Board thanks the commenters for their support.

71. COMMENT: A commenter is concerned that expanding the tasks that may be delegated to a CHHA could result in patient harm.

RESPONSE: The Board points out that the only new task that a CHHA may perform pursuant to the amendments and new rules is the administration of medications. The Board believes that the procedures established by N.J.A.C. 13:37-6.4(c) and 14.3(e) will help to ensure that CHHAs who are administering medications pursuant to a delegation are doing so in a safe and effective manner. This provides an even playing field for CHHAs as other assistive personnel were not precluded from administering medications pursuant to a delegation.

72. COMMENT: A commenter supports the delegation of the administration of medications to CHHAs, but has concerns regarding the responsibility of registered professional nurses for patient outcomes. The commenter contends that registered professional nurses currently instruct patients and family members as to the administration of medication. This is part of educating a patient and a nurse is not responsible for any errors as long as proper education was provided. The commenter asks if a nurse would have the same protections if he or she delegates administration of medication to a CHHA. The commenter also asks how a nurse will know if a CHHA is competent to administer medications as the nurse does not have continuous supervisory control of the CHHA.

RESPONSE: The Board disagrees with the commenter that authorizing an unlicensed person to administer medications is instructing the person as opposed to delegating to that person. When a registered professional nurse authorizes an individual to administer medications, such authorization has to be done through a delegation in order to protect the health, safety, and welfare of the patient. The standards in N.J.A.C. 13:37-6.4(c) and 14.3(e) provide the framework for a proper delegation of the administration of medication. A registered professional nurse who delegates the administration of medication to a CHHA will have to assess the abilities of the CHHA to administer that medication. If this assessment is done in a proper manner, the nurse will be able to delegate to the CHHA even though he or she is not continuously present to supervise the CHHA.

73. COMMENT: A commenter opposes provisions that allow registered professional nurses to delegate the administration of medication to CHHAs. The commenter contends that this undercuts the education of nurses and could be dangerous. The commenter contends that the education of CHHAs does not prepare them to make decisions regarding medication administration.

RESPONSE: A CHHA would not be authorized to make decisions regarding medication administration. A CHHA would be authorized to administer a medication only in the manner delegated by a registered professional nurse. The Board believes that the standards established by N.J.A.C. 13:37-14.3(e) help to ensure that the delegation of the administration of medications is done in a safe and effective manner.

74. COMMENT: A commenter recommends that the Board institute a certification process to authorize CHHAs to administer medications. The commenter believes that this would help to ensure that CHHAs have the skills necessary to provide this service in a safe and effective manner. The commenter recommends that N.J.A.C. 13:37-14.3(e) be amended to require this certification before a registered professional nurse delegates the administration of medication to a CHHA. The commenter recommends that N.J.A.C. 13:37-14.4 be amended to establish the training requirements for medication certification, examination requirements for medication certification, and the process for approving medication

certification programs. The commenter also suggests that N.J.A.C. 13:37-14.9 should also be amended to establish application requirements for medication certification.

RESPONSE: A CHHA would be authorized to administer a medication only in the manner delegated by a registered professional nurse. The Board believes that the standards established by N.J.A.C. 13:37-14.3(e) help to ensure that the delegation of the administration of medications is done in a safe and effective manner, and does not believe that the creation of a certification process as suggested by the commenter is warranted at this time. The Board, however, will continue to reassess the need for additional training in medication administration for CHHAs, including whether amendments to the CHHA curriculum requirements to cover this topic are necessary.

75. COMMENT: A commenter points out that N.J.A.C. 13:37-14.3 does not provide a list of medications that a CHHA may administer pursuant to a delegation from a registered professional nurse. The commenter asks if there is any limitation as to which medications may be administered by a CHHA.

RESPONSE: There is no limitation as to the medications that a CHHA may administer pursuant to a delegation, so long as no nursing judgment needs to be exercised in the administration.

76. COMMENT: N.J.A.C. 13:37-14.3(e)2 requires a registered professional nurse to document specific information in the nursing plan of care when he or she delegates the administration of medication to a CHHA. A commenter recommends that this rule be amended so that this information is recorded in a CHHA plan of care.

RESPONSE: The Board believes that the nursing plan of care is the document that establishes the nursing tasks being performed for a patient. This document is the appropriate place to record delegations of nursing tasks and the Board will not amend N.J.A.C. 13:37-14.3 as the commenter recommends.

77. COMMENT: N.J.A.C. 13:37-14.3(e)2i requires a delegating registered nurse to record "the specific medication whose administration has been delegated." A commenter recommends that this provision be reworded to read: "the specific medication administration that has been delegated."

RESPONSE: The commenter's recommended amendment would change the intent of N.J.A.C. 13:37-14.3(e)2i. The regulation as written [page=434] requires a registered professional nurse to document the medication that is being administered. The commenter's recommendation would remove the requirement that the specific medication be documented and replace it with documenting the route by which a medication is being administered, which would be redundant.

78. COMMENT: N.J.A.C. 13:37-14.3(e)2iv requires a delegating registered nurse to record a timeframe for the nurse to reevaluate a patient when the administration of medication to that patient has been delegated to a CHHA. A commenter recommends that this provision be deleted as it is unrelated to a CHHA administering medications.

RESPONSE: The Board disagrees that a timeframe for reevaluating a patient is unrelated to a CHHA administering medications. A reevaluation by a registered professional nurse is essential to ensure that a

CHHA is administering a medication in a safe and effective manner.

79. COMMENT: N.J.A.C. 13:37-14.3(e)2viii requires a delegating registered nurse to record any conditions that would require a CHHA to contact a registered professional nurse who has delegated the administration of medication to the CHHA. A commenter recommends that this provision be amended to require the CHHA to contact the nurse if the patient evidences any adverse reaction or side-effect to the medication. The commenter points out that the recommended amendment mirrors the language in N.J.A.C. 13:37-6.4.

RESPONSE: The Board believes that a registered professional nurse must document any condition, not just adverse reactions or side-effects, that would require a CHHA to contact the nurse and will not amend N.J.A.C. 13:37-14.3(e) as the commenter recommends. The Board points out that N.J.A.C. 13:37-6.4(c)8 imposes the same requirement on registered professional nurses as N.J.A.C. 13:37-14.3(e)2viii.

80. COMMENT: A commenter doubts that a CHHA will be able to understand all medications, interactions, and side effects. The commenter contends that CHHAs do not have the critical thinking skills to intervene as a registered professional nurse does.

RESPONSE: The Board agrees that a CHHA will not have the critical skills to intervene as a registered professional nurse does. This is why the standards of N.J.A.C. 13:37-14.3(e) establish procedures to ensure that the CHHA properly understands the administration being delegated and the registered professional nurse indicates when the CHHA needs to contact the nurse in order to properly address interactions and side effects. The Board points out that a nurse should not delegate a task if he or she believes a CHHA is not capable.

81. COMMENT: A commenter contends that registered professional nurses working in home care currently do not have the time to complete their workloads. The commenter is concerned that the assessment and supervision requirements in N.J.A.C. 13:37-14.3 will create more burdens for nurses.

RESPONSE: Registered professional nurses working in home care are already providing assessment and supervision of CHHAs and others providing care. The Board does not believe that the requirements of N.J.A.C. 13:37-14.3 generally increase these workloads, except for the new procedures established so that registered professional nurses may now delegate the administration of medication to CHHAs. As CHHAs have never before been permitted to administer medications, there are new assessment and supervision requirements for such administration; but there should be a concomitant reduction in workload in that registered professional nurses will no longer be required to administer those medications themselves or delegate the administration to unlicensed individuals who may require even greater oversight.

82. COMMENT: A commenter recommends that the phrase "conducted by a home care agency" in N.J.A.C. 13:37-14.4 be amended to read "conducted by a home care services agency." The commenter contends that this amendment mirrors the language in N.J.A.C. 13:37-14.2.

RESPONSE: The Board has changed N.J.A.C. 13:37-14.4 upon adoption to reflect the proper terminology

for entities that may conduct CHHA training programs.

83. COMMENT: A commenter is unclear as to whether hospice agencies can conduct CHHA training programs and asks the Board to clarify whether such agencies can provide training programs.

RESPONSE: A CHHA training program may be conducted only by a home care services agency or an educational institution approved by the Department of Education or the Commission on Higher Education. Pursuant to N.J.S.A. 45:11-23.c, a "home care services agency" does not include a hospice. Because a hospice is not a home care services agency, nor an educational institution, a hospice may not conduct a CHHA training program.

84. COMMENT: A commenter contends that health care service firms are not equipped to establish or administer examinations for prospective CHHAs. The commenter contends that the Board has this expertise and that it should be responsible for developing and administering an examination that applicants would have to pass in order to obtain certification. The commenter recommends that N.J.A.C. 13:37-14.4, 14.8, and 14.9 be amended to transfer examination requirements from CHHA training programs and impose them on the Board.

RESPONSE: A health care service firm that provides a CHHA training program must be able to administer an examination to its students that tests a student's ability to complete the functions of a CHHA. If a health care service firm is not able to administer such a test, it should not be educating CHHAs.

85. COMMENT: A commenter recommends that N.J.A.C. 13:37-14.7 and 14.8 be amended to clarify that the terms "community health nursing" and "home care" include time spent working for hospice agencies.

RESPONSE: "Community health nursing" is defined in N.J.A.C. 13:37-14.2 as: "professional nursing practice emphasizing health promotion, health maintenance, primary prevention, health education and management, coordination of health care services, and continuity of care for individuals, families, and groups in the community." It includes "home visits to assess, plan for, and provide nursing services; health guidance and direct care; and coordination of services with community resources, families and other health professionals and paraprofessionals." This definition was derived from Department of Health rule, N.J.A.C. 8:42-1.2. Given the definition of "community health nursing" in N.J.A.C. 13:37-14.2, the Board believes that it is clear that time spent working for hospice agencies qualifies as working in community health nursing and home care and it is not necessary to amend N.J.A.C. 13:37-14.7 and 14.8 as the commenter recommends.

86. COMMENT: A commenter asks if a program coordinator will be responsible or liable for any errors committed by a CHHA who was educated in the coordinator's program. The commenter contends that the regulations do not provide guidance as to assigning liability when a CHHA performs a task incorrectly.

RESPONSE: The program coordinator has always been responsible for overseeing the training program administered by that program coordinator under N.J.A.C. 13:37-14.7. The Board would not discipline a

program coordinator for errors by a CHHA trained in the coordinator's program and it is unlikely that the coordinator would be held liable for a CHHA's errors solely because the coordinator oversaw the CHHA's training program.

87. COMMENT: A commenter recommends that the phrase "conditional certification" in N.J.A.C. 13:37-14.9(d) be changed to "work permit" as this is the term currently used by the Board to refer to the authorization to work as a CHHA prior to receiving the results of a criminal history background check.

RESPONSE: N.J.S.A. 45:11-24.4 uses the term "conditional certification" and that is the term that the Board must use in N.J.A.C. 13:37-14.9.

88. COMMENT: A commenter supports new N.J.A.C. 13:37-14.11, which establishes procedures for obtaining a certification through reciprocity. The commenter believes that this will help to ensure that entities that employ CHHAs will be able to meet staffing demands and client needs.

RESPONSE: The Board thanks the commenter for his support.

89. COMMENT: A commenter supports new N.J.A.C. 13:37-14.12, which requires CHHAs to wear identification tags. The commenter believes that this will facilitate professionalism and uniformity in the home care industry.

RESPONSE: The Board thanks the commenter for his support, but points out that the identification tag requirement is not new and that CHHAs have been required to wear identification tags since 2000 pursuant to N.J.A.C. 13:37-8.2.

[page=435] 90. COMMENT: A commenter supports the new provisions for renewal of certification, certification reactivation, and certification reinstatement in N.J.A.C. 13:37-14.13, 14.14, and 14.15.

RESPONSE: The Board thanks the commenter for his support.

91. COMMENT: A commenter recommends that a CHHA be required to complete continuing education as a prerequisite of certification renewal.

RESPONSE: The Board does not have the statutory authority to require CHHAs to complete continuing education as a prerequisite for certification renewal.

92. COMMENT: A commenter supports the amendments to N.J.A.C. 13:37-14.16, which outline duties and powers of the Board.

RESPONSE: The Board thanks the commenter for his support.

93. COMMENT: A commenter supports new N.J.A.C. 13:37-14.17, which provides prohibitions for sexual misconduct. The commenter believes that this will facilitate professionalism and uniformity in the home care industry.

RESPONSE: The Board thanks the commenter for his support, but points out that the sexual misconduct prohibition is not new and that these prohibitions have existed since 2004 pursuant to N.J.A.C. 13:37-8.3. The Board also notes that it has amended the rule to delete the word "nursing" as a modifier to "tasks," as used in the definitions of "patient-aide relationship" and "sexual harassment" because that term has not yet been defined. It is clear from the context of the entire rulemaking that a CHHA should be accountable for sexual misconduct whenever performing any tasks for patients.

Federal Standards Statement

A Federal standards analysis is not required because there are no Federal laws or standards applicable to the adopted amendments, repeals, and new rules.

Full text of the adoption follows (additions to proposal indicated in boldface with asterisks *thus*; deletions from proposal indicated in brackets with asterisks, *[thus]*):

SUBCHAPTER 5. GENERAL REQUIREMENTS OF LICENSURE; LICENSE RENEWAL; FEE SCHEDULE

13:37-5.5 Fee schedule

(a) (No change.)

(b) The following fees shall be charged by the Board in connection with certification of homemaker-home health aides:

1.-7. (No change.)

8. Reinstatement fee (after 30 days)..... 20.00 plus the certification renewal fee set forth in (b)6 above

9.-10. (No change.)

(c)-(f) (No change.)

SUBCHAPTER 6. DELEGATION AND SUPERVISION

*[13:37-6.1 Purpose and scope

(a) This subchapter governs the delegation of nursing tasks by a registered professional nurse to licensed practical nurses, certified homemaker-home health aides (CHHAs), or assistive persons.

(b) Only a registered professional nurse has the authority to delegate nursing tasks to a licensed practical nurse, a CHHA, or an assistive person.

(c) A registered professional nurse who delegates a nursing task is responsible for having made the determination to delegate the task, to assure that the person to whom the task is delegated is trained and competent to perform the task, for providing the appropriate oversight to the person to whom the task is delegated, and the provision of all care that has not been delegated.

(d) A registered professional nurse is responsible for the care that a patient receives under his or her direction or supervision and accountable for the manner in which the task is performed and outcomes of care.

13:37-6.2 Definitions

The following words and terms, when used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise.

"Assessment" means the in-person evaluation of a patient conducted by a registered professional nurse to establish a baseline of the patient's physical and functional status and to identify the level and nature of services needed to meet the patient's needs.

"Assignment" means a decision-making process by which a nurse allocates work to another nurse.

"Assistive person" means an unlicensed individual, regardless of title, to whom tasks are delegated. "Assistive person" does not include a licensed practical nurse or a CHHA who is subject to the jurisdiction of the Board of Nursing, but may include other persons not subject to jurisdiction of the Board of Nursing, but regulated or certified by other agencies.

"CHHA" means a certified home-maker home health aide who holds a certification issued by the Board of Nursing, after completing a training program and having passed a competency examination, pursuant to N.J.S.A. 45:11-24.

"Delegation" means transferring, from a registered professional nurse to a licensed practical nurse, a CHHA, or an assistive person, the authority and responsibility to perform a nursing task, while retaining accountability for overall care.

"Direction" means the provision of guidance and instructions relating to the performance of a delegated nursing task. "Direction" requires that guidance be provided at the outset, but does not require the same degree of ongoing oversight as is required if supervision is to be provided.

"Plan of care" means a documented delineation of the proposed treatment to be provided to a patient, including, but not limited to, patient diagnoses or problems, the short-term and long-term goals for patient care and discharge, developed by a registered professional nurse, specifying any nursing tasks to be delegated to a licensed practical nurse, a CHHA, or an assistive person.

"Supervision" means the provision of on-going guidance by a registered professional nurse for a nursing task delegated to a CHHA or an assistive person at the outset, as well as the provision of on-going oversight and availability, as determined appropriate in the professional judgment of the registered professional nurse.]*

*13:37-6.1 Nursing procedures

Nursing procedures shall be determined by the Nursing Practice Act of this State, subject to the interpretation and revision by the Board of Nursing.

13:37-6.2 Delegation of selected nursing tasks

(a) The registered professional nurse is responsible for the nature and quality of all nursing care including the assessment of the nursing needs, the plan of nursing care, the implementation, and the monitoring and evaluation of the plan. The registered professional nurse may delegate selected nursing tasks in the implementation of the nursing regimen to licensed practical nurses and ancillary nursing personnel. Ancillary nursing personnel shall include but not be limited to: aides, assistants, attendants, and technicians.

(b) In delegating selected nursing tasks to licensed practical nurses or ancillary nursing personnel, the registered professional nurse shall be responsible for exercising that degree of judgment and knowledge reasonably expected to assure that a proper delegation has been made. A registered professional nurse may not delegate the performance of a nursing task to persons who have not been adequately prepared by verifiable training and education. No task may be delegated which is within the scope of nursing practice and requires:

1. The substantial knowledge and skill derived from completion of a nursing education program and the specialized skill, judgment, and knowledge of a registered nurse;

2. An understanding of nursing principles necessary to recognize and manage complications which may result in harm to the health and safety of the patient.

(c) The registered professional nurse shall be responsible for the proper supervision of licensed practical nurses and ancillary nursing [page=436] personnel to whom such delegation is made. The degree of supervision exercised over licensed practical nurses and ancillary nursing personnel shall be determined by the registered professional nurse based on an evaluation of all factors including:

1. The condition of the patient;

2. The education, skill, and training of the licensed practical nurse and ancillary nursing personnel to whom delegation is being made;

3. The nature of the tasks and the activities being delegated;

4. Supervision may require the direct continuing presence or the intermittent observation, direction, and occasional physical presence of a registered professional nurse. In all cases, the registered professional nurse shall be available for on-site supervision.

(d) A registered professional nurse shall not delegate the performance of a selected nursing task to any licensed practical nurse who does not hold a current valid license to practice nursing in the State of New Jersey. A registered professional nurse shall not delegate the performance of a selected nursing task to ancillary nursing personnel who have not received verifiable education and have not demonstrated the adequacy of their knowledge, skill, and competency to perform the task being delegated.

(e) Nothing contained in this rule is intended to limit the current scope of nursing practice.

(f) Nothing contained in this rule shall limit the authority of a duly licensed physician acting in accordance with N.J.S.A. 45:9-1 et seq.*

13:37-6.3 Authorized delegation

(a) *[Only a registered professional nurse may delegate nursing tasks.]* *(Reserved)*

(b) A registered professional nurse shall not delegate if the nurse, in his or her professional judgment, determines that such delegation is not consistent with standards of practice.

13:37-6.4 Registered nurse obligations relating to delegations to a licensed practical nurse, CHHA, or assistive person

*[(a) Prior to delegating any nursing task to a licensed practical nurse, a CHHA, or an assistive person, the registered professional nurse shall:

1. Conduct an assessment of the needs of the patient and develop a plan of care;

2. Determine that the task to be delegated is within the registered professional nurse's scope of practice, generally involves predictable results, without life-threatening consequences, and can be performed without requiring judgment based on nursing knowledge, repeated nursing assessments during the performance of the task, or complex observation or critical decisions;

3. Evaluate the training, knowledge, and skills of the licensed practical nurse, the CHHA, or the assistive person to whom the task is to be delegated, assuring that the tasks to be delegated do not require skills and knowledge that exceed those that have been satisfactorily established, by verifying the credentials as to licensed practical nurses and CHHAs, and assessing the competencies achieved through their training and experience, or, in the case of an assistive person, evaluating competencies through direct observation or through policy and procedures of the institution or agency that address the knowledge, and skills of the assistive person to perform the nursing task;

4. Communicate to the licensed practical nurse, the CHHA, or the assistive person the task that is being delegated and how it relates to the patient's needs and the plan of care, the directions for that task and the expectations for that task, in clear, concise, correct, and complete terms, and make efforts to ascertain that the directions have been understood;

5. Identify the nature of the direction that will be provided to the licensed practical nurse or supervision to the CHHA, or assistive person, based on consideration of the following factors:

i. The stability and condition of the patient;

ii. The nature and complexity of the task;

iii. The proximity and availability of the registered professional nurse to the licensed practical nurse, the CHHA, or assistive person;

iv. The nature of the setting where the delegated task will be performed; and

v. The available means of communication between the registered professional nurse and the licensed practical nurse, CHHA, or assistive person, either through physical presence of the registered professional nurse or through real-time electronic means; and

6. Convey to the licensed practical nurse, the CHHA, or the assistive person, the nature of the direction or supervision to be provided and any obligations to report changes in the patient's status or untoward reactions.

(b) After delegating the nursing task to a licensed practical nurse, CHHA, or assistive personnel, the registered professional nurse shall:

1. Document, either in facility or health care service firm patient records or in records maintained by the registered professional nurse, the tasks that the registered professional nurse has delegated and to whom and that the registered professional nurse has gone through the steps required by (a)1 through 6 above;

2. Evaluate patient outcomes, assessing whether the desired and/or expected outcomes were achieved, addressing any problems, concerns, or changes in conditions, as may be applicable; and

3. Provide feedback to the licensed practical nurse, CHHA, or assistive person.]*

*(a) (Reserved)

(b) (Reserved)*

(c) When delegating the administration of a specific medication to a licensed practical nurse, a CHHA, or an assistive person, the registered professional nurse shall ensure that the facility patient record or

record maintained by the registered professional nurse includes:

1. The specific medication whose administration has been delegated;

2. Any specific instructions the registered nurse provided as part of that delegation;

3. The duration of the delegation;

4. A timeframe for the professional registered nurse to reevaluate the patient;

5. The dosage of the medication, route of administration for the medication, and frequency of the medication;

6. Any side effects that the licensed practical nurse, the CHHA, or the assistive person should watch for;

7. Any contraindications to administering the medication;

8. Any conditions that would require the licensed practical nurse, CHHA, or assistive person to contact the registered professional nurse;

9. Any instructions on positioning of the patient prior to and after the administration of the medication; and

10. The instructions for proper preparation and maintenance of the medication.

(d) When delegating the administration of medication to a licensed practical nurse, a CHHA, or an assistive person, the registered professional nurse shall advise the person whom the task is delegated to:

1. Document every time that the medication is administered; and

2. Report immediately to the delegating registered professional nurse, if:

i. The medication was administered at the wrong time;

ii. The wrong dose of medication was administered;

iii. The wrong medication was administered;

iv. The medication was administered through the wrong route;

v. The medication was not administered;

vi. The patient refused to take the medication; or

vii. The patient evidences any adverse reaction or side-effects to the medication.

13:37-6.5 Non-delegable nursing tasks

(a) If*[, after undertaking the steps required by N.J.A.C. 13:37-6.4(a), as to whether a task should be delegated,]* a registered professional nurse determines that delegation of a task is inappropriate, the nurse shall not delegate the task.

(b) A registered professional nurse shall not delegate the physical, psychological, and social assessment of the patient, which requires professional nursing judgment, intervention, referral, or modification of care.

(c) A registered professional nurse shall not delegate the formulation of the plan of nursing care and evaluation of the effectiveness of the plan.

13:37-6.6 Assignment

The requirements of this subchapter apply solely to delegation. These requirements are not applicable when a registered professional nurse makes an assignment to another registered professional nurse, when a [page=437] registered professional nurse makes an assignment to a licensed practical nurse, when a licensed practical nurse makes an assignment to a registered professional nurse, or when a licensed practical nurse makes an assignment to another licensed practical nurse.

SUBCHAPTER 8. NURSING PRACTICE

13:37-8.2 Identification tags

(a) Each licensee shall wear an identification tag when engaging in the practice for which the individual is licensed. The identification tag shall be clearly visible at all times, and such tag shall bear the first name or initial, the full surname and the term reflecting the individual's level of licensure, for example, Registered Nurse or R.N. The letters on the tag shall be of equal size in type, not smaller than one-quarter inch. The size of the identification tag shall be equal to or greater than that of any other identification worn by the licensee.

(b) Where a general hospital requires a facility staff member who is a licensee to wear an identifying badge pursuant to P.L. 1997, c. 76 (N.J.S.A. 26:2H-12.8a), that staff member need wear only one identification badge, as long as the badge meets requirements of both P.L. 1997, c. 76 (N.J.S.A. 26:2H-12.8a) and (a) above.

(c) In order to protect his or her personal safety or to prevent the substantial invasion of his or her privacy, or to prevent the identification tag from causing physical harm to the patient, a licensee may request an exemption from the requirements of (a) above. Such requests for an exemption shall be made by the licensee in writing to the Board and shall set forth the reasons why wearing the tag would

endanger the licensee's personal safety, substantially invade the licensee's privacy, or physically harm a patient.

(d) (No change.)

(e) The exemption set forth in (c) above shall not apply to a nurse providing home-based services for a registered health care service firm who is required to wear an identification tag pursuant to N.J.S.A. 34:8-79.

13:37-8.3 Sexual misconduct

(a) This section shall apply to all advanced practice nurses, registered professional nurses, and licensed practical nurses licensed or certified by the Board.

(b) As used in this section, the following terms have the following meanings unless the context indicates otherwise:

. . .

"Patient" means any person who is the recipient of nursing services rendered by a licensee pursuant to N.J.S.A. 45:11-23 et seq.

"Patient relationship" means an association between a licensee and patient wherein the licensee owes a continuing duty to the patient to be available to render nursing services consistent with the licensee's education, training, and experience.

"Sexual contact" means the knowing touching of a person's body directly or through clothing, where the circumstances surrounding the touching would be construed by a reasonable person to be motivated by the licensee's own prurient interest or for sexual arousal or gratification. "Sexual contact" includes the imposition of a part of the licensee's body upon a part of the patient's body, sexual penetration, or the insertion or imposition of any object or any part of a licensee or patient's body into or near the genital, anal, or other opening of the other person's body.

. . .

(c) A licensee shall not engage in sexual contact with a patient with whom he or she has a patient relationship. The patient relationship is considered ongoing for purposes of this section unless:

Recodify existing 2.-4. as 1.-3. (No change in text.)

(d) A licensee shall not seek or solicit sexual contact with a patient with whom he or she has a patient relationship and shall not seek or solicit sexual contact with any person in exchange for nursing services.

(e) A licensee shall not engage in any discussion of an intimate sexual nature with a patient, unless that

discussion is related to legitimate patient needs. Such discussion shall not include disclosure by the licensee of his or her own intimate sexual relationships.

(f) A licensee shall provide privacy and examination conditions that prevent the exposure of the unclothed body of the patient unless necessary to the nursing services rendered.

(g) (No change.)

(h) A licensee shall not engage in any activity performed with a patient that would lead a reasonable person to believe that the activity serves the licensee's personal prurient interests or is for the sexual arousal, sexual gratification of the licensee or patient, or which constitutes an act of sexual abuse.

(i) (No change.)

(j) Nothing in this section shall be construed to prevent a licensee from rendering nursing services to a spouse, providing that the rendering of such nursing services is consistent with accepted standards and that the performance of nursing services is not utilized to exploit the patient for the sexual arousal or sexual gratification of the licensee.

(k) It shall not be a defense to any action under this section that:

1. The patient solicited or consented to sexual contact with the licensee; or

2. The licensee was in love with or had affection for the patient.

SUBCHAPTER 14. HOMEMAKER-HOME HEALTH AIDES

13:37-14.1 Purpose and scope

(a) The rules in this subchapter are designed to protect the health and safety of the public through certification of homemaker-home health aides (CHHAs), pursuant to N.J.S.A. 45:11-24.d(20).

(b) This subchapter prescribes standards and curricula for CHHA education and training programs that a CHHA, as defined in this subchapter, is required to complete in order to work in this State. This subchapter also establishes standards and requirements for CHHA certification and for the renewal, suspension, or revocation of that certification.

13:37-14.2 Definitions

The following words and terms, as used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise.

"Activities of daily living" means the functions or tasks for self-care, which are performed either independently or with supervision or assistance. Activities of daily living include mobility, transferring,

walking, grooming, bathing, dressing, undressing, eating, and toileting.

"Board" means the Board of Nursing.

"CHHA" means a certified homemaker-home health aide who is employed by a home care services agency and who, under supervision of a registered professional nurse, follows a delegated nursing regimen or performs tasks that are delegated *[consistent with the provisions of N.J.A.C. 13:37-6.4]*.

"Community health nursing" means professional nursing practice emphasizing health promotion, health maintenance, primary prevention, health education and management, coordination of health care services, and continuity of care for individuals, families, and groups in the community. "Community health nursing" includes home visits to assess, plan for, and provide nursing services; health guidance and direct care; and coordination of services with community resources, families, and other health professionals and paraprofessionals.

"Full-time" means that a person has worked at least 1,820 hours in a year.

"Home care services agency" means home health agencies, assisted living residences, comprehensive personal care homes, assisted living programs, or alternate family care sponsor agencies licensed by the Department of Health pursuant to P.L. 1971, c. 136 (N.J.S.A. 26:2H-1 et seq.), nonprofit homemaker-home health aide agencies, and health care service firms regulated by the Division of Consumer Affairs pursuant to P.L. 1989, c. 331 (N.J.S.A. 34:8-43 et seq.) and P.L. 1960, c. 39 (N.J.S.A. 56:8-1 et seq.), which are engaged in the business of procuring or offering to procure employment for homemaker-home health aides, where a fee may be exacted, charged, or received directly or indirectly for procuring or offering to procure that employment.

"Home-making activities" means the functions and tasks that a CHHA may be asked to perform by the patient, the patient's family, or a delegating registered professional nurse that are necessary to provide the patient with an appropriate therapeutic environment and comfort at home, including shopping, errands, laundry, meal planning and preparation, including therapeutic diets, serving of meals, and child care.

[page=438]"Part-time" means that a person has worked at least 1,040 hours in a year, but has not worked enough hours to qualify as "full-time."

. . .

13:37-14.3 Duties of a homemaker-home health aide; registered professional nurse delegation and direction

(a) *[A CHHA shall perform nursing tasks, including activities of daily living, only if delegated by a registered professional nurse.]* *(Reserved)*

(b) A CHHA may perform home-making activities, as requested or assigned by the patient, the patient's

family, or a registered professional nurse responsible for the patient's care.

(c) When a CHHA is assigned to a patient that has already been assessed by a registered professional nurse, the registered professional nurse shall review the nursing plan of care with the CHHA. The registered professional nurse and CHHA shall meet face-to-face, if the registered professional nurse determines that the CHHA is not yet adequately prepared to perform the tasks that he or she would perform for the patient pursuant to a delegation from the registered professional nurse*,* so that the registered professional nurse may provide instruction to the CHHA as to the manner in which the tasks shall be performed.

(d) A CHHA shall review the plan of care with a delegating registered professional nurse after the assessment has been conducted and a plan of care developed and whenever changes have been made to the plan of care by the registered professional nurse.

(e) A CHHA shall administer medications only if:

1. A registered professional nurse delegates the administration of a specific medication to the CHHA pursuant to N.J.A.C. 13:37-6.4(c);

2. The delegating registered professional nurse documents in the nursing plan of care and in the patient record kept by the CHHA's home care services agency:

i. The specific medication whose administration has been delegated;

ii. Any specific instruction the registered professional nurse provided to the CHHA as part of that delegation;

iii. The duration of the delegation;

iv. A timeframe for the professional registered nurse to reevaluate the patient;

v. The dosage of the medication, route of administration for the medication, and frequency of the medication;

vi. Any side effects that the CHHA should watch for;

vii. Any contraindications to administering the medication;

viii. Any conditions that would require the CHHA to contact the registered professional nurse;

ix. Any instructions on positioning of the patient prior to and after the administration of the medication; and

x. The instructions for proper preparation and maintenance of the medication;

3. The CHHA shall document every time that he or she administers medications; and

4. The CHHA shall report immediately to the delegating registered professional nurse or his or her registered professional nurse designee if:

i. The medication was administered at the wrong time;

ii. The wrong dose of medication was administered;

iii. The wrong medication was administered;

iv. The medication was administered through the wrong route;

v. The medication was not administered;

vi. The patient refused to take the medication; or

vii. The patient evidences any adverse reaction or side-effects to the medication.

13:37-14.4 CHHA training program

(a) An agency or educational institution shall apply to the Board pursuant to N.J.A.C. 13:37-14.6 for written approval to conduct a CHHA training program prior to the commencement of the training program. Program approval shall be valid for a 12-month period.

(b) A CHHA training program shall be conducted by a home care *services* agency or an educational institution approved by the New Jersey State Department of Education or the Commission on Higher Education.

(c) A CHHA training program shall consist of at least 76 hours. The program shall include 60 hours of classroom instruction and 16 hours of clinical instruction in a skills laboratory or patient care setting, covering topics outlined in (g) below and N.J.A.C. 13:37-14.5.

(d) The student-to-instructor ratio for classroom instruction shall not exceed 30 students to one classroom instructor.

(e) Classroom and clinical instruction shall be taught by an individual who meets the requirements of N.J.A.C. 13:37-14.8(a) and (b).

(f) The student-to-instructor ratio for clinical instruction shall not exceed 10 students to one clinical instructor.

(g) The curriculum for a CHHA training program shall include instruction in:

1.-15. (No change.)

(h) The Board may conduct an on-site visit of any program prior to approval of the program, or at any other time, in order to ensure compliance with the requirements of this subchapter. If the on-site visit indicates that a program is not in compliance with this subchapter, the Board shall either deny approval of the program or revoke approval.

(i) The program shall inform an individual, before the individual is admitted to a CHHA training program, that a criminal history background check is a pre-requisite for certification as a CHHA.

(j) Every CHHA training program shall include a competency evaluation examination that tests a student's ability to complete the functions of a CHHA.

13:37-14.5 Home care and hospice care training programs

(a) In addition to the curriculum training requirements of N.J.A.C. 13:37-14.4(g), the training program for a CHHA in home care or hospice care shall include instruction in:

1. The role of the CHHA, including:

i. Settings utilizing CHHAs;

ii. Role of the CHHA; and

iii. Legal and ethical considerations for the CHHA;

2.-4. (No change)

5. Infant and child care, including:

i. (No change.)

ii. Family dynamics;

6. The responsibility of an agency to the CHHA, including:

i.-vii. (No change.)

viii. Agency policies on patient and family confidentiality; and

7. Board statutes and rules governing CHHA practice (N.J.S.A. 45:11-24 through 24.9 and N.J.A.C. 13:37-14).

13:37-14.6 Application for CHHA training program approval

(a) A training program that seeks Board approval shall submit the following to the Board at least two months prior to the commencement of the training program:

1. A completed application for training program approval. The application form includes:

i. The name and address of the agency or school;

ii. The course dates and location;

iii. The anticipated number of students;

iv. The name and address of the program coordinator; and

v. If the program is conducted by a home care services agency, the agency's license or registration number issued by the Department of Health or the Division of Consumer Affairs.

2. An instructor approval application, which provides the name of the instructor assigned to each session;

3. The program approval fee for each location at which the program will be offered, as set forth in N.J.A.C. 13:37-5.5(b)2; and

4. Resumes of each instructor. Each resume shall include the instructor's:

i. Name;

ii. Address;

iii. Education (institution, type of degree or diploma, month and year of graduation);

iv. Work experience (employer's name and address, dates of employment, including month and year, job title, whether full-time or part-time); and

v. New Jersey nursing license number.

[page=439] 13:37-14.7 Program coordinator; qualifications and responsibilities

(a) The CHHA training program shall be coordinated by a registered professional nurse licensed in New Jersey who:

1. Holds a bachelor's or higher degree in nursing; and

2. Has worked either:

i. Full-time for a total of two years as a registered professional nurse within the five-year period immediately preceding application, one year of which shall have been in community health nursing or home care; or

ii. Part-time for a total of four years as a registered professional nurse within the five-year period immediately preceding application, two years of which shall have been in community health nursing or home care.

(b) The program coordinator shall provide an appropriately equipped classroom and skills laboratory with sufficient equipment and resources to provide for efficient and effective theoretical and clinical learning experiences.

(c) The program coordinator shall have the following responsibilities:

1. Establishing and implementing policies and procedures for the program;

2. Maintaining on file a copy of the core curriculum, as provided in N.J.A.C. 13:37-14.4(g), and the home care and hospice care curriculum, as provided in N.J.A.C. 13:37-14.5;

3. Establishing methods to ensure that students who have missed classroom or clinical instruction receive the instruction that has been missed;

4. Establishing and maintaining records for each student, which may be maintained electronically. The student record shall include the following:

i. The beginning and ending dates of the program session;

ii. An attendance record, including the dates of any makeup sessions; and

iii. Evaluation of the student's performance by the classroom instructor and by the registered professional nurse who supervised the student's clinical instruction;

5. Developing, implementing, and maintaining on file, which may be maintained electronically, a plan for evaluating the effectiveness of the program. The evaluation plan shall include the following:

i. The name of the person responsible for conducting the evaluation plan;

ii. An annual written training program evaluation report, including findings, conclusions, and recommendations;

iii. A written evaluation of instructor performance;

iv. Program, instructor, and student data, which shall include the following:

(1) The beginning and ending dates of each program session;

(2) The number of students enrolled;

(3) The number and percentage of students who successfully completed the program; and

(4) The number and percentage of students who failed the program;

6. Ensuring that the curriculum includes the information required pursuant to N.J.A.C. 13:37-14.4(g) and 14.5;

7. Establishing job descriptions indicating the responsibilities of each instructor;

8. Ensuring that each instructor meets the qualifications specified in N.J.A.C. 13:37-14.8;

9. Ensuring that the program is in compliance with this subchapter; and

10. Submitting to the Board eligibility lists detailing those students who have successfully completed a homemaker-home health aide program.

(d) The program coordinator shall notify the Board of Nursing in writing:

1. Within two weeks of a change in location or instructor; and

2. Immediately of a cancellation of a training program.

(e) Program coordinators shall attend orientation sessions held by the Board.

13:37-14.8 Program instructor: qualifications and responsibilities

(a) Classroom and clinical instruction in a CHHA training program shall be provided by a registered professional nurse licensed in New Jersey who has worked either:

1. Full-time for two years as a registered professional nurse within the past five years, one year of which shall have been in community health or home care; or

2. Part-time for four years as a registered professional nurse within the past five years, two years of which shall have been in community health or home care.

(b) A CHHA training program that has an instructor who meets the requirements of (a) above may allow a person who does not meet the requirements of (a) above to assist the instructor during the training program, if that person has a minimum of one year of full-time or two years of part-time experience in

the area being taught.

(c) Program instructors who began their current employment position before June 6, 1994, need not meet the requirements of (a) above.

(d) The program instructor's responsibilities shall include the following:

1. Developing a lesson plan that covers the topics required pursuant to N.J.A.C. 13:37-14.4(g) and 14.5; and

2. Developing and administering the competency evaluation examination required by N.J.A.C. 13:37-14.4(j).

13:37-14.9 Application for CHHA certification

(a) An applicant for certification as a CHHA shall submit the following to the Board:

1. Evidence that the applicant satisfactorily completed a CHHA training program approved by the Board, including the competency evaluation examination required by N.J.A.C. 13:37-14.4(j);

2. Evidence that the applicant has completed the education requirements of (b) below;

3. A completed Criminal History Certification of Authorization form for the applicant;

4. Proof that the applicant is employed, or will be employed, by a home care services agency; and

5. The application fee and initial certification fee as set forth in N.J.A.C. 13:37-5.5(b).

(b) Applicants for certification shall qualify for certification by either:

1. Completing a CHHA training program approved by the Board pursuant to N.J.A.C. 13:37-14.6;

2. Holding certification as a nurse aide from the Department of Health and completing a course that covers the information required by N.J.A.C. 13:37-14.5; or

3. Successfully completing a clinical nursing course in a registered professional nursing education program or a licensed practical nursing education program, which includes basic nursing theory and skills.

(c) An applicant shall have completed the education required by (b)1 or 3 above no more than six months prior to an application for certification being submitted to the Board. An education program completed more than six months prior to submission shall not qualify an applicant for certification.

(d) Prior to receipt of the results of a criminal history background check pursuant to N.J.S.A. 45:11-24.4,

the Board shall issue a conditional certification to an applicant upon receiving the items required under (a) above, as long as the applicant attests in the application that he or she has not been convicted of a disqualifying crime or disorderly persons offense pursuant to N.J.S.A. 45:11-24.3. The conditional certification shall be valid for up to 120 days.

(e) An applicant who indicates on the application that he or she has been convicted of a disqualifying crime or disorderly persons offense pursuant to N.J.S.A. 45:11-24.3 shall not be eligible for a conditional certification. Once the criminal history background check has been completed for an applicant who has indicated that he or she has been convicted of a disqualifying crime or disorderly persons offense, the applicant shall have 30 days to submit information to the Board demonstrating that he or she has been rehabilitated. The Board shall determine if this information demonstrates that the applicant has been rehabilitated pursuant to N.J.S.A. 45:11-24.3 and if it should issue certification to the applicant.

(f) Once the Board receives the results of a criminal history background check for an applicant who has indicated that he or she has not been convicted of a crime or disorderly persons offense, it shall:

[page=440] 1. Issue a homemaker-home health aide certificate to the applicant, if the criminal history background check indicates that the applicant has never been convicted of a crime or disorderly persons offense;

2. Review the nature of the crime or disorderly persons offense and determine if it should issue a CHHA certificate to the applicant, if the criminal history background check indicates that the applicant has been convicted of a crime or disorderly persons offense that is not categorized as a disqualifying crime or disorderly persons offense pursuant to N.J.S.A. 45:11-24.3; or

3. Revoke the conditional certificate, if the criminal history background check indicates that the applicant has been convicted of a disqualifying crime or disorderly persons pursuant to N.J.S.A. 45:11-24.3. An applicant shall have 30 days to submit information disputing the accuracy of the criminal history background check. The Board shall review the information submitted by the applicant to determine if it should issue a certificate to the applicant.

13:37-14.10 (No change in text.)

13:37-14.11 Certification by reciprocity

(a) Upon receipt of a completed application, application fee, promise of employment letter from a New Jersey home care services agency, consent to a criminal history record background check, and requisite fee for such a check, the Board shall issue certification as a CHHA to any person who documents that he or she holds a valid, current CHHA certification in good standing issued by another state, if:

1. The Board determines that the state that issued the certification has or had at the time of issuance, education, training, and examination requirements for certification substantially equivalent to the current standards of this State;

2. The applicant has been practicing as a CHHA for a period of at least six months within the five years prior to the date of application; and

3. The requirements of (b) below are satisfied.

(b) Prior to the issuance of the certification in (a) above, the Board shall have received:

1. Documentation satisfactory to the Board that the applicant's certification in any other state in which the applicant is licensed is in good standing;

2. The results of a criminal history record background check of the files of the Criminal Justice Information Services Division in the Federal Bureau of Investigation and the State Bureau of Identification in the Division of State Police do not disclose a conviction for a disqualifying crime; and

3. Designation of an agent in this State for service of process, if the applicant is not a State resident and does not have an office in this State.

(c) For purposes of this section, "good standing" means that:

1. No action has been taken against the applicant's certification by any licensing board;

2. No action adversely affecting the applicant's privileges to practice as a CHHA has been taken by any out-of-State institution, organization, or employer;

3. No disciplinary proceeding is pending that could affect the applicant's privileges to practice as a CHHA;

4. All fines levied by any out-of-State board have been paid; and

5. There is no pending or final action by any criminal authority for violation of law or regulation, or any arrest or conviction for any criminal or quasi-criminal offense under the laws of the United States, New Jersey, or any other state, including, but not limited to: criminal homicide; aggravated assault; sexual assault, criminal sexual contact or lewdness; or any offense involving any controlled dangerous substance or controlled dangerous substance analog.

(d) The Board, after a CHHA has been given notice and an opportunity to be heard, may revoke any certification based on a certification issued by another state obtained through fraud, deception, or misrepresentation.

(e) The Board may grant a certification without examination to an applicant seeking reciprocity who holds a corresponding certification from another state who does not meet the good standing requirement of (b) above due to a pending action by a licensing board, a pending action by an out-of-State institution, organization, or employer affecting the applicant's privileges to practice, a pending disciplinary proceeding, or a pending criminal charge or arrest for a crime provided the alleged conduct

of the applicant that is the subject of the action, proceeding, charge, or arrest, assuming it is true, does not demonstrate a serious inability to practice as a CHHA, adversely affect the public health, safety, or welfare, or result in economic or physical harm to a person, or create a significant threat of such harm.

13:37-14.12 Identification tags

(a) Every CHHA shall wear an identification tag at all times while providing care to patients. The identification tag shall be clearly visible at all times and shall include the CHHA's first name or initial, the full surname, the words "homemaker-home health aide" and a photograph of the individual pursuant to P.L. 2002, c. 81. The letters on the tag shall be of equal size, in type not smaller than one-quarter inch. The size of the identification tag shall be equal to or greater than that of any other identification worn by the CHHA.

(b) In order to protect his or her personal safety, or to prevent the substantial invasion of his or her privacy, or to prevent the identification tag from causing physical harm to a patient, a CHHA may request an exemption from the requirements of (a) above. Such requests for an exemption shall be made by the CHHA in writing to the Board and shall set forth the reasons why wearing the tag would endanger the aide's personal safety, substantially invade the aide's privacy, or physically harm a patient.

(c) The exemption set forth in (b) above shall not apply to a CHHA providing home-based services for a registered health care service firm who is required to wear an identification tag pursuant to N.J.S.A. 34:8-79.

13:37-14.13 Renewal of certification

(a) The Board shall send a notice of renewal to each CHHA, at least 60 days prior to the expiration of the certification. The notice of renewal shall explain inactive renewal and advise the CHHA of the option to renew as inactive. If the notice to renew is not sent 60 days prior to the expiration date, no monetary penalties or fines shall apply to the CHHA for failure to renew provided that the certification is renewed within 60 days from the date the notice is sent or within 30 days following the date of certification expiration, whichever is later.

(b) A CHHA shall renew his or her certification for a period of two years from the last expiration date. The CHHA shall submit a renewal application to the Board, along with the renewal fee set forth in N.J.A.C. 13:37-5.5(b), prior to the date of certification expiration.

(c) A CHHA may renew his or her certification by choosing inactive status. A CHHA electing to renew his or her certification as inactive shall not practice as a CHHA, or hold him- or herself out as eligible to practice as a CHHA, in New Jersey until such time as the certification is returned to active status.

(d) If a CHHA does not renew the certification prior to its expiration date, the CHHA may renew the certification within 30 days of its expiration by submitting a renewal application, a renewal fee, and a late fee as set forth in N.J.A.C. 13:37-5.5(b). During this 30-day period, the certification shall be valid and the CHHA shall not be deemed practicing without certification.

(e) A CHHA who fails to submit a renewal application within 30 days of certification expiration shall have his or her certification suspended without a hearing.

(f) An individual who practices as a CHHA with a suspended certification shall be deemed to be engaging in the uncertified practice and shall be subject to action consistent with N.J.S.A. 45:1-14 et seq., even if no notice of suspension has been provided to the individual.

13:37-14.14 Certification reactivation

(a) A CHHA who holds an inactive certification pursuant to N.J.A.C. 13:37-14.13(c) may apply to the Board for reactivation of certification. A CHHA seeking reactivation of an inactive certification shall submit:

1. A renewal application;

2. A certification of employment listing each job held during the period of inactive certification, which includes the names, addresses, and telephone number of each employer;

3. The renewal fee for the biennial period for which reactivation is sought as set forth in N.J.A.C. 13:37-5.5(b); and

[page=441] 4. Proof that the person is employed by, or has a promise of employment from, a home care services agency.

(b) If a Board review of an application establishes a basis for concluding that there may be practice deficiencies in need of remediation prior to reactivation, the Board may require the applicant to submit to and successfully pass an examination or an assessment of skills, a refresher course, or other requirements as determined by the Board prior to reactivation of the certification. If that examination or assessment identifies deficiencies or educational needs, the Board may require the applicant as a condition of reactivation of certification to take and successfully complete education or training or to submit to supervision, monitoring, or limitations, as the Board determines are necessary to assure that the applicant practices with reasonable skill and safety. The Board may restore the certification subject to the applicant's completion of the training within a period of time prescribed by the Board following the restoration of the certification. In making its determination whether there are practice deficiencies requiring remediation, the Board shall consider the following:

1. Length of time the certification was inactive;

2. Employment history;

3. Professional history;

4. Disciplinary history and any action taken against the applicant by any licensing board;

5. Actions affecting the applicant's privileges taken by any institution, organization, or employer related to practice as a CHHA or other professional or occupational practice in New Jersey, any other state, the District of Columbia, or in any other jurisdiction;

6. Pending proceedings against any professional or occupational license or certificate issued to the applicant by a professional board in New Jersey, any other state, the District of Columbia, or in any other jurisdiction; and

7. Civil litigation related to practice as a CHHA or other professional or occupational practice in New Jersey, any other state, the District of Columbia, or in any other jurisdiction.

13:37-14.15 Certification reinstatement

(a) Pursuant to N.J.S.A. 45:1-7.1.c, an individual who has had his or her certification suspended pursuant to N.J.A.C 13:37-14.13(e) may apply to the Board for reinstatement. An individual applying for reinstatement shall submit:

1. A reinstatement application;

2. A certification of employment listing each job held during the period of suspended certification, which includes the names, addresses, and telephone number of each employer;

3. The renewal fee for the biennial period for which reinstatement is sought as set forth in N.J.A.C. 13:37-5.5(b);

4. The past due renewal fee for the biennial period immediately preceding the renewal period for which reinstatement is sought as set forth in N.J.A.C. 13:37-5.5(b);

5. The reinstatement fee set forth in N.J.A.C. 13:37-5.5(b); and

6. Proof that the person is employed by, or has a promise of employment from, a home care services agency.

(b) If a Board review of an application establishes a basis for concluding that there may be practice deficiencies in need of remediation prior to reinstatement, the Board may require the applicant to submit to and successfully pass an examination or an assessment of skills, a refresher course, or other requirements as determined by the Board prior to reinstatement of certification. If that examination or assessment identifies deficiencies or educational needs, the Board may require the applicant as a condition of reinstatement of certification to take and successfully complete education or training or to submit to supervision, monitoring, or limitations, as the Board determines are necessary to assure that the applicant practices with reasonable skill and safety. The Board may restore certification subject to the applicant's completion of the training within a period of time prescribed by the Board following the restoration of the certification. In making its determination whether there are practice deficiencies

requiring remediation, the Board shall consider the following:

1. Length of time the certification was suspended;

2. Employment history;

3. Professional history;

4. Disciplinary history and any action taken against the applicant by any licensing board;

5. Actions affecting the applicant's privileges taken by any institution, organization, or employer related to practice as a CHHA or other professional or occupational practice in New Jersey, any other state, the District of Columbia, or in any other jurisdiction;

6. Pending proceedings against any professional or occupational license or certificate issued to the applicant by a professional board in New Jersey, any other state, the District of Columbia, or in any other jurisdiction; and

7. Civil litigation related to practice as a CHHA or other professional or occupational practice in New Jersey, any other state, the District of Columbia, or in any other jurisdiction.

13:37-14.16 Duties and powers of the Board

(a) The Board may deny, revoke, or suspend a CHHA training program approval if the program coordinator has failed to comply with N.J.S.A. 45:11-20 et seq., or the requirements of this subchapter.

(b) The Board may investigate complaints made against a training program, program coordinator, or CHHA and may conduct inquiries in connection with such complaints.

(c) The Board may suspend or revoke the certification of a CHHA who has violated any provisions of N.J.S.A. 45:11-20 et seq., or the requirements of this subchapter.

(d) Any Board action set forth in N.J.S.A. 45:1-21 and 22 shall take place only upon notice and the opportunity for a hearing in accordance with 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.

13:37-14.17 Sexual misconduct

(a) The purpose of this section is to identify for CHHAs conduct that shall be deemed sexual misconduct.

(b) As used in this section, the following terms have the following meanings unless the context clearly indicates otherwise:

"Patient" means any person who is the recipient of services from a CHHA.

"Patient-aide relationship" means a relationship between a CHHA and a patient wherein the CHHA owes a continuing duty to the patient to perform *[nursing]* tasks a registered professional nurse has delegated to the CHHA, *[non-nursing]* tasks a registered professional nurse has directed the CHHA to perform, or home-making activities as requested by a patient or patient's family.

"Sexual contact" means the knowing touching of a person's body directly or through clothing, where the circumstances surrounding the touching would be construed by a reasonable person to be motivated by the CHHA's own prurient interest or for sexual arousal or gratification. "Sexual contact" includes the imposition of a part of the CHHA's body upon a part of the patient's body, sexual penetration, or the insertion or imposition of any object or any part of a CHHA or patient's body into or near the genital, anal, or other opening of the other person's body.

"Sexual harassment" means solicitation of any sexual act, physical advances, or verbal or non-verbal conduct that is sexual in nature, and which occurs in connection with a CHHA performing *[nursing]* tasks a registered professional nurse has delegated to the CHHA or *[non-nursing]* tasks a registered professional nurse has directed the CHHA to perform, and that either: is unwelcome, is offensive to a reasonable person, or creates a hostile workplace environment, and the CHHA knows, should know, or is told this; or is sufficiently severe or intense to be abusive to a reasonable person in that context. "Sexual harassment" may consist of a single extreme or severe act or of multiple acts and may include conduct of a CHHA with an individual whether or not such individual is in a subordinate position to the CHHA.

"Spouse" means the husband, wife, civil partner, domestic union partner, or fiancee of the CHHA or an individual involved in a long-term committed relationship with the CHHA. For purposes of the definition of "spouse," a long-term committed relationship means a relationship, which is at least six months in duration.

(c) A CHHA shall not engage in sexual contact with a patient with whom he or she has a patient-aide relationship. The patient-aide [page=442] relationship is ongoing for purposes of this section, unless the last service provided to the patient was rendered more than three months ago.

(d) A CHHA shall not seek or solicit sexual contact with a patient with whom he or she has a patient-aide relationship and shall not seek or solicit sexual contact with any person in exchange for professional services.

(e) A CHHA shall not engage in any discussion of an intimate sexual nature with a person with whom the CHHA has a patient-aide relationship, unless that discussion is directly related to a task delegated by a registered professional nurse to the CHHA or which a registered professional nurse directed the CHHA to perform. Such discussion shall not include disclosure by the CHHA of his or her own intimate sexual relationships.

(f) A CHHA shall provide privacy conditions that prevent the exposure of the unclothed body of the patient unless necessary to the CHHA services rendered.

(g) A CHHA shall not engage in sexual harassment either within or outside of the professional setting.

(h) A CHHA shall not engage in any other activity, which would lead a reasonable person to believe that the activity serves the CHHA's personal prurient interests, which is for the sexual arousal or sexual gratification of the CHHA or patient, or which constitutes an act of sexual abuse.

(i) Violation of any of the prohibitions or directives set forth in (c) through (h) above shall constitute professional misconduct pursuant to N.J.S.A. 45:1-21.c and e.

(j) Nothing in this section shall be construed to prevent a CHHA from providing care to a spouse, providing that the provision of such care is consistent with accepted standards and that the performance of this care is not utilized to exploit the spouse for the sexual arousal or sexual gratification of the CHHA.

(k) It shall not be a defense to any action under this section that:

1. The patient solicited or consented to sexual contact with the CHHA; or

2. The CHHA is in love with or held affection for the patient.