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

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

CURRENT VERSION OF TEXT
As introduced.

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

1. Section 2 of P.L.1947, c.262 (C.45:11-24) is amended to read as follows:
   2. a. The board; appointment; terms. In addition to the members appointed to represent the interests of the public pursuant to section 2 of P.L.1971, c.60 [(C.45:1-2.1 et seq.), (C.45:1-2.2)], the New Jersey Board of Nursing shall consist of 12 members, six of whom shall be registered professional nurses, two of whom shall be licensed practical nurses, two of whom shall be nurse educators, one of whom shall be an advanced practice nurse, and one of whom shall be an additional public member, all to be appointed by the Governor. Appointments to the board shall be for terms of five years or for the unexpired portion of a term in the case of a vacancy for any cause within a term, and until a successor shall be appointed and qualified. In making appointments the Governor shall give due consideration to, but shall not be bound by, recommendations submitted by the various nurses' professional associations of this State. Upon notice and hearing, the Governor may remove from office any member of the board for neglect of duty, incompetency, unprofessional or dishonorable conduct.
   b. Qualifications for appointment. The advanced practice nurse member shall be a resident of this State, shall be a graduate of an accredited advanced practice nurse program, shall have had at least five years' experience in professional nursing, shall at the time of appointment be actively working as an advanced practice nurse, and, except for the member first appointed, shall hold a certification as an advanced practice nurse pursuant to P.L.1991, c.377 (C.45:11-45 et al.). Each registered professional nurse member of the board shall be a citizen of the United States and a resident of this State; shall be a graduate of an accredited school of nursing within the United States; shall be a registered nurse in this State; shall have had at least five years' experience in professional nursing following graduation from an accredited school of nursing; and shall at the time of appointment be actively engaged in nursing or work relating thereto. The licensed practical nurse members of the board shall be citizens of the United States and residents of this State; shall hold a valid license to practice practical nursing in this State; shall have had at least three years' experience in practical nursing; and shall at the time of appointment be actively engaged in practical nursing or work related thereto. Each nurse educator member of the board

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

Matter underlined thus is new matter.
shall be a resident of this State, shall be a registered nurse in this State, shall have at least five years’ experience in professional nursing, and shall have been active as an educator or administrator in an approved program to train registered nurses.

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

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

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

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

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

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

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

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

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

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

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

(10) It shall keep an official record which shall show the name, age, nativity and permanent place of residence of each applicant and licensee and such further information concerning each applicant and licensee as the board shall deem advisable. The record shall show also whether the applicant was examined, licensed or rejected under this and any prior act. Copies of any of the entries of the record or of any certificate issued by the board may be authenticated by any
member of the board under its seal and when so authenticated shall
be evidence in all courts of this State of the same weight and force
as the original thereof. For authenticating a copy of any entry or
entries contained in its record the board shall be paid a fee of $3.00,
but such authentication, if made at the request of any public agency
of this or any other jurisdiction, may be without fee.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(27) It may require licensees to meet continuing education requirements as a condition of relicensure.
e. Compensation. Each member of the board shall receive $15.00 per day for each day in which such member is actually engaged in the discharge of duties and traveling and other expenses necessarily incurred in the discharge of duties.

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

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

1. the development of standards that contain board staffing ratios appropriate to process every application and issue conditional certifications pursuant to subparagraph (24) of subsection d. of this section; and
2. the establishment of an Internet site for the submission of online applications within one year following the effective date of P.L. , c. (C. ) (pending before the Legislature as this bill). (cf: P.L.2017, c.125, s.1)

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

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

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

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

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

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

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

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

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

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

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

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

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

(2) A home care services agency shall be immune from liability for any actions taken in good faith pursuant to paragraph (1) of this subsection and shall be presumed to be acting in good faith unless it is shown by clear and convincing evidence that the home care services agency acted with actual malice toward the employee.
The person terminated from employment pursuant to paragraph (1) of this subsection shall have 30 days from the date of the termination to petition the board for a hearing on the accuracy of the information about the conviction reported to the board or to establish why the person should not be terminated from employment, and disqualified from certification, as a homemaker-home health aide. The board shall notify the person's employer of the person's petition for a hearing within five days following the receipt of the petition from the person. Upon the issuance of a final decision upon a petition to the board pursuant to this paragraph, the board shall notify the person and the person's employer as to whether:

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

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

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

3. This act shall take effect immediately.

STATEMENT

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

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

The board will be required to establish and implement, through regulations, on the recommendation of the advisory council created under the bill, and at its discretion, a more efficient and streamlined application and conditional certification process for homemaker-home health aides that is to include: developing board staffing ratios at levels appropriate to meet the certification timeframe requirements established under the bill; and, within one year of the
effective date of the bill, establishing an Internet website for the
online submission of homemaker-home health aide certification
applications.

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