

AMENDMENTS TO LB698

(Amendments to Standing Committee amendments, AM1994)

Introduced by Campbell, 25.

1 1. Strike the original sections and all amendments thereto and
2 insert the following new sections:

3 Section 1. Sections 1 to 6 of this act shall be known and may be
4 cited as the Home Care Consumer Bill of Rights Act.

5 Sec. 2. For purposes of the Home Care Consumer Bill of Rights Act:

6 (1) Home care consumer means any person who receives home care
7 services and who is (a) sixty years of age or older or (b) a person with
8 disabilities and is younger than sixty years of age. Home care consumer
9 shall also include the parent or guardian of the home care consumer when
10 the consumer is a minor child;

11 (2) Home care services means home and community-based services the
12 purposes of which are to promote independence and reduce the necessity
13 for residence in a long-term care facility, including, but not limited
14 to, personal care services designed to assist an individual in the
15 activities of daily living such as bathing, exercising, personal
16 grooming, and getting in and out of bed, and which are provided under the
17 medicare program under Title XVIII of the federal Social Security Act, as
18 amended, the medicaid program under Title XIX of the federal Social
19 Security Act, as amended, or any other public or private program
20 providing home care services; and

21 (3) Provider of home care services means a public or private
22 organization that provides home care services or arranges for the
23 provision of home care services by an independent contractor.

24 Sec. 3. (1) A home care consumer who is a minor child shall be
25 represented by his or her parent or guardian. Such parent or guardian
26 shall act on behalf of the minor child in securing the minor child's

1 rights under the Home Care Consumer Bill of Rights Act.

2 (2) A home care consumer who has been found by a court to be an
3 incapacitated person shall be represented by a guardian. Such guardian
4 shall act on behalf of the incapacitated person in securing the
5 incapacitated person's rights under the Home Care Consumer Bill of Rights
6 Act.

7 (3) A home care consumer or an incapacitated person who is not a
8 minor child has the right to the assistance of an agent, an attorney, an
9 individual designated pursuant to a power of attorney, or an individual
10 otherwise designated in writing by the home care consumer to act on
11 behalf of the home care consumer in securing his or her rights under the
12 act.

13 Sec. 4. In addition to any other rights recognized under state or
14 federal law, a home care consumer has the following rights:

15 (1) The right to confidentiality of all personal, financial, and
16 medical information which is disclosed to a provider of home care
17 services. A home care consumer also has the right of access to his or her
18 own records and all written information from those records;

19 (2) The right to receive disclosure from the provider of home care
20 services in writing and in plain language (a) whether the provider of
21 home care services is an employer, a joint employer, an employee leasing
22 company, or a contractor, as applicable, and (b) that the home care
23 consumer (i) may be considered an employer under law and, if the home
24 care consumer is so considered, may be held responsible for the payment
25 of federal and state taxes, including, but not limited to, federal and
26 state income taxes, taxes under the Federal Insurance Contributions Act
27 for purposes of social security and medicare, contributions under the
28 Federal Unemployment Tax Act and the Employment Security Law, payment of
29 overtime pay and minimum wage, workers' compensation insurance, and any
30 other applicable payments required under state or federal law and (ii)
31 should consult a tax professional if the home care consumer is uncertain

1 about his or her responsibility for such payments;

2 (3) The right to be informed of the home care consumer's rights
3 under the Home Care Consumer Bill of Rights Act by a provider of home
4 care services prior to receiving home care services. The provider of home
5 care services shall provide a copy of the rights guaranteed by the Home
6 Care Consumer Bill of Rights Act in the format accessible to the consumer
7 which may include paper, electronic, audio, large print, or braille;

8 (4) The right to be informed of the contact information for the
9 entities the home care consumer may contact if the home care consumer's
10 rights are violated, including the Consumer Protection Division of the
11 Office of the Attorney General, in order to have grievances addressed in
12 an appropriate and timely manner and without retaliation;

13 (5) The right to participate in the planning of his or her home care
14 services, including, but not limited to, the right to make choices about
15 aspects of the home care services that are important to him or her,
16 choosing providers and schedules to the extent practicable, receiving
17 reasonable accommodation of his or her needs and preferences, and
18 involving anyone he or she chooses to participate with him or her in that
19 planning;

20 (6) The right to receive sufficient information to make informed
21 decisions, to be fully informed in advance about any proposed changes in
22 home care services, and to be involved in the decisionmaking process
23 regarding those changes;

24 (7) The right to refuse home care services;

25 (8) The right to be informed of the cost of home care services prior
26 to receiving those services, whether the cost of home care services is
27 covered under health insurance, long-term care insurance, or other
28 private or public programs, and any charges the home care consumer will
29 be expected to pay for such home care services. A home care consumer has
30 the right to thirty days' advance notice of any changes to such costs or
31 services;

1 (9) The right to receive care and services provided in a way that
2 promotes his or her dignity and individuality; and

3 (10) The right to (a) express grievances about the quality of the
4 home care services, the number of hours of home care services, and any
5 violations of the home care consumer's rights under the Home Care
6 Consumer Bill of Rights Act and (b) assert the rights under the act
7 without retaliation.

8 Sec. 5. (1) When the Attorney General has cause to believe that any
9 provider of home care services is violating the Home Care Consumer Bill
10 of Rights, the Attorney General may enforce the Home Care Consumer Bill
11 of Rights Act.

12 (2) For purposes of the act, the Attorney General may:

13 (a) Require a provider of home care services to file a statement or
14 report in writing under oath or otherwise as to all facts and
15 circumstances concerning the provision of home care services to the home
16 care consumer;

17 (b) Examine under oath any person in connection with the provision
18 of home care services;

19 (c) Examine any property or sample thereof, record, book, document,
20 account, or paper as the Attorney General deems necessary; and

21 (d) Issue subpoenas to require the attendance of witnesses or the
22 production of documents.

23 (3) The Attorney General may bring a civil action in the district
24 court of any county in which a violation occurred, or in Lancaster
25 County, seeking injunctive relief and a monetary award for civil
26 penalties, attorney's fees, and costs. Any person who violates the act
27 shall be subject to a civil penalty of not more than two thousand dollars
28 for each violation.

29 (4) The Attorney General may also seek and recover actual damages
30 for each health care consumer injured by a violation of the act.

31 Sec. 6. Any home care consumer who suffers a loss or harm as a

1 result of a violation of the Home Care Consumer Bill of Rights Act may
2 file a civil action to recover actual damages, attorney's fees, court
3 costs, and any other remedies provided by law.

4 Sec. 7. Sections 7 to 14 of this act shall be known and may be
5 cited as the Assisting Caregiver Transitions Act.

6 Sec. 8. For purposes of the Assisting Caregiver Transitions Act:

7 (1) Activities of daily living means transfer, ambulation, exercise,
8 toileting, eating, self-administration of medication, and similar
9 activities;

10 (2) Aftercare means assistance provided by a caregiver to a patient
11 in the patient's residence after the patient's discharge from a hospital
12 following an inpatient stay and may include, but is not limited to, (a)
13 assisting with activities of daily living and (b) carrying out medical or
14 nursing tasks, including, but not limited to, managing wound care,
15 assisting in administration of medication, and operating medical
16 equipment;

17 (3) Caregiver means a person nineteen years of age or older who is
18 designated by a patient or a patient's legal guardian to provide
19 aftercare;

20 (4) Hospital means a general acute hospital as defined in section
21 71-412; and

22 (5) Residence means the home in which a patient resides. Residence
23 does not include an assisted-living facility as defined in section
24 71-406, a group home, a hospital as defined in section 71-419, an
25 intermediate care facility as defined in section 71-420, a rehabilitation
26 hospital as defined in section 71-427 or other rehabilitation facility, a
27 nursing facility as defined in section 71-424, or a skilled nursing
28 facility as defined in section 71-429.

29 Sec. 9. (1) A hospital shall give each patient or patient's legal
30 guardian the opportunity to designate at least one caregiver as soon as
31 practicable and prior to the patient's release.

1 (2) If a patient is unconscious or incapacitated upon his or her
2 admission to the hospital, the hospital shall give the patient or the
3 patient's legal guardian the opportunity to designate a caregiver as soon
4 as possible after the patient's recovery of consciousness or capacity.

5 (3) A patient or his or her legal guardian is not required to
6 designate a caregiver at any time. If a patient or a patient's legal
7 guardian declines to designate a caregiver, the hospital shall document
8 this fact in the patient's medical record.

9 Sec. 10. (1) If a patient or a patient's legal guardian designates
10 a caregiver, the hospital shall record in the patient's medical record
11 the designated caregiver's name, his or her relationship to the patient,
12 and the caregiver's telephone number, residence address, and other
13 contact information.

14 (2) A patient or a patient's legal guardian may change the caregiver
15 designation at any time. The hospital shall document the change in the
16 patient's medical record before the patient's discharge.

17 (3) A person designated as a caregiver is not obligated to accept
18 such designation or to perform aftercare for the designating patient or
19 patient's legal guardian.

20 Sec. 11. If a patient or a patient's legal guardian designates a
21 caregiver, the hospital shall notify the caregiver of the patient's
22 discharge from the hospital or transfer to another facility as soon as
23 practicable which may be after the patient's physician issues a discharge
24 or transfer order. If the hospital is unable to contact the caregiver,
25 such lack of contact shall not interfere with, delay, or otherwise affect
26 the medical care provided to the patient or the medically appropriate
27 discharge or transfer of the patient. The hospital shall document all
28 attempts to contact the caregiver in the patient's medical record.

29 Sec. 12. (1) As soon as possible after designation of a caregiver
30 and prior to the patient's discharge, the hospital shall attempt to
31 consult with the patient or the patient's legal guardian and the

1 caregiver and shall issue a discharge plan that describes the patient's
2 aftercare needs. The discharge plan shall include, but need not be
3 limited to:

4 (a) The name and contact information of the caregiver, as provided
5 by him or her; and

6 (b) A description of the aftercare tasks necessary to maintain the
7 patient's ability to reside in his or her residence.

8 (2) The hospital shall provide the caregiver with instructions
9 concerning all aftercare tasks described in the discharge plan. The
10 instructions shall include, but need not be limited to:

11 (a) A live demonstration of or instruction in the aftercare tasks,
12 as performed by a hospital employee or other authorized individual in a
13 culturally competent manner;

14 (b) An opportunity for the caregiver and the patient or the
15 patient's guardian to ask questions about aftercare; and

16 (c) Answers to the caregiver's, patient's, and patient's legal
17 guardian's questions in a culturally competent manner.

18 (3) The hospital shall document the instructions in the patient's
19 medical record, including the date, time, and contents of the
20 instructions and whether the caregiver accepted or refused the offer of
21 instruction.

22 Sec. 13. The Assisting Caregiver Transitions Act does not:

23 (1) Create a private right of action against a hospital, a hospital
24 employee, or a person with whom the hospital has a contractual
25 relationship;

26 (2) Create additional civil or regulatory liability for a hospital,
27 a hospital employee, or a person with whom the hospital has a contractual
28 relationship;

29 (3) Supersede or replace existing rights or remedies under any other
30 law;

31 (4) Affect a license issued to a hospital pursuant to the Health

1 Care Facility Licensure Act;

2 (5) Establish a new requirement to reimburse or otherwise pay for
3 services rendered by a caregiver for aftercare; or

4 (6) Interfere with an individual acting under a valid health care
5 power of attorney as defined in section 30-3401 or acting as a
6 conservator as defined in section 30-2209.

7 Sec. 14. The Department of Health and Human Services may adopt and
8 promulgate rules and regulations to carry out the Assisting Caregiver
9 Transitions Act.

10 Sec. 15. Section 68-901, Revised Statutes Supplement, 2015, is
11 amended to read:

12 68-901 Sections 68-901 to 68-975 and section 16 of this act shall be
13 known and may be cited as the Medical Assistance Act.

14 Sec. 16. (1)(a) Any provider with a high categorical risk level as
15 determined by the Centers for Medicare and Medicaid Services or the
16 medicaid assistance program established pursuant to the Medical
17 Assistance Act shall be subject to a fingerprint-based criminal history
18 record information check.

19 (b) Such provider who is an individual, or any individual with at
20 least a five percent direct or indirect ownership interest in any such
21 provider, shall provide his or her fingerprints to the Nebraska State
22 Patrol. The Nebraska State Patrol shall undertake a search for
23 fingerprint-based criminal history record information relating to such
24 provider, including transmittal of the fingerprints to the Federal Bureau
25 of Investigation for a national fingerprint-based criminal history record
26 information check.

27 (c) The fingerprint-based criminal history record information check
28 shall include information concerning the provider from federal
29 repositories of such information and repositories of such information in
30 other states, if authorized by federal law.

31 (d) The Nebraska State Patrol shall issue a report to the department

1 that includes the fingerprint-based criminal history record information
2 concerning the provider.

3 (e) The provider or individual being screened shall pay the actual
4 cost of the fingerprinting and fingerprint-based criminal history record
5 information check.

6 (2) The department shall maintain a record of the results of the
7 fingerprint-based criminal history record information check.

8 (3) The department may deny or terminate the enrollment of:

9 (a) Any provider who is an individual who does not pass the national
10 fingerprint-based criminal history record information check; or

11 (b) Any provider in which an individual with at least a five percent
12 direct or indirect ownership interest in the provider does not pass the
13 national fingerprint-based criminal history record information check.
14 Criteria for not passing the fingerprint-based criminal history record
15 information check includes at least the following: (i) Any criminal
16 conviction within the last ten years related to the provider's
17 involvement with the federal Health Insurance for the Aged Act, 42 U.S.C.
18 1305 et seq., any program or assistance set forth in Chapter 68, or the
19 federal Children's Health Insurance Program established pursuant to 42
20 U.S.C. 1397aa, as such act, laws, and section existed on January 1, 2016;
21 or (ii) any conviction involving fraudulent activities.

22 Sec. 17. Section 71-401, Revised Statutes Supplement, 2015, is
23 amended to read:

24 71-401 Sections 71-401 to 71-470 and sections 19 to 21 of this act
25 shall be known and may be cited as the Health Care Facility Licensure
26 Act.

27 Sec. 18. Section 71-403, Revised Statutes Supplement, 2015, is
28 amended to read:

29 71-403 For purposes of the Health Care Facility Licensure Act,
30 unless the context otherwise requires, the definitions found in sections
31 71-404 to 71-431 and section 19 of this act shall apply.

1 Sec. 19. Memory care endorsement means an endorsement for the
2 license of an assisted-living facility providing care for persons with
3 cognitive impairments or dementia which meets the requirements for the
4 endorsement under section 21 of this act.

5 Sec. 20. (1) An assisted-living facility may apply to the
6 department for a memory care endorsement on a form prescribed by the
7 department. Only an assisted-living facility which qualifies for the
8 endorsement may advertise itself as an endorsed memory care facility and
9 may qualify for reimbursement rates established pursuant to section 22 of
10 this act.

11 (2) In order to qualify for the memory care endorsement, an
12 assisted-living facility shall provide proof of meeting the
13 qualifications established by the department pursuant to section 21 of
14 this act.

15 Sec. 21. (1) The department shall adopt and promulgate rules and
16 regulations establishing qualifications for a memory care endorsement.
17 The qualifications shall be specific to those necessary for residents
18 with cognitive impairment or dementia and shall include, but not be
19 limited to, staffing enhancements, staff training, dedicated memory care
20 programming, cultural competencies, facility requirements, and security
21 issues.

22 (2) The department shall award a memory care endorsement to an
23 assisted-living facility licensed under the Health Care Facility
24 Licensure Act upon application which provides proof of meeting the
25 qualifications and payment of the required fee.

26 (3) The department shall set the fee at an amount to cover the costs
27 of administering the endorsement.

28 Sec. 22. The department shall examine the rates paid for care for
29 persons with cognitive impairment or dementia, including state spending
30 for such care and reimbursement rates paid for such care under the
31 medical assistance program pursuant to the Medical Assistance Act. The

1 department shall make findings regarding cost-savings for providing care
2 for persons with cognitive impairments or dementia in assisted-living
3 facilities with a memory care endorsement. The department shall make
4 recommendations regarding a higher or supplemental reimbursement rate for
5 assisted-living facilities which have a memory care endorsement and
6 provide care for persons with cognitive impairments or dementia at a
7 savings to the state or medical assistance program.

8 Sec. 23. Section 71-516.01, Reissue Revised Statutes of Nebraska, is
9 amended to read:

10 71-516.01 Sections 71-516.01 to 71-516.04 and section 27 of this act
11 shall be known and may be cited as the Alzheimer's Special Care
12 Disclosure Act.

13 Sec. 24. Section 71-516.02, Reissue Revised Statutes of Nebraska, is
14 amended to read:

15 71-516.02 The Legislature finds and declares that:

16 (1) Certain nursing homes and related facilities and assisted-living
17 facilities claim special care for persons who have Alzheimer's disease,
18 dementia, or a related disorder;

19 (2) It is in the public interest to provide for the protection of
20 consumers regarding the accuracy and authenticity of such claims; ~~and~~

21 (3) The provisions of the Alzheimer's Special Care Disclosure Act
22 are intended to require such facilities to disclose the reasons for those
23 claims, require records of such disclosures to be kept, and require the
24 ~~department~~ Department of Health and Human Services to examine the
25 records; ~~and~~ -

26 (4) Alzheimer's special care units provide care for persons with
27 cognitive impairments and dementia and assisted-living facilities would
28 benefit from a memory care endorsement.

29 Sec. 25. Section 71-516.03, Reissue Revised Statutes of Nebraska, is
30 amended to read:

31 71-516.03 For the purposes of the Alzheimer's Special Care

1 Disclosure Act; -

2 (1) Alzheimer's special care unit means ~~shall mean~~ any nursing
3 facility or assisted-living facility, licensed by the department
4 ~~Department of Health and Human Services~~, which secures, segregates, or
5 provides a special program or special unit for residents with a diagnosis
6 of probable Alzheimer's disease, dementia, or a related disorder and
7 which advertises, markets, or otherwise promotes the facility as
8 providing specialized Alzheimer's disease, dementia, or related disorder
9 care services; -

10 (2) Department means the Department of Health and Human Services;
11 and

12 (3) Memory care endorsement has the same meaning as in section 19 of
13 this act.

14 Sec. 26. Section 71-516.04, Revised Statutes Cumulative Supplement,
15 2014, is amended to read:

16 71-516.04 (1) Any facility which offers to provide or provides care
17 for persons with Alzheimer's disease, dementia, or a related disorder by
18 means of an Alzheimer's special care unit shall disclose the form of care
19 or treatment provided that distinguishes such form as being especially
20 applicable to or suitable for such persons. The disclosure shall be made
21 to the department ~~Department of Health and Human Services~~ and to any
22 person seeking placement within an Alzheimer's special care unit. The
23 department shall examine all such disclosures in the records of the
24 department as part of the facility's license renewal procedure at the
25 time of licensure or relicensure.

26 (2) The information disclosed shall explain the additional care
27 provided in each of the following areas:

28 (a 1) The Alzheimer's special care unit's written statement of its
29 overall philosophy and mission which reflects the needs of residents
30 afflicted with Alzheimer's disease, dementia, or a related disorder;

31 (b 2) The process and criteria for placement in, transfer to, or

1 discharge from the unit;

2 (c 3) The process used for assessment and establishment of the plan
3 of care and its implementation, including the method by which the plan of
4 care evolves and is responsive to changes in condition;

5 (d 4) Staff training and continuing education practices which shall
6 include, but not be limited to, four hours annually for direct care
7 staff. Such training shall include topics pertaining to the form of care
8 or treatment set forth in the disclosure described in this section. The
9 requirement in this subdivision shall not be construed to increase the
10 aggregate hourly training requirements of the Alzheimer's special care
11 unit;

12 (e 5) The physical environment and design features appropriate to
13 support the functioning of cognitively impaired adult residents;

14 (f 6) The frequency and types of resident activities;

15 (g 7) The involvement of families and the availability of family
16 support programs; and

17 (h 8) The costs of care and any additional fees.

18 (3) In order to qualify for a memory care endorsement, an assisted-
19 living facility making a disclosure under this section shall comply with
20 section 21 of this act.

21 Sec. 27. An assisted-living facility which is an Alzheimer's
22 special care unit may apply for a memory care endorsement as provided in
23 the Health Care Facility Licensure Act but shall not advertise itself as
24 an endorsed memory care unit without such endorsement.

25 Sec. 28. Sections 1 to 14, 17 to 27, and 29 of this act become
26 operative three calendar months after the adjournment of this legislative
27 session. The other sections of this act become operative on their
28 effective date.

29 Sec. 29. Original sections 71-516.01, 71-516.02, and 71-516.03,
30 Reissue Revised Statutes of Nebraska, section 71-516.04, Revised Statutes
31 Cumulative Supplement, 2014, and sections 71-401 and 71-403, Revised

1 Statutes Supplement, 2015, are repealed.

2 Sec. 30. Original section 68-901, Revised Statutes Supplement,
3 2015, is repealed.

4 Sec. 31. Since an emergency exists, this act takes effect when
5 passed and approved according to law.