

E AND R AMENDMENTS TO LB 439

Introduced by Wishart, 27, Chairman Enrollment and Review

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

3 Section 1. Section 71-406, Reissue Revised Statutes of Nebraska, is
4 amended to read:

5 71-406 ~~(1) Assisted-living facility has the same meaning as in~~
6 ~~section 71-5903 means a facility where shelter, food, and care are~~
7 ~~provided for remuneration for a period of more than twenty-four~~
8 ~~consecutive hours to four or more persons residing at such facility who~~
9 ~~require or request such services due to age, illness, or physical~~
10 ~~disability.~~

11 ~~(2) Assisted-living facility does not include a home, apartment, or~~
12 ~~facility where (a) casual care is provided at irregular intervals or (b)~~
13 ~~a competent person residing in such home, apartment, or facility provides~~
14 ~~for or contracts for his or her own personal or professional services if~~
15 ~~no more than twenty-five percent of persons residing in such home,~~
16 ~~apartment, or facility receive such services.~~

17 Sec. 2. Section 71-5803.05, Reissue Revised Statutes of Nebraska, is
18 amended to read:

19 71-5803.05 Assisted-living facility has the same meaning as in
20 section 71-5903 ~~71-406~~.

21 Sec. 3. Section 71-5902, Reissue Revised Statutes of Nebraska, is
22 amended to read:

23 71-5902 The purposes of the Assisted-Living Facility Act are to
24 supplement provisions of the Health Care Facility Licensure Act relating
25 to the licensure and regulation of assisted-living facilities, ~~and~~ to
26 provide for the health and safety of residents of such facilities, and to
27 promote the goals of individualized decisionmaking and personal autonomy.

1 Sec. 4. Section 71-5903, Reissue Revised Statutes of Nebraska, is
2 amended to read:

3 71-5903 For purposes of the Assisted-Living Facility Act:

4 (1) Activities of daily living means activities such as bathing,
5 continence, dressing, grooming, eating, mobility, toileting,
6 transferring, and transfer, ambulation, exercise, toileting, eating,
7 self-administration of medication, and similar activities;

8 (2) Administrator means the person responsible for day-to-day
9 operations ~~operating officer~~ of an assisted-living facility and includes
10 a person with a title such as administrator, chief executive officer,
11 manager, superintendent, director, or other similar designation;

12 (3)(a) ~~(3)~~ Assisted-living facility means a residential setting that
13 provides assisted-living services for remuneration to four or more
14 persons who reside in such residential setting and are not related to the
15 owner of the residential setting and, except as provided in subdivision
16 (b) of this subdivision, includes a home, an apartment, or a facility has
17 the same meaning as in section 71-406; and

18 (b) Assisted-living facility does not include a home, an apartment,
19 or a facility in which (i) casual care is provided at irregular intervals
20 or (ii) a competent person residing in such home, apartment, or facility
21 provides for or contracts for his or her own personal or professional
22 services if no more than fifty percent of the persons residing in such
23 home, apartment, or facility receive such services;

24 (4) Assisted-living services means services that promote the health
25 and safety of persons in a residential setting, including housing, three
26 meals each day, access to staff for twenty-four hours each day,
27 noncomplex nursing interventions, and support with activities of daily
28 living, and includes resident assessment for admission and continued
29 stay;

30 (5) ~~(4)~~ Authorized representative means ~~(a)~~ a person authorized by a
31 resident of an assisted-living facility, such as a person holding a power

1 of attorney or a resident designee, or authorized by a court, such as a
2 guardian, to manage the affairs of the resident holding a durable power
3 of attorney for health care, (b) a guardian, or (c) a person appointed by
4 a court to manage the personal affairs of a resident of an assisted-
5 living facility other than the facility;

6 (6) (5) Chemical restraint means a psychopharmacologic drug that is
7 used for discipline or convenience and is not required to treat medical
8 symptoms;

9 (7) (6) Complex nursing interventions means interventions which
10 require nursing judgment to safely alter standard procedures in
11 accordance with the needs of the resident, which require nursing judgment
12 to determine how to proceed from one step to the next, or which require a
13 multidimensional application of the nursing process. ~~Complex nursing~~
14 ~~interventions does not include a nursing assessment;~~

15 (8) (7) Department means the Department of Health and Human
16 Services;

17 (9) Noncomplex interventions (8) ~~Health maintenance activities~~ means
18 nurse assessments and noncomplex interventions which can safely be
19 performed according to exact directions, which do not require alteration
20 of the standard procedure, and for which the results and resident
21 responses are predictable;

22 (10) Part-time or intermittent basis means not to exceed ten hours
23 each week for each resident for a period of time with a predictable end
24 within twenty-one days;

25 (9) ~~Personal care~~ means ~~bathing, hair care, nail care, shaving,~~
26 ~~dressing, oral care, and similar activities;~~

27 (11) (10) Physical restraint means any manual method or physical or
28 mechanical device, material, or equipment attached or adjacent to the
29 resident's body that he or she cannot remove easily and that restricts
30 freedom of movement or normal access to his or her own body; and

31 (12) Resident services agreement means an agreement entered into by

1 the resident or the resident's authorized representative and the
2 assisted-living facility that stipulates the responsibilities of the
3 assisted-living facility and the resident, identifies service needs of
4 the resident, outlines the services that will be provided to the resident
5 by the assisted-living facility and from other sources, and specifies the
6 cost of services provided by the assisted-living facility.

7 ~~(11) Stable or predictable means that a resident's clinical and~~
8 ~~behavioral status and nursing care needs are determined to be (a)~~
9 ~~nonfluctuating and consistent or (b) fluctuating in an expected manner~~
10 ~~with planned interventions, including an expected deteriorating~~
11 ~~condition.~~

12 Sec. 5. Section 71-5904, Reissue Revised Statutes of Nebraska, is
13 amended to read:

14 71-5904 Assisted living promotes resident self-direction and
15 participation in decisions which emphasize independence, individuality,
16 privacy, and dignity, and residential surroundings.

17 ~~To be eligible for admission to an assisted living facility, a~~
18 ~~person shall be in need of or wish to have available room, board,~~
19 ~~assistance with or provision of personal care, activities of daily~~
20 ~~living, or health maintenance activities or supervision due to age,~~
21 ~~illness, or physical disability. The administrator shall have the~~
22 ~~discretion regarding admission or retention of residents of the assisted-~~
23 ~~living facility subject to the Assisted-Living Facility Act and rules and~~
24 ~~regulations adopted and promulgated under the act.~~

25 Sec. 6. Section 71-5905, Revised Statutes Cumulative Supplement,
26 2016, is amended to read:

27 71-5905 (1) An assisted-living facility shall determine if an
28 applicant for admission to the assisted-living facility is admitted or if
29 a resident of the assisted-living facility is retained based on the care
30 needs of the applicant or resident, the ability to meet those care needs
31 within the assisted-living facility, and the degree to which the

1 ~~admission or retention of the applicant or resident poses a danger to the~~
2 ~~applicant or resident or others. not admit or retain a resident who~~
3 ~~requires complex nursing interventions or whose condition is not stable~~
4 ~~or predictable unless:~~

5 ~~(a) The resident, if he or she is not a minor and is competent to~~
6 ~~make a rational decision as to his or her needs or care, or his or her~~
7 ~~authorized representative, and his or her physician or a registered nurse~~
8 ~~agree that admission or retention of the resident is appropriate;~~

9 ~~(b) The resident or his or her authorized representative agrees to~~
10 ~~arrange for the care of the resident through appropriate private duty~~
11 ~~personnel, a licensed home health agency, or a licensed hospice; and~~

12 ~~(c) The resident's care does not compromise the facility operations~~
13 ~~or create a danger to others in the facility.~~

14 ~~(2) Any complex nursing intervention or noncomplex intervention~~
15 ~~provided by an employee of the assisted-living facility shall be~~
16 ~~performed in accordance with applicable state law Health maintenance~~
17 ~~activities at an assisted-living facility shall be performed in~~
18 ~~accordance with the Nurse Practice Act and the rules and regulations~~
19 ~~adopted and promulgated under the act.~~

20 (3) Each assisted-living facility shall provide written information
21 about the practices of the assisted-living facility to each applicant for
22 admission to the facility or his or her authorized representative. The
23 information shall include:

24 (a) A description of the services provided by the assisted-living
25 facility and the staff available to provide the services;

26 (b) The charges for services provided by the assisted-living
27 facility;

28 (c) Whether or not the assisted-living facility accepts residents
29 who are eligible for the medical assistance program under the Medical
30 Assistance Act and, if applicable, the policies or limitations on access
31 to services provided by the assisted-living facility for residents who

1 seek care paid by the medical assistance program;

2 (d) The criteria for admission to and continued residence in the
3 assisted-living facility and the process for addressing issues that may
4 prevent admission to or continued residence in the circumstance under
5 which a resident would be required to leave an assisted-living facility;

6 (e) The process for developing and updating the resident services
7 agreement;~~and~~

8 (f) For facilities that have special care units for dementia, the
9 additional services provided to meet the special needs of persons with
10 dementia; and ~~-~~

11 (g) Whether or not the assisted-living facility provides part-time
12 or intermittent complex nursing interventions.

13 (4) Each assisted-living facility shall enter into a resident
14 services agreement in consultation with each resident.

15 Sec. 7. Section 71-5906, Reissue Revised Statutes of Nebraska, is
16 amended to read:

17 71-5906 (1) An assisted-living facility may provide complex nursing
18 interventions on a part-time or intermittent basis.

19 (2) ~~Every (1) On and after January 1, 2005,~~ every person seeking
20 admission to an assisted-living facility or the authorized representative
21 of such person shall, upon admission and annually thereafter, provide the
22 facility with a list of drugs, devices, biologicals, and supplements
23 being taken or being used by the person, including dosage, instructions
24 for use, and reported use.

25 (3) ~~(2) Every person residing in an assisted-living facility on~~
26 ~~January 1, 2005,~~ or the authorized representative of such person shall,
27 ~~within sixty days after January 1, 2005,~~ and annually thereafter, provide
28 the facility with a list of drugs, devices, biologicals, and supplements
29 being taken or being used by such person, including dosage, instructions
30 for use, and reported use.

31 (4) ~~(3)~~ An assisted-living facility shall not be subject to

1 disciplinary action by the department for the failure of any person
2 seeking admission to or residing at such facility or the authorized
3 representative of such person to comply with subsections ~~(1) and (2)~~ and
4 (3) of this section.

5 (5) ~~(4)~~ Each assisted-living facility shall provide for a registered
6 nurse to review medication administration policies and procedures and to
7 be responsible for the training of medication aides at such facility.

8 Sec. 8. Section 71-6725, Revised Statutes Cumulative Supplement,
9 2016, is amended to read:

10 71-6725 (1) The minimum competencies for a medication aide, a person
11 licensed to operate a child care facility or a staff member of a child
12 care facility, or a staff member of a school shall include (a)
13 maintaining confidentiality, (b) complying with a recipient's right to
14 refuse to take medication, (c) maintaining hygiene and current accepted
15 standards for infection control, (d) documenting accurately and
16 completely, (e) providing medications according to the five rights, (f)
17 having the ability to understand and follow instructions, (g) practicing
18 safety in application of medication procedures, (h) complying with
19 limitations and conditions under which a medication aide may provide
20 medications, and (i) having an awareness of abuse and neglect reporting
21 requirements and any other areas as shall be determined by rules or
22 regulations.

23 (2) The Department of Health and Human Services shall adopt and
24 promulgate rules and regulations setting minimum standards for
25 competencies listed in subsection (1) of this section and methods for
26 competency assessment of medication aides. The Department of Health and
27 Human Services shall adopt and promulgate rules and regulations setting
28 methods for competency assessment of the person licensed to operate a
29 child care facility or staff of child care facilities. The State
30 Department of Education shall adopt and promulgate rules and regulations
31 setting methods for competency assessment of the school staff member.

1 (3) A medication aide, except one who is employed by a nursing home,
2 an intermediate care facility for persons with developmental
3 disabilities, or an assisted-living facility, a person licensed to
4 operate a child care facility or a staff member of a child care facility,
5 or a staff member of a school shall not be required to take a course. The
6 medication aide shall be assessed to determine that the medication aide
7 has the competencies listed in subsection (1) of this section.

8 (4) A medication aide providing services in an assisted-living
9 facility as defined in section 71-5903 ~~71-406~~, a nursing home, or an
10 intermediate care facility for persons with developmental disabilities
11 shall be required to have completed a forty-hour course on the
12 competencies listed in subsection (1) of this section and competency
13 standards established through rules and regulations as provided for in
14 subsection (2) of this section, except that a medication aide who has,
15 prior to January 1, 2003, completed a twenty-hour course and passed an
16 examination developed and administered by the Department of Health and
17 Human Services may complete a second twenty-hour course supplemental to
18 the first twenty-hour course in lieu of completing the forty-hour course.
19 The department shall adopt and promulgate rules and regulations regarding
20 the procedures and criteria for curriculum. Competency assessment shall
21 include passing an examination developed and administered by the
22 department. Criteria for establishing a passing standard for the
23 examination shall be established in rules and regulations.

24 (5) Medication aides providing services in nursing homes or
25 intermediate care facilities for persons with developmental disabilities
26 shall also meet the requirements set forth in section 71-6039.

27 Sec. 9. Section 71-7611, Revised Statutes Supplement, 2017, is
28 amended to read:

29 71-7611 (1) The Nebraska Health Care Cash Fund is created. The State
30 Treasurer shall transfer (a) sixty million three hundred thousand dollars
31 on or before July 15, 2014, (b) sixty million three hundred fifty

1 thousand dollars on or before July 15, 2015, (c) sixty million three
2 hundred fifty thousand dollars on or before July 15, 2016, (d) sixty
3 million seven hundred thousand dollars on or before July 15, 2017, (e)
4 sixty million seven hundred thousand dollars on or before July 15, 2018,
5 and (f) sixty million four hundred fifty thousand dollars on or before
6 every July 15 thereafter from the Nebraska Medicaid Intergovernmental
7 Trust Fund and the Nebraska Tobacco Settlement Trust Fund to the Nebraska
8 Health Care Cash Fund, except that such amount shall be reduced by the
9 amount of the unobligated balance in the Nebraska Health Care Cash Fund
10 at the time the transfer is made. The state investment officer shall
11 advise the State Treasurer on the amounts to be transferred first from
12 the Nebraska Medicaid Intergovernmental Trust Fund until the fund balance
13 is depleted and from the Nebraska Tobacco Settlement Trust Fund
14 thereafter in order to sustain such transfers in perpetuity. The state
15 investment officer shall report electronically to the Legislature on or
16 before October 1 of every even-numbered year on the sustainability of
17 such transfers. The Nebraska Health Care Cash Fund shall also include
18 money received pursuant to section 77-2602. Except as otherwise provided
19 by law, no more than the amounts specified in this subsection may be
20 appropriated or transferred from the Nebraska Health Care Cash Fund in
21 any fiscal year.

22 The State Treasurer shall transfer ten million dollars from the
23 Nebraska Medicaid Intergovernmental Trust Fund to the General Fund on
24 June 28, 2018, and June 28, 2019.

25 It is the intent of the Legislature that no additional programs are
26 funded through the Nebraska Health Care Cash Fund until funding for all
27 programs with an appropriation from the fund during FY2012-13 are
28 restored to their FY2012-13 levels.

29 (2) Any money in the Nebraska Health Care Cash Fund available for
30 investment shall be invested by the state investment officer pursuant to
31 the Nebraska Capital Expansion Act and the Nebraska State Funds

1 Investment Act.

2 (3) The University of Nebraska and postsecondary educational
3 institutions having colleges of medicine in Nebraska and their affiliated
4 research hospitals in Nebraska, as a condition of receiving any funds
5 appropriated or transferred from the Nebraska Health Care Cash Fund,
6 shall not discriminate against any person on the basis of sexual
7 orientation.

8 (4) The State Treasurer shall transfer fifty thousand dollars on or
9 before July 15, 2016, from the Nebraska Health Care Cash Fund to the
10 Board of Regents of the University of Nebraska for the University of
11 Nebraska Medical Center. It is the intent of the Legislature that these
12 funds be used by the College of Public Health for workforce training.

13 (5) It is the intent of the Legislature that the cost of the staff
14 and operating costs necessary to carry out the changes made by this
15 legislative bill and not covered by fees or federal funds shall be funded
16 from the Nebraska Health Care Cash Fund for fiscal years 2018-19 and
17 2019-20.

18 Sec. 10. Section 71-9402, Revised Statutes Cumulative Supplement,
19 2016, is amended to read:

20 71-9402 For purposes of the Assisting Caregiver Transitions Act:

21 (1) Activities of daily living means transfer, ambulation, exercise,
22 toileting, eating, self-administration of medication, and similar
23 activities;

24 (2) Aftercare means assistance provided by a caregiver to a patient
25 in the patient's residence after the patient's discharge from a hospital
26 following an inpatient stay and may include, but is not limited to, (a)
27 assisting with activities of daily living and (b) carrying out medical or
28 nursing tasks, including, but not limited to, managing wound care,
29 assisting in administration of medication, and operating medical
30 equipment;

31 (3) Caregiver means a person nineteen years of age or older who is

1 designated by a patient or a patient's legal guardian to provide
2 aftercare;

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

5 (5) Residence means the home in which a patient resides. Residence
6 does not include an assisted-living facility as defined in section
7 71-5903 ~~71-406~~, a group home, a hospital as defined in section 71-419, an
8 intermediate care facility as defined in section 71-420, a rehabilitation
9 hospital as defined in section 71-427 or other rehabilitation facility, a
10 nursing facility as defined in section 71-424, or a skilled nursing
11 facility as defined in section 71-429.

12 Sec. 11. Original sections 71-406, 71-5803.05, 71-5902, 71-5903,
13 71-5904, and 71-5906, Reissue Revised Statutes of Nebraska, sections
14 71-5905, 71-6725, and 71-9402, Revised Statutes Cumulative Supplement,
15 2016, and section 71-7611, Revised Statutes Supplement, 2017, are
16 repealed.

17 2. On page 1, line 3, strike "and"; in line 4 after "2016" insert "
18 and section 71-7611, Revised Statutes Supplement, 2017"; and in line 8
19 after the first semicolon insert "to state intent relating to the
20 Nebraska Health Care Cash Fund;".