

COMMITTEE REPORT

TO: Patrick O'Donnell
Clerk of the Legislature

FROM: Senator Sara Howard
Chair, Health and Human Services Committee

DATE: 11.13.2020

RE: Health and Human Services Committee Report and Recommendations on
Regulated Occupations within Committee Jurisdiction – Assisted-Living
Facility Administrator

GENERAL INFORMATION

- I. Occupation Regulated
 - A) Assisted-Living Facility Administrator

- II. Name of Occupational Board Responsible for Enforcement
 - A) Nebraska Department of Health and Human Services

- III. Public Purpose and Assumptions Underlying License Creation
 - A) An assisted-living facility is a facility where shelter, food, and care are provided for remuneration for a period of more than 24 consecutive hours to four or more persons residing at such facility who require or request such services due to age, illness, or physical disability. An Assisted-Living Facility Administrator is an operating officer of an assisted-living facility, and includes a person with a title such as administrator, chief executive officer, manager, superintendent, director, or other similar designation. The administrator is responsible for planning, organizing, and directing the day to day operation of the assisted-living facility.

Anyone serving as an Assisted-Living Facility Administrator must submit an application to be placed on the state registry.

- IV. Number of Regulated Professionals in Nebraska
 - A) There are 1,472 registered Assisted-Living Facility Administrators in Nebraska.

BOARD MEMBERSHIPS AND MEETINGS

- I. Number of Members
 - A) There is no advisory board which oversees the Assisted-Living Facility Administrator occupation. The Assisted-Living Facility Administrator occupation is overseen by the Department of Health and Human Services.

- II. Who Appoints Members of the Board / Is Legislative Approval Required?
 - A) Not Applicable.

- III. Term Length
 - A) Not Applicable.

- IV. Qualifications for Membership of the Board
 - A) Not Applicable.

- V. The Number of Meetings Required Per Year / Meetings Actually Held
 - A) Not Applicable.

- VI. Annual Budget Information for the Previous Five Years
 - A) The Assisted-Living Facility Administrator occupation is cash-funded from licensure fees, and built into the overall budget for the Department of Health and Human Services. Funds for credentialed occupations may come from interest earned on the Professional and Occupational Credentialing Cash Fund, certification and verification of credentials, administrative fees, reinstatement fees, general funds and federal funds, fees for miscellaneous services, gifts, and grants.

- VII. Statement from Occupational Board on Effectiveness of Regulations
 - A) The Department of Health and Human Services stated “Regulations are required to ensure minimum education requirements are met, which ensures safety of Nebraskans served by this credentialed, unlicensed profession.”

AUTHORIZATION

- I. Statutory Authorization
 - A) Statutory authorization for the Assisted-Living Facility Administrator occupation may be found in the Nebraska Revised Statutes, sections [71-5901](#) to [71-5909](#), which may be cited as the Assisted-Living Facility Act. For text of the Nebraska statutes relating to the Assisted-Living Facility Administrator occupation, see Appendix A.

II. Other Authorization

- A) Rules and Regulations regarding the Assisted-Living Facility Administrator occupation can be found in the Nebraska Administrative Code [Title 175, Chapter 4, Section 4-006.02](#).

CREDENTIALING

I. Number of Licenses, Certifications, or Registrations Issued In Past Five Years

- A) There were 473 new active Assisted-Living Facility Administrator registrations issued in the past five years. Each year of employment, an Assisted-Living Facility Administrator must complete 12 hours of ongoing training in areas related to care and facility management of the population served in order to remain on the registry.

II. Number of Licenses, Certifications, or Registrations Denied in Past Five Years

- A) There were no Assisted-Living Facility Administrator registrations denied in the past five years.

III. Number of Licenses, Certifications, or Registrations Revoked in Past Five Years

- A) There were no Assisted-Living Facility Administrator registrations revoked in the past five years.

IV. Number of Licenses, Certifications, or Registrations Penalized in Past Five Years

- A) There were no Assisted-Living Facility Administrator registrations penalized in the past five years.

V. Comparison of How Other States Regulate This Occupation

- A) The National Association of Long-Term Care Administration Boards maintains a website which details how other states regulate the Nursing Facility Administrator and Assisted-Living Facility Administrator Occupations. That website may be found [here](#).

VI. What Is The Potential Harm if This Occupation Is No Longer Licensed, Certified, or Regulated?

- A) If the Assisted-Living Facility Administrator occupation is no longer regulated, individuals who do not have the appropriate training or experience in resident care and services, social services, financial management, administration, or gerontology would be able to operate an assisted-living facility. This could lead to physical, emotional, or mental

harm to residents or mismanagement of funds for the facility, and would be detrimental to the health, safety, and welfare of the public.

COMMITTEE RECOMMENDATION ON CONTINUATION, MODIFICATION, OR TERMINATION OF OCCUPATIONAL REGULATIONS

Regulated occupations under the purview of the Health and Human Services Committee are unique in that through the Nebraska Regulation of Health Professions Act (Neb. Rev. Stat. Sections 71-6201 to 71-6229), health professions which are not licensed or regulated, or health professions that wish to change their scope of practice, go through a three-stage credentialing process.

Credentialing review is a three-stage process conducted by the following review bodies in the following order:

- 1) The review of an ad hoc technical review committee appointed by the Director of the Division of Public Health;
- 2) The review of the State Board of Health;
- 3) The review of the Director of the Division of Public Health.

The three review bodies each create their own independent report on each proposal. All reports created by the review process are available to members of the Health and Human Services Committee to assist them during their review of any bills that might arise from credentialing review proposals. These reports include recommendations regarding the level of licensure of the health profession. These reports are advisory to the Legislature, and only the action of the Legislature may create changes in the regulatory status of a profession. These reports represent expert input into possible public health and safety aspects of credentialing review proposals, and the nine-month process is overseen by those with experience in the provision of health-related or medical services.

The licenses, certifications, and registrations overseen by the Department of Health and Human Services are intended to protect the health, safety, and welfare of Nebraskans. The current regulation of the Assisted-Living Administrator occupation by registration is appropriate and balanced and does not need modification at this time.

APPENDIX A

STATUTES PERTAINING TO THE ASSISTED-LIVING FACILITY ACT

71-5901. Act, how cited.

Sections 71-5901 to 71-5909 shall be known and may be cited as the Assisted-Living Facility Act.

Source: Laws 2004, LB 1005, § 45; Laws 2019, LB571, § 1.

71-5902. Purposes of act.

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

Source: Laws 2004, LB 1005, § 46; Laws 2018, LB439, § 3.

71-5903. Terms, defined.

For purposes of the Assisted-Living Facility Act:

(1) Activities of daily living means activities such as bathing, continence, dressing, grooming, eating, mobility, toileting, transferring, and self-administration of medication and similar activities;

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

(3)(a) Assisted-living facility means a residential setting that provides assisted-living services for remuneration to four or more persons who reside in such residential setting and are not related to the owner of the residential setting and, except as provided in subdivision (b) of this subdivision, includes a home, an apartment, or a facility; and

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

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

- (5) Authorized representative means a person authorized by a resident of an assisted-living facility, such as a person holding a power of attorney or a resident designee, or authorized by a court, such as a guardian, to manage the affairs of the resident;
- (6) Chemical restraint means a psychopharmacologic drug that is used for discipline or convenience and is not required to treat medical symptoms;
- (7) Complex nursing interventions means interventions which require nursing judgment to safely alter standard procedures in accordance with the needs of the resident, which require nursing judgment to determine how to proceed from one step to the next, or which require a multidimensional application of the nursing process;
- (8) Department means the Department of Health and Human Services;
- (9) Noncomplex interventions means interventions which can safely be performed according to exact directions, which do not require alteration of the standard procedure, and for which the results and resident responses are predictable;
- (10) Part-time or intermittent basis means not to exceed ten hours each week for each resident for a period of time with a predictable end within twenty-one days;
- (11) Physical restraint means any manual method or physical or mechanical device, material, or equipment attached or adjacent to the resident's body that he or she cannot remove easily and that restricts freedom of movement or normal access to his or her own body; and
- (12) Resident services agreement means an agreement entered into by the resident or the resident's authorized representative and the assisted-living facility that stipulates the responsibilities of the assisted-living facility and the resident, identifies service needs of the resident, outlines the services that will be provided to the resident by the assisted-living facility and from other sources, and specifies the cost of services provided by the assisted-living facility.

Source: Laws 1997, LB 608, § 13; R.S.Supp.,1998, § 71-20,115; Laws 2000, LB 819, § 60; R.S.1943, (2003), § 71-460; Laws 2004, LB 1005, § 47; Laws 2007, LB296, § 637; Laws 2018, LB439, § 4.

71-5904. Administrator; discretion.

Assisted living promotes resident self-direction and participation in decisions which emphasize independence, individuality, privacy, and dignity.

The administrator shall have the discretion regarding admission or retention of residents of the assisted-living facility subject to the Assisted-Living Facility Act and rules and regulations adopted and promulgated under the act.

Source: Laws 1997, LB 608, § 14; R.S.Supp.,1998, § 71-20,116; Laws 2000, LB 819, § 61; R.S.1943, (2003), § 71-461; Laws 2004, LB 1005, § 48; Laws 2018, LB439, § 5.

71-5905. Admission or retention; conditions; services of employees; requirements; written information provided to applicant for admission; resident services agreement.

(1) An assisted-living facility shall determine if an applicant for admission to the assisted-living facility is admitted or if a resident of the assisted-living facility is retained based on the care needs of the applicant or resident, the ability to meet those care needs within the assisted-living facility, and the degree to which the admission or retention of the applicant or resident poses a danger to the applicant or resident or others.

(2) Any complex nursing intervention or noncomplex intervention provided by an employee of the assisted-living facility shall be performed in accordance with applicable state law.

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

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

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

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

(d) The criteria for admission to and continued residence in the assisted-living facility and the process for addressing issues that may prevent admission to or continued residence in the assisted-living facility;

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

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

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

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

Source: Laws 2004, LB 1005, § 49; Laws 2011, LB401, § 1; Laws 2018, LB439, § 6.

71-5906. Complex nursing interventions; authorized; drugs, devices, biologicals, and supplements; list required; duties.

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

(2) Every person seeking admission to an assisted-living facility or the authorized representative of such person shall, upon admission and annually thereafter, provide the facility with a list of drugs, devices, biologicals, and supplements being taken or being used by the person, including dosage, instructions for use, and reported use.

(3) Every person residing in an assisted-living facility or the authorized representative of such person shall annually provide the facility with a list of drugs, devices, biologicals, and supplements being taken or being used by such person, including dosage, instructions for use, and reported use.

(4) An assisted-living facility shall not be subject to disciplinary action by the department for the failure of any person seeking admission to or residing at such facility or the authorized representative of such person to comply with subsections (2) and (3) of this section.

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

Source: Laws 2004, LB 1005, § 50; Laws 2018, LB439, § 7.

71-5907. State Fire Code classification.

For purposes of the State Fire Code under section 81-503.01, an assisted-living facility shall be classified as (1) residential board and care if the facility meets the residential board and care classification requirements of the State Fire Code or (2) limited care if the facility meets the limited care classification requirements of the State Fire Code.

Source: Laws 2004, LB 1005, § 51; Laws 2019, LB195, § 1.

71-5908. Rules and regulations.

The department shall adopt and promulgate rules and regulations necessary to carry out the Assisted-Living Facility Act, including, but not limited to, rules and regulations which:

(1) Prohibit the use of chemical or physical restraints at an assisted-living facility;

(2) Require that a criminal background check be conducted on all persons employed as direct care staff at an assisted-living facility;

(3) Establish initial and ongoing training requirements for administrators and approved curriculum for such training. Such requirements shall consist of thirty hours

of initial training, including, but not limited to, training in resident care and services, social services, financial management, administration, gerontology, and rules, regulations, and standards relating to the operation of an assisted-living facility. The department may waive initial training requirements established under this subdivision for persons employed as administrators of assisted-living facilities on January 1, 2005, upon application to the department and documentation of equivalent training or experience satisfactory to the department. Training requirements established under this subdivision shall not apply to an administrator who is also a nursing home administrator or a hospital administrator; and

(4) Provide for acceptance of accreditation by a recognized independent accreditation body or public agency, which has standards that are at least as stringent as those of the State of Nebraska, as evidence that the assisted-living facility complies with rules and regulations adopted and promulgated under the Assisted-Living Facility Act.

Source: Laws 2004, LB 1005, § 52.

71-5909. Grievance procedure.

(1) For purposes of this section:

(a) Grievance means a written expression of dissatisfaction that may or may not be the result of an unresolved complaint; and

(b) Grievance procedure means the written policy of an assisted-living facility for addressing a grievance from an individual including an employee or resident.

(2) Each assisted-living facility shall, on or before January 1, 2020, provide to the department the grievance procedure provided to an applicant for admission to the assisted-living facility. When such grievance procedure is modified, updated, or otherwise changed, the new grievance procedure shall be provided to the department within seven business days after such new grievance procedure takes effect. The department shall make such grievance procedure available to the deputy public counsel for institutions.

Source: Laws 2019, LB571, § 2.