

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 – Nurse Aide

GENERAL INFORMATION

- I. Occupation Regulated
 - A) Nurse Aide

- 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) A Nurse Aide is a person on the Nurse Aide Registry employed for the purpose of aiding a Licensed Registered or Practical Nurse through the performance of non-specialized tasks related to the personal care and comfort of residents, clients, and/or patients. This allows nurses to perform other duties while still ensuring quality level of care for Nebraskans.

- IV. Number of Regulated Professionals in Nebraska
 - A) There are 36,547 registered Nurse Aides in Nebraska.

BOARD MEMBERSHIPS AND MEETINGS

- I. Number of Members
 - A) There is no advisory board which oversees the Nurse Aide occupation. The Nurse Aide 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 cost of oversight for Nurse Aides is included in the CMS Federal Nursing Home budget, and is not separated out.

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 then ensures safety of Nebraskans served by this credentialed, unlicensed persons." The rules and regulations in Nebraska reflect necessary compliance with federal law regarding Nurse Aides.

AUTHORIZATION

I. Statutory Authorization

A) Statutory authorization for the Nurse Aide occupation may be found in the Nebraska Revised Statutes, sections [71-6038](#) and [71-6039](#). For text of the Nebraska statutes relating to the Nurse Aide occupation, see Appendix A.

II. Other Authorization

A) Federal Authority comes from the Code of Federal Regulations [Title 42, Chapter IV, Subchapter G, Parts 483.150 through 483.158](#), which contains statutes relating to the Nurse Aide occupation including statutory basis, competency evaluation, and registry.

B) Rules and regulations regarding Nurse Aides may be found in the Nebraska Administrative Code [Title 471, Chapter 12](#), Section 014, and in [Title 172, Chapter 108](#). Title 471, Chapter 12, governs nursing facility regulations, while Section 014 discusses Nurse Aides specifically. Title 172, Chapter 108 discusses approval of training programs and qualifications for nursing assistants in nursing homes, and further clarifies that "nursing assistants" and Nurse Aides are interchangeable for purposes of this section of the Nebraska Administrative Code.

CREDENTIALING

- I. Number of Licenses, Certifications, or Registrations Issued In Past Five Years
 - A) 17,341 Nurse Aides have been placed on the registry in the past five years.

- II. Number of Licenses, Certifications, or Registrations Denied in Past Five Years
 - A) With regards to registration, if there is a finding or conviction of abuse or neglect, or a crime of moral turpitude, that individual's status will be updated on the registry and the individual shall be marked ineligible.
 - B) Not Applicable.

- III. Number of Licenses, Certifications, or Registrations Revoked in Past Five Years
 - A) Not Applicable

- IV. Number of Licenses, Certifications, or Registrations Penalized in Past Five Years
 - A) Not Applicable

- V. Comparison of How Other States Regulate This Occupation
 - A) Nurse Aides and the Nurse Aide Registry as well as the Nurse Aide Training and Competency Evaluation Program, are regulated by the Federal Nursing Home Regulations and Code of Federal Regulations. State Nurse Aide, Nurse Aide Registry and Nurse Aide Training Programs are also regulated by Nebraska statutes and regulations. Other States follow the same federal law for Nurse Aides, though some are more stringent. Other States have similar regulations for Nurse Aides. The hours of training can vary but cannot be less than 75 hours.

- VI. What Is The Potential Harm if This Occupation Is No Longer Licensed, Certified, or Regulated?
 - A) The potential harm if the occupation is no longer regulated would be a lack of compliance with federal law, which could jeopardize funding received from the Federal Government. Furthermore, if the Nurse Aide occupation was unregulated, there could be certain individuals with a history of neglect, violence, or abuse who would be able to work as Nurse Aides. Regulation is also required to ensure that Nurse Aides meet minimum education requirements which ensures the safety of Nebraskans.

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 Nurse Aide occupation by requiring Nurse Aides to be placed on a registry mirrors current federal law, and is no more restrictive than the federal law. This level of regulation is appropriate and balanced and does not need modification at this time.

APPENDIX A

STATUTES PERTAINING TO THE NURSE AIDE OCCUPATION

71-6038. Terms, defined.

For purposes of sections 71-6038 to 71-6042:

(1) Complicated feeding problems include, but are not limited to, difficulty swallowing, recurrent lung aspirations, and tube or parenteral or intravenous feedings;

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

(3) Nurse aide means any person employed by a facility described in subsection (1) of section 71-6039 for the purpose of aiding a licensed registered or practical nurse through the performance of nonspecialized tasks related to the personal care and comfort of residents other than a paid dining assistant or a licensed registered or practical nurse;

(4) Nursing home means any facility or a distinct part of any facility that provides care as defined in sections 71-420, 71-421, 71-422, 71-424, and 71-429; and

(5) Paid dining assistant means any person employed by a nursing home for the purpose of aiding a licensed registered or practical nurse through the feeding of residents other than a nurse aide or a licensed registered or practical nurse.

Source: Laws 1983, LB 273, § 1; Laws 1984, LB 416, § 10; Laws 1988, LB 190, § 4; Laws 1990, LB 1080, § 6; Laws 1994, LB 1210, § 148; Laws 1996, LB 1044, § 749; Laws 1998, LB 1354, § 40; Laws 2004, LB 1005, § 110; Laws 2007, LB296, § 642; Laws 2007, LB463, § 1235; Laws 2017, LB417, § 13.

71-6039. Nurse aide; qualifications; training requirements; department; duties; licensure as nurse; effect.

(1) No person shall act as a nurse aide in a facility or a distinct part of a facility that provides care as defined in section 71-405, 71-406, 71-409, 71-412, 71-416, 71-417, 71-418, 71-419, 71-420, 71-421, 71-422, 71-424, 71-426, 71-427, or 71-429 unless such person:

(a) Is at least sixteen years of age and has not been convicted of a crime involving moral turpitude;

(b) Is able to speak and understand the English language or a language understood by a substantial portion of the facility residents; and

(c) Has successfully completed a basic course of training approved by the department for nurse aides within one hundred twenty days of initial employment in the capacity of a nurse aide.

(2)(a) A registered nurse or licensed practical nurse whose license has been revoked, suspended, or voluntarily surrendered in lieu of discipline may not act as a nurse aide in a facility described in subsection (1) of this section.

(b) If a person registered as a nurse aide becomes licensed as a registered nurse or licensed practical nurse, his or her registration as a nurse aide becomes null and void as of the date of licensure.

(c) A person listed on the Nurse Aide Registry with respect to whom a finding of conviction has been placed on the registry may petition the department to have such finding removed at any time after one year has elapsed since the date such finding was placed on the registry.

(3) The department may prescribe a curriculum for training nurse aides and may adopt and promulgate rules and regulations for such courses of training. The content of the courses of training and competency evaluation programs shall be consistent with federal requirements unless exempted. The department may approve courses of training if such courses of training meet the requirements of this section. Such courses of training shall include instruction on the responsibility of each nurse aide to report suspected abuse or neglect pursuant to sections 28-372 and 28-711. Nursing homes may carry out approved courses of training within the nursing home, except that nursing homes may not conduct the competency evaluation part of the program. The prescribed training shall be administered by a licensed registered nurse.

(4) For nurse aides at intermediate care facilities for persons with developmental disabilities, such courses of training shall be no less than twenty hours in duration and shall include at least fifteen hours of basic personal care training and five hours of basic therapeutic and emergency procedure training, and for nurse aides at all nursing homes other than intermediate care facilities for persons with developmental disabilities, such courses shall be no less than seventy-five hours in duration.

(5) This section shall not prohibit any facility from exceeding the minimum hourly or training requirements.

Source: Laws 1983, LB 273, § 2; Laws 1984, LB 416, § 11; Laws 1986, LB 921, § 11; Laws 1988, LB 463, § 49; Laws 1990, LB 1080, § 7; Laws 1994, LB 1210, § 149; Laws 2004, LB 1005, § 111; Laws 2007, LB185, § 43; Laws 2007, LB463, § 1236; Laws 2013, LB23, § 38; Laws 2017, LB417, § 14.

71-6039.06. Eligibility for Licensee Assistance Program.

Nurse aides and paid dining assistants are eligible to participate in the Licensee Assistance Program as prescribed by section 38-175.

Source: Laws 2007, LB463, § 1240; Laws 2017, LB417, § 15.

71-6040. Department; approve programs and materials.

The department shall approve all courses, lectures, seminars, course materials, or other instructional programs used to meet the requirements of sections 71-6038 to 71-6042.

Source: Laws 1983, LB 273, § 3; Laws 1996, LB 1044, § 750; Laws 2004, LB 1005, § 112; Laws 2007, LB463, § 1237.

71-6041. Department; adopt rules and regulations.

To protect the health, safety, and welfare of nursing home residents and the public, the department shall adopt and promulgate such rules and regulations as are necessary for the effective administration of sections 71-6038 to 71-6042. Such rules and regulations shall be consistent with federal requirements developed by the United States Department of Health and Human Services.

Source: Laws 1983, LB 273, § 4; Laws 1994, LB 1210, § 150; Laws 1996, LB 1044, § 751; Laws 2004, LB 1005, § 113; Laws 2007, LB463, § 1238.

71-6042. Chief medical officer; enforcement; powers.

The chief medical officer as designated in section 81-3115 shall have the authority to enforce sections 71-6038 to 71-6042 and rules and regulations adopted under section 71-6041 by any of the following means: Denial, suspension, restriction, or revocation of a nursing home's license, refusal of the renewal of a nursing home's license, restriction of a nursing home's admissions, or any other enforcement provision granted to the department.

Source: Laws 1983, LB 273, § 5; Laws 2004, LB 1005, § 114; Laws 2007, LB296, § 643; Laws 2007, LB463, § 1239.