

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 – Paid Dining Assistant

GENERAL INFORMATION

- I. Occupation Regulated
 - A) Paid Dining Assistant

- 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 Paid Dining Assistant assists nurses in the feeding of residents in a nursing home. Paid Dining Assistants have a single-function role, which is only to assist in feeding residents. The role of a Paid Dining Assistant is supervised by the nurse who is on duty. The Paid Dining Assistant feeds residents who have no complicated feeding problems based on the resident's latest assessment and plan of care. Paid Dining Assistants must complete a state-approved course of training which includes, but is not limited to, feeding techniques, assistance with feeding and hydration, infection control, and resident rights. Once a Paid Dining Assistant completes the training course, they are placed on the Paid Dining Assistant Registry. The creation of the registry and regulation of the Paid Dining Assistant is to ensure that residents are safely assisted with nourishment needs, and to allow nurses to utilize their time with residents with more severe needs. The Paid Dining Assistant occupation is provided for in federal law.

- IV. Number of Regulated Professionals in Nebraska
 - A) There are 792 registered Paid Dining Assistants in Nebraska.

BOARD MEMBERSHIPS AND MEETINGS

- I. Number of Members
 - A) There is no advisory board which oversees the Paid Dining Assistant occupation. The Paid Dining Assistant 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 Paid Dining Assistants 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 ensures safety of Nebraskans served by this credentialed, unlicensed profession.” The rules and regulations in Nebraska reflect necessary compliance with federal law regarding Paid Dining Assistants.

AUTHORIZATION

- I. Statutory Authorization
 - A) Statutory authorization for the Paid Dining Assistant occupation may be found in the Nebraska Revised Statutes, sections [71-6038](#) through [71-6042](#). For text of the Nebraska statutes relating to the Paid Dining Assistant occupation, see Appendix A.

- II. Other Authorization
 - A) Federal Authority comes from the Code of Federal Regulations, [Title 42, Chapter IV, Subchapter G, Part 483.160](#), which contains requirements for training of “paid feeding assistants” which Nebraska refers to as Paid Dining Assistants.

- B) Rules and regulations regarding Paid Dining Assistants may be found in the Nebraska Administrative Code [Title 471, Chapter 105](#). These rules and regulations mirror federal law.

CREDENTIALING

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

- A) 138 Paid Dining Assistants have been placed on the registry in the past five years.

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

- A) There have been no registrations denied in the past five years. If, after completion of the training requirements, 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.

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

- A) No licenses have been revoked in the past five years.

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

- A) No licenses have been penalized in the past five years.

IV. Comparison of How Other States Regulate This Occupation

- A) Paid Dining Assistants and the Paid Dining Assistant Registry are regulated by the Federal Nursing Home Regulations and Code of Federal Regulations. Other states follow the same federal rules and regulations for Paid Dining Assistants.

V. 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 Paid Dining Assistant occupation was unregulated, there could be certain individuals with a history of neglect, violence, or abuse who would be able to work as Paid Dining Assistants. Regulation is also required to ensure that Paid Dining Assistants 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 Paid Dining Assistant occupation by requiring Paid Dining Assistants 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 PAID DINING ASSISTANTS

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.

71-6039.01. Paid dining assistant; qualifications.

No person shall act as a paid dining assistant in a nursing home unless such person:

(1) Is at least sixteen years of age;

(2) Is able to speak and understand the English language or a language understood by the nursing home resident being fed by such person;

(3) Has successfully completed at least eight hours of training as prescribed by the department for paid dining assistants;

(4) Has no adverse findings on the Nurse Aide Registry or the Adult Protective Services Central Registry; and

(5) Has no adverse findings on the central registry created in section [28-718](#) if the nursing home which employs such person as a paid dining assistant has at any one time more than one resident under the age of nineteen years.

Source: Laws 2004, LB 1005, § 115; Laws 2014, LB853, § 47.

71-6039.02. Paid dining assistant; permitted activities.

A paid dining assistant shall:

(1) Only feed residents who have no complicated feeding problems as selected by the nursing home based on the resident's latest assessment and plan of care and a determination by the charge nurse that the resident's condition at the time of such feeding meets that plan of care;

(2) Work under the supervision of a licensed registered or practical nurse who is in the nursing home and immediately available; and

(3) Call a supervisor for help in an emergency.

Source: Laws 2004, LB 1005, § 116.

71-6039.03. Paid dining assistant; training requirements.

(1) The department may prescribe a curriculum for training paid dining assistants and may adopt and promulgate rules and regulations for such courses of training. Such courses shall be no less than eight hours in duration. The department may approve courses of training for paid dining assistants that meet the requirements of this section. Nursing homes may carry out approved courses of training and competency evaluation programs at the nursing home. Training of paid dining assistants shall be administered by a licensed registered nurse.

(2) Courses of training and competency evaluation programs for paid dining assistants shall include:

(a) Feeding techniques;

(b) Assistance with feeding and hydration;

(c) Communication and interpersonal skills;

(d) Appropriate responses to resident behavior;

(e) Safety and emergency procedures, including the abdominal thrust maneuver;

(f) Infection control;

(g) Resident rights;

(h) Recognizing changes in residents that are inconsistent with their normal behavior and the importance of reporting those changes to the supervisory nurse;

(i) Special needs; and

(j) Abuse and neglect, including the responsibility to report suspected abuse or neglect pursuant to sections [28-372](#) and [28-711](#).

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

Source: Laws 2004, LB 1005, § 117.

71-6039.04. Paid dining assistant registry.

The department shall maintain a paid dining assistant registry and shall include in the registry individuals who have successfully completed a paid dining assistant course of training and a competency evaluation program.

Source: Laws 2004, LB 1005, § 118.

71-6039.05. Paid dining assistant; nursing home; duties.

Each nursing home shall maintain (1) a record of all paid dining assistants employed by such facility, (2) verification of successful completion of a training course for each paid dining assistant, and (3) verification that the facility has made checks with the Nurse Aide Registry, the Adult Protective Services Central Registry, and the central registry created in section 28-718, if applicable under section 71-6039.01, with respect to each paid dining assistant.

Source: Laws 2004, LB 1005, § 119; Laws 2014, LB853, § 48.

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.