

LEGISLATURE OF NEBRASKA

ONE HUNDRED FIRST LEGISLATURE

SECOND SESSION

LEGISLATIVE BILL 904

Introduced by Howard, 9.

Read first time January 12, 2010

Committee: Health and Human Services

A BILL

1 FOR AN ACT relating to assisted-living facilities; to amend
2 sections 71-406, 71-5901, 71-5903, 71-5904, 71-5905,
3 and 71-5908, Reissue Revised Statutes of Nebraska; to
4 define and redefine terms and to eliminate definitions;
5 to provide for enhanced assisted-living certificates; to
6 provide powers and duties; to harmonize provisions; and
7 to repeal the original sections.

8 Be it enacted by the people of the State of Nebraska,

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

3 71-406 ~~(1)~~ Assisted-living facility means a facility
4 where shelter, food, and care are provided for remuneration for
5 a period of more than twenty-four consecutive hours to four or
6 more persons residing at such facility who require or request
7 such services due to age, illness, or physical disability.
8 congregate residential facility that provides or coordinates
9 personal services, twenty-four-hour supervision and assistance,
10 whether scheduled or unscheduled, activities, and health-related
11 services to four or more persons residing at such facility, for
12 remuneration, which services, supervision and assistance, and
13 activities are designed to: (1) Minimize the need to move; (2)
14 accommodate residents' changing needs and preferences; (3) maximize
15 residents' dignity, autonomy, privacy, independence, and safety;
16 and (4) encourage family and community involvement.

17 ~~(2)~~ Assisted-living facility does not include a home,
18 apartment, or facility where (a) casual care is provided at
19 irregular intervals or (b) a competent person residing in such
20 home, apartment, or facility provides for or contracts for his
21 or her own personal or professional services if no more than
22 twenty-five percent of persons residing in such home, apartment, or
23 facility receive such services.

24 Sec. 2. Section 71-5901, Reissue Revised Statutes of
25 Nebraska, is amended to read:

1 71-5901 Sections 71-5901 to 71-5908 and sections 6 and 7
2 of this act shall be known and may be cited as the Assisted-Living
3 Facility Act.

4 Sec. 3. Section 71-5903, Reissue Revised Statutes of
5 Nebraska, is amended to read:

6 71-5903 For purposes of the Assisted-Living Facility Act:

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

10 (2) Administrator means the operating officer of an
11 assisted-living facility and includes a person with a title such
12 as administrator, chief executive officer, manager, superintendent,
13 director, or other similar designation;

14 (3) Aging in place means care and services at an
15 assisted-living facility which holds an enhanced assisted-living
16 certificate and which, to the extent practicable within the
17 scope of services set forth in the written residency agreement,
18 accommodates a resident's changing needs and preferences in order
19 to allow such resident to remain in the assisted-living facility
20 as long as the assisted-living facility is able and authorized
21 to accommodate the resident's needs. An assisted-living facility
22 that does not hold an enhanced assisted-living certificate shall
23 not be deemed able to accommodate a resident's needs if the
24 resident requires or is in need of enhanced assisted-living care,
25 twenty-four-hour skilled nursing care, or medical care;

1 ~~(3)~~ (4) Assisted-living facility has the same meaning as
2 in section 71-406;

3 ~~(4)~~ (5) Authorized representative means (a) a person
4 holding a durable power of attorney for health care, (b) a
5 guardian, or (c) a person appointed by a court to manage the
6 personal affairs of a resident of an assisted-living facility other
7 than the facility;

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

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

18 (7) Department means the Department of Health and Human
19 Services;

20 (8) Enhanced assisted-living care means the care
21 or services provided pursuant to an enhanced assisted-living
22 certificate;

23 (9) Enhanced assisted-living certificate means a
24 certificate issued by the department pursuant to section 6 of this
25 act;

1 (10) Enhanced assisted-living resident means a resident
 2 who is provided enhanced assisted-living care;

3 ~~(8)~~ (11) Health maintenance activities means noncomplex
 4 interventions which can safely be performed according to exact
 5 directions, which do not require alteration of the standard
 6 procedure, and for which the results and resident responses are
 7 predictable;

8 ~~(9)~~ (12) Personal care means bathing, hair care, nail
 9 care, shaving, dressing, oral care, and similar activities; and

10 ~~(10)~~ (13) Physical restraint means any manual method or
 11 physical or mechanical device, material, or equipment attached or
 12 adjacent to the resident's body that he or she cannot remove easily
 13 and that restricts freedom of movement or normal access to his or
 14 her own body. and

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

20 Sec. 4. Section 71-5904, Reissue Revised Statutes of
 21 Nebraska, is amended to read:

22 71-5904 Assisted living promotes resident self-direction,
 23 and participation in care decisions, which emphasize independence,
 24 individuality, privacy, and dignity. and residential
 25 surroundings.

1 To be eligible for admission to an assisted-living
2 facility, a person shall be in need of ~~or wish to have available~~
3 ~~room, board,~~ assistance with or provision of personal care,
4 activities of daily living, ~~or health maintenance activities,~~
5 or supervision, ~~due to age, illness, or physical disability.~~ The
6 administrator shall have the discretion regarding admission or
7 retention of residents subject to the Assisted-Living Facility Act
8 and rules and regulations adopted and promulgated under the act.

9 Sec. 5. Section 71-5905, Reissue Revised Statutes of
10 Nebraska, is amended to read:

11 71-5905 (1) An assisted-living facility shall adopt
12 standards for admission and retention of residents in accordance
13 with the purpose of the Assisted-Living Facility Act. An
14 assisted-living facility shall not admit or retain a resident
15 who requires complex nursing interventions or whose condition
16 is not stable or predictable unless+ is eligible for enhanced
17 assisted-living care unless the assisted-living facility has
18 obtained an enhanced assisted-living certificate.

19 (a) ~~The resident, if he or she is not a minor and is~~
20 ~~competent to make a rational decision as to his or her needs or~~
21 ~~care, or his or her authorized representative, and his or her~~
22 ~~physician or a registered nurse agree that admission or retention~~
23 ~~of the resident is appropriate,~~

24 (b) ~~The resident or his or her authorized representative~~
25 ~~agrees to arrange for the care of the resident through appropriate~~

1 private duty personnel, a licensed home health agency, or a
2 licensed hospice, and

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

5 (2) Health maintenance activities at an assisted-living
6 facility shall be performed in accordance with the Nurse Practice
7 Act and the rules and regulations adopted and promulgated under the
8 act.

9 Sec. 6. (1) The department may issue enhanced
10 assisted-living certificates pursuant to this section. An enhanced
11 assisted-living certificate authorizes an assisted-living facility
12 to accommodate aging in place by admitting and retaining residents
13 who desire to continue to age in place and who: (a) Are chronically
14 chairfast and unable to transfer or chronically require the
15 physical assistance of another person to transfer; (b) chronically
16 require the physical assistance of another person in order to walk;
17 (c) chronically require the physical assistance of another person
18 to climb or descend stairs; (d) are dependent on medical equipment
19 and require more than intermittent or occasional assistance from
20 medical personnel; or (e) have chronic unmanaged urinary or bowel
21 incontinence.

22 (2) An assisted-living facility may apply to the
23 department on a form approved by the department to obtain an
24 enhanced assisted-living certificate. The assisted-living facility
25 may apply for an enhanced assisted-living certificate for the

1 entire assisted-living facility or for any number of beds within
2 the assisted-living facility. The application shall be accompanied
3 by a nonrefundable application fee of XX dollars.

4 (3) The application shall include, but not be limited
5 to, the name and address of the applicant, the number of beds
6 in the assisted-living facility, the number of beds to which the
7 enhanced assisted-living certificate would apply, if less than
8 the total number of beds in the assisted-living facility, a plan
9 setting forth how the additional needs of enhanced assisted-living
10 residents will be safely and appropriately met by the applicant,
11 and such other information required by the department. The plan
12 required by this section shall include, but need not be limited to,
13 a written description of services, staffing levels, staff education
14 and training, work experience, any modifications of the applicant's
15 environment that have been made or will be made to protect the
16 health, safety, and welfare of enhanced assisted-living residents,
17 and any other information the department may require pursuant to
18 rules and regulations.

19 Sec. 7. (1) An assisted-living facility shall not provide
20 enhanced assisted-living care without an enhanced assisted-living
21 certificate issued by the department.

22 (2) In addition to any other requirements established
23 by the department, an assisted-living facility holding an enhanced
24 assisted-living certificate may hire care staff directly pursuant
25 to standards developed by the department or may contract with

1 appropriate private duty personnel, a licensed home health agency,
2 or a licensed hospice.

3 (3) An assisted-living facility resident shall not be
4 permitted to continue to age in place under the terms of an
5 enhanced assisted-living certificate unless the assisted-living
6 facility, the resident's physician, and, if applicable, the
7 resident's licensed home health agency agree that the additional
8 needs of the resident can be safely and appropriately met at the
9 assisted-living facility offering enhanced assisted-living care
10 pursuant to an enhanced assisted-living certificate. A resident
11 eligible for enhanced assisted-living care or his or her authorized
12 representative shall submit to the assisted-living facility a
13 written report from the resident's physician, which report shall
14 state that:

15 (a) The physician has physically examined the resident
16 within the last month; and

17 (b) The resident is not in need of twenty-four-hour
18 skilled nursing care or medical care which would require his or her
19 placement in a hospital or nursing home.

20 (4) The assisted-living facility shall notify each
21 enhanced assisted-living resident that, while the assisted-living
22 facility will make reasonable efforts to facilitate the resident's
23 ability to age in place pursuant to an enhanced assisted-living
24 certificate, if the needs of the enhanced assisted-living resident
25 cannot be safely or appropriately met, the assisted-living facility

1 may require the transfer of the enhanced assisted-living resident
2 to a more appropriate facility.

3 (5) If an enhanced assisted-living resident is in need of
4 twenty-four-hour skilled nursing care or medical care, the enhanced
5 assisted-living resident may remain at an assisted-living facility
6 holding an enhanced assisted-living certificate if each of the
7 following conditions are met:

8 (a) The enhanced assisted-living resident hires, at his
9 or her own expense, appropriate nursing, medical, or hospice
10 personnel to care for the enhanced assisted-living resident's
11 increased needs;

12 (b) The enhanced assisted-living resident's physician and
13 licensed home health agency both determine and document that, with
14 the provision of such additional nursing, medical, or hospice care,
15 the enhanced assisted-living resident can be safely cared for in
16 the assisted-living facility and would not require placement in a
17 hospital or nursing home;

18 (c) The administrator of the assisted-living facility
19 agrees to retain the enhanced assisted-living resident and to
20 coordinate the care provided by the assisted-living facility and
21 the additional nursing, medical, or hospice staff employed by the
22 enhanced assisted-living resident pursuant to subdivision (5) (a) of
23 this section; and

24 (d) The enhanced assisted-living resident is otherwise
25 eligible to reside at the assisted-living facility.

1 (6) The Assisted-Living Facility Act does not require
2 an assisted-living facility to obtain an enhanced assisted-living
3 certificate.

4 Sec. 8. Section 71-5908, Reissue Revised Statutes of
5 Nebraska, is amended to read:

6 71-5908 The department shall adopt and promulgate rules
7 and regulations necessary to carry out the Assisted-Living Facility
8 Act, including, but not limited to, rules and regulations which:

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

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

14 (3) Establish initial and ongoing training requirements
15 for administrators and approved curriculum for such training. Such
16 requirements shall consist of thirty hours of initial training,
17 including, but not limited to, training in resident care and
18 services, social services, financial management, administration,
19 gerontology, and rules, regulations, and standards relating to the
20 operation of an assisted-living facility. The department may waive
21 initial training requirements established under this subdivision
22 for persons employed as administrators of assisted-living
23 facilities on January 1, 2005, upon application to the department
24 and documentation of equivalent training or experience satisfactory
25 to the department. Training requirements established under this

1 subdivision shall not apply to an administrator who is also a
2 nursing home administrator or a hospital administrator; and

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

9 (5) Require at least one direct care staff member to be
10 on the premises and awake at all times;

11 (6) Provide for an annual survey of assisted-living
12 facilities;

13 (7) Establish training requirements in cardiopulmonary
14 resuscitation and first aid;

15 (8) Establish application and issuance requirements
16 for enhanced assisted-living certificates and standards for
17 assisted-living facilities and personnel providing enhanced
18 assisted-living care; and

19 (9) Require the development of a disaster-response plan
20 for assisted-living facilities and training of staff in the
21 implementation of such disaster-response plan.

22 Sec. 9. Original sections 71-406, 71-5901, 71-5903,
23 71-5904, 71-5905, and 71-5908, Reissue Revised Statutes of
24 Nebraska, are repealed.