

# HEALTH AND HUMAN SERVICES COMMITTEE OF THE NEBRASKA LEGISLATURE

Report as required by Neb. Rev. Stat. 84-948

## Committee Members

Senator Brian Hardin, Chairperson, District 48

Senator John Fredrickson, District 20

Senator Ben Hansen, District 16

Senator Beau Ballard, District 21

Senator Merv Riepe, District 12

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## Committee Staff

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## **Occupational Board Reform Act**

The Legislature passed the Occupational Board Reform Act in 2018 (Neb. Rev. Stat. §§ 84-901 to 84-920) with an operative date of July 1, 2019. The act requires that:

“Beginning in 2019, each standing committee of the Legislature shall annually review and analyze approximately twenty percent of the occupational regulations within the jurisdiction of the committee and prepare and submit an annual report electronically to the Clerk of the Legislature by December 15 of each year as provided in this section. Each committee shall complete this process for all occupational regulations within its jurisdiction within five years and every five years thereafter. Each report shall include the committee's recommendations regarding whether the occupational regulations should be terminated, continued, or modified.” (Neb. Rev. Stat. § 84-948)

## Committee Findings

Neb. Rev. Stat. 84-948 requires the report to include the following with answers in bold:

(3) A committee's report shall include, but not be limited to, the following:

(a) The title of the regulated occupation and the name of the occupational board responsible for enforcement of the occupational regulations.

**Nurse Aide; no advisory board regulates this profession; regulated by DHHS**

(b) The statutory citation or other authorization for the creation of the occupational regulations and occupational board;

**Neb. Rev. Stat. 71-6038 and 71-6039**

(c) The number of members of the occupational board and how the members are appointed;

**NA**

(d) The qualifications for membership on the occupational board;

**NA**

(e) The number of times the occupational board is required to meet during the year and the number of times it actually met;

**NA**

(f) Annual budget information for the occupational board for the five most recently completed fiscal years;

**The cost of oversight for Nurse Aides is included in the CMS Federal Nursing Home Budget, and is not separated out.**

(g) For the immediately preceding five calendar years, or for the period of time less than five years for which the information is practically available, the number of government certifications, occupational licenses, and registrations the occupational board has issued, revoke, denied, or assessed penalties against, listed anonymously and separately per type of credential, and the reasons for such revocations, denials, other penalties.

NA

(h) A review of the basic assumptions underlying the creation of the occupational regulations;

**Please see Neb. Rev. Stat. 71-6039**

**<https://nebraskalegislature.gov/laws/statutes.php?statute=71-6039>**

(i) A statement from the occupational board on the effectiveness of the occupational regulations

**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.**

(j) A comparison of whether and how other states regulate the occupation;

**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.**

(4) Subject to subsection )5) of this section, each committee shall also analyze, and include in its report, whether the occupational regulations meet the policies stated in section 84-946 considering the following recommended courses of action for meeting such policies:

**The regulations, NAC, Title 471, Chapter 12; and NAC, Title 172, Chapter 108; appear to be consistent with the state statutes.**

- (a) If the need is to protect consumers against fraud, the likely recommendation will be to strengthen powers under the Uniform Deceptive Trade Practices Act or require disclosures that will reduce misleading attributes of the specific goods or services:

N/A

- (b) If the need is to protect consumers unclean facilities or to promote general health and safety, the likely recommendation will be to require periodic inspections of such facilities;

N/A

- (c) If the need is protect consumers against potential damages from failure by providers to complete a contract fully or up to standards, the likely recommendation will be to require that providers be bonded:

N/A

- (d) If the need is to protect a person who is not party to a contract between the provider and consumer, the likely recommendation will be to require that the provider have insurance;

N/A

- (e) If the need is to protect consumers against potential damages by transient providers, the likely recommendation will be to require that providers register their businesses with the Secretary of State;

N/A

- (f) If the need is to protect consumers against a shortfall or imbalance of knowledge about the goods or services relative to the providers' knowledge, the likely recommendation will be to enact government certification; and

N/A

- (g) If the need is to address a systematic information shortfall such that a reasonable consumer is unable to distinguish between the quality of providers, there is an absence of institutions that provide adequate guidance to the consumer, and the consumer's inability to distinguish between providers and the lack of adequate guidance allows for undue risk of present, significant, and substantiated harms, the likely recommendation will be to enact an occupational license.

N/A

(5) If a lawful occupation is subject to the Nebraska Regulation of Health Professions Act, the analysis under subsection (4) of this section shall be made using the least restrictive method of regulation as set out in section 71-6222.

N/A

(6) In developing recommendations under this section, the committee shall review any report issued to the Legislature pursuant to the Nebraska Regulation of Health Professions Act, if applicable, and consider any findings or recommendations of such report related to the occupational regulations under review.

N/A

(7) If the committee finds that it is necessary to change occupational regulations, the committee shall recommend the least restrictive regulation consistent with the public interest and the policies in this section and section 84-946.

NA

### **Conclusion**

The licenses, certifications, and registrations overseen by DHHS are intended to protect the health, safety, and welfare of Nebraskans. The current regulation of the Nurse Aide occupation is appropriate and balanced and does not need modification at this time.