

LEGISLATIVE BILL 404

Approved by the Governor April 20, 1982

Introduced by Fowler, 27; DeCamp, 40; Rumery, 42; R. Maresh, 32; Marvel, 33; Wesely, 26

AN ACT to adopt the Nebraska Community Aging Services Act; to replace the Nebraska Commission on Aging with a department; to amend sections 68-1101 and 68-1103, Reissue Revised Statutes of Nebraska, 1943, and sections 68-1104, 68-1105, and 81-102, Revised Statutes Supplement, 1981; and to repeal the original sections.

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

Section 1. Sections 1 to 28 of this act shall be known and may be cited as the Nebraska Community Aging Services Act.

Sec. 2. The Legislature of the State of Nebraska hereby finds and declares:

(1) That in many urban and rural areas of the state numerous older Nebraskans are without access to community aging services which strengthen and support a self-reliant, independent family home life in times of personal crisis or advanced age;

(2) That this deficiency in program coverage causes many older persons to forfeit their independent living arrangements for more dependent and sometimes inappropriate institutional living;

(3) That this deficiency has resulted in disproportionate expenditures of both private and public funds for institutionally-based care for the state's older citizens;

(4) That the known future increase in the number and proportion of the state's aged population will require increased use of the natural care system of family, friends, and neighbors, and of older people's strengths and experience for their own self-sufficiency;

(5) That older persons are healthier, happier, and better served living in their own homes and neighborhoods; that support and care is best given by family, friends, or neighbors; that community-based aging services through senior centers and local organizations can serve, supplement, and bolster family living; and

that greater state and other public expenditures for inappropriate care can be avoided by investment in preventive community aging services;

(6) That older citizens of this state are entitled to the same opportunities as others for full enjoyment of and maximum participation in their communities' civic, social, and employment activities and in the personal choice and management of their own lives; and

(7) That it is in the public interest that community aging services which support the continued independence and self-sufficiency of older Nebraskans be available in all areas of the state.

Sec. 3. Sections 1 to 28 of this act are intended to (1) define the state's long-term care policy and program for its older citizens in all areas of the state, (2) define and recognize a system for planning, administering, and delivering such program, (3) provide for the coordination and integration of all community activities and services into a comprehensive, coordinated program, and (4) provide authority for state funding of such program.

Sec. 4. For purposes of sections 1 to 28 of this act, unless the context otherwise requires, the definitions found in sections 5 to 11 of this act shall be used.

Sec. 5. Committee shall mean the Department on Aging Advisory Committee.

Sec. 6. Department shall mean the Department on Aging created in section 13 of this act.

Sec. 7. Director shall mean the Director on Aging appointed by the Governor, with the advice and consent of the Legislature, or such officer of the agency as he or she may designate to carry out in whole or in part the administration of sections 1 to 28 of this act.

Sec. 8. Area agency on aging shall mean the agency formed or eligible pursuant to sections 1 to 28 of this act which is designated by the department as responsible for the administration of the area program plan in each planning and service area.

Sec. 9. Area program plan shall mean the document submitted to the department by an area agency on aging in order to receive funds under sections 1 to 28 of this act and under the Older Americans Act, as amended,

which details the area agency's plan for a comprehensive, coordinated program of community aging services for such area.

Sec. 10. Community aging services shall mean those activities and services which fulfill the goals of sections 1 to 28 of this act and which are necessary to promote, restore, or support senior citizen self-sufficiency and independence, which include (1) congregate activities including, but not limited to, senior centers, group meals, volunteerism, adult day care, and recreation, and (2) individual services, which may include, but shall not be limited to, specialized transportation, meals-on-wheels, home handyman, home health care, legal services, and counseling that relate to problems of aging or encourage access to aging services.

Sec. 11. Senior service center shall mean a senior center or other community facility that provides ready access to a broad range of community aging services.

Sec. 12. In addition to duties enumerated in section 68-1104, the committee shall advise the Department on Aging regarding:

(1) The state plan on aging as developed and prepared by the Department on Aging;

(2) Policies adopted by the department;

(3) The needs of the state's older population;

(4) The development of the state plan and on policies which affect older Nebraskans;

(5) Such rules, regulations, and standards as may be adopted by the department; and

(6) A community aging services budget for submission to the Legislature by the department.

The committee shall also act as a panel for the hearing and resolution of any appeal requested by an area agency should the department disapprove the area plan and budget, or amendments as submitted.

Sec. 13. There is hereby created the Department on Aging, which shall have the following powers and duties:

(1) To develop, approve, and submit to the Governor an annual state plan on aging for purposes of administering grant funds allocated to the state under the Older Americans Act, as amended;

(2) To cooperate with similar departments, commissions, or councils in the federal government and in other states;

(3) To adopt and promulgate rules, regulations, and bylaws governing its procedure and activities, and as necessary to carry out the policies of the department;

(4) To create committees to aid in the discharge of its powers and duties;

(5) To cooperate with and assist other state and local governmental agencies and officials on matters relating to services for the aging;

(6) To divide the state into planning and service areas as provided in section 71-5002 for mental health regions, except that Regions III and V may each be divided into two planning and service areas with boundaries as established by the Department on Aging for planning and service areas in existence in those regions on July 1, 1982;

(7) To establish minimum standards for the performance of area agencies on aging and for the operation of any services funded in whole or in part under the provisions of sections 1 to 28 of this act;

(8) To require the submission of a one and five-year area plan and budget by each area agency or agency seeking designation as an area agency. Such plans and budgets shall be submitted by July 1 of each year in accordance with the uniform area plan format and other instructions issued by the department;

(9) To review and approve a one and five-year area plan and budget for the support of each area agency and the provision of eligible activities and services as defined in section 22 of this act;

(10) To adopt and submit to the Legislature a community aging services budget;

(11) To review the performance of each area agency, based on the department approved area plan and budget, and to designate or withdraw the designation of an area agency on aging receiving or requesting resources through the state or under sections 1 to 28 of this act.

Upon a final decision to withdraw, the department may temporarily perform all or part of the functions and responsibilities of the area agency, may designate another agency to perform such functions and responsibilities identified by the department until the designation of a new area agency on aging, and, when deemed necessary, may temporarily deliver services to assure continuity;

(12) To conduct continuing studies and analyses of the problems faced by the elderly within the state and develop such recommendations for administrative or legislative action as appear necessary;

(13) To develop grants and plans, enter into contracts, accept gifts, grants, and federal funds, and do all things necessary and proper to discharge these powers and duties;

(14) To accept and administer any other programs or resources delegated, designated, assigned, or awarded to the department from public or private sources;

(15) To report and make recommendations to the Governor and the Legislature on the activities of the department and the committee and improvements or additional resources needed to promote the general welfare of the aging in Nebraska; and

(16) Such other powers and duties necessary to effectively implement sections 1 to 28 of this act.

Each member of the Legislature shall receive a copy of the report required by subdivision (15) of this section by making a request for it to the director.

Sec. 14. The chief executive officer of the Department on Aging shall be the Director on Aging, who shall be appointed by and serve at the pleasure of the Governor. The director shall administer the affairs of the department and shall employ such assistants, professional staff, and other employees as may be deemed necessary by the director to effectively carry out sections 1 to 28 of this act and the powers and duties of the department.

Sec. 15. The department shall designate an area agency on aging for each planning and service area designated pursuant to subdivision (6) of section 13 of this act.

Sec. 16. The department shall designate, to perform the functions of an area agency on aging, any

office or agency having the necessary authority and capacity which is proposed by the chief elected officials of a combination of units of local general purpose governments formed under the Interlocal Cooperation Act.

Sec. 17. Before designating an area agency on aging for a planning and service area, the department shall:

(1) Provide written notice to the county government in the planning and service area of the pending designation no less than sixty days before taking action;

(2) Conduct an on-site assessment to determine whether the agency which is being considered for designation as an area agency on aging has the capacity and authority to perform all the functions of an area agency on aging specified by sections 1 to 28 of this act; and

(3) Consider the views of the units of general purpose local government within the planning and service area.

Sec. 18. The governing unit of the designated area agency on aging shall:

(1) In accordance with the provisions of section 19 of this act, employ a qualified administrator to serve as the chief executive officer for the administration of the agency and employ adequate staff for carrying out the area program plan;

(2) Approve and submit a one and five-year area plan and budget to the department by July 1 of each year;

(3) Approve such contracts and agreements as are necessary to carry out the functions of the agency; and

(4) Establish and consult with an area advisory council on needs, services, and policies affecting older persons in the area. The advisory council for the area agency on aging shall establish bylaws which specify the role and functions of the council, number of members, selection of members, term of membership, and frequency of meetings.

Sec. 19. (1) The Department on Aging shall establish minimum qualifications of education, training, and experience for the chief executive officers of the area agencies on aging.

(2) Each area agency on aging governing unit shall establish written policies and procedures for the selection, appointment, and annual performance rating of its chief executive officer and staff.

Sec. 20. An area agency on aging shall:

(1) Monitor, evaluate, and comment on policies, programs, hearings, and community actions which affect older persons;

(2) Conduct public hearings, studies, and assessments on the needs of older persons living in the planning and service area;

(3) Represent the interests of older persons to public officials and to public and private agencies or organizations;

(4) Cooperate, coordinate, and plan with other agencies, organizations, or individuals to promote benefits and opportunities for older persons consistent with the goals of sections 1 to 28 of this act; and

(5) Develop a one and five-year area plan and budget for a comprehensive, coordinated program of community aging services needed by older persons of the area.

Sec. 21. The one and five-year area plan and budget shall contain at least the following:

(1) Provisions required by sections 1 to 28 of this act and the Older Americans Act, as amended; and

(2) A detailed statement of the manner in which the area agency on aging develops, administers, and supports the comprehensive, coordinated program of community aging services throughout the area.

The department may require minimum service levels for the area and establish minimum standards for activities under the plan.

Sec. 22. Activities and services eligible for funding under sections 1 to 28 of this act and an approved plan are:

(1) Those agency functions and services necessary to carry out the agency's responsibilities under sections 1 to 28 of this act and in its plan, including but not limited to, administration, management, information, referral, counseling, program evaluation, needs

assessment, research, training, program development, outreach, coordination, advocacy, planning, technical assistance, contracting, and promotion; and

(2) Those community aging services necessary to promote, restore, or support senior citizen self-sufficiency including (a) congregate activities which are (i) organized and provided on a group basis and delivered in or through a senior service center, (ii) have as their purpose to serve older persons as a group, and (iii) carry out the goals of sections 1 to 28 of this act, and (b) individual services which are (i) organized and provided on a one-to-one basis in home or through a senior service center, (ii) have as their purpose to serve an individual or family need, and (iii) carry out the goals of sections 1 to 28 of this act.

Sec. 23. Within an area plan, the determination of eligibility of persons to benefit from community aging services shall be as follows:

(1) For congregate activities the determination shall be left to the area agency on aging, taking into account (a) the area's community and older citizens' needs, resources, and standards and (b) the recommendations of the area advisory council; and

(2) For individual services the determination shall be by (a) an assessment of an individual's or family's circumstances, and (b) the development of a service plan.

Sec. 24. Effective July 1, 1982, the department shall reimburse each designated area agency on aging for seventy-five per cent of the actual cost of providing eligible activities and services, as defined in section 22 of this act. Such reimbursement shall be made from (1) state funds appropriated by the Legislature and (2) federal funds allocated to the department, including federal funds allocated under the Older Americans Act, as amended. The payments shall be made by the department on or before the twentieth day of each month. If state funds appropriated or federal funds allocated are insufficient to finance the department approved plan and budget for each designated area agency on aging, the reimbursement to each area agency on aging shall be proportionately reduced. If an area agency on aging chooses to exceed the budget approved by the department, costs in excess of the approved budget shall not be reimbursed by the department.

Sec. 25. To qualify for reimbursement by the department, as provided for in section 24 of this act, a

designated area agency on aging shall have a department approved plan and budget and shall provide no less than twenty-five per cent of such approved plan and budget from local sources. Local sources shall include, but shall not be limited to, local tax dollars, donations, and fees, and shall not include receipts from federal or state sources, except federal revenue sharing trust funds.

Sec. 26. In the event of a documented malfeasance on the part of any area agency on aging in the administration of its area plan, and the failure of the governing unit of the area agency to take corrective action within a reasonable time, the director shall, with the advice of the Department on Aging Advisory Committee, terminate funding to the area agency governing unit by disapproving the area plan for that area agency on aging.

Sec. 27. Based upon the department approved plan and budget for each designated area agency on aging, the department shall submit a budget request to the Department of Administrative Services no later than September 15 of each year for the funds required to achieve the objectives of sections 1 to 28 of this act. Such request shall include all federal funds available to the department for reimbursement to area agencies on aging.

Sec. 28. Any area agency on aging receiving state funds pursuant to sections 1 to 28 of this act shall maintain, as a minimum in its area plan budget, the same level of funds expended from local tax sources as was expended in the area plan budget for the year ending June 30, 1981.

Sec. 29. Sections 1 to 28 of this act are hereby established as a new program, pursuant to subdivision (2) of section 77-3424, for purposes of sections 77-3412 to 77-3431, for the fiscal year beginning after June 30, 1982.

Sec. 30. That section 68-1101, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

68-1101. There is hereby created the Nebraska Commission-on-Aging-which Department on Aging Advisory Committee. The members of the Nebraska Commission on Aging serving on the effective date of this act shall be the initial members of such committee. The committee shall consist of twelve members, two from each of five districts provided for by section 68-1102 and two from the state at large. In making the initial appointments

one member from each district and one member at large shall be appointed for two years and one member from each district and one member at large shall be appointed for four years. As the terms of the members expire, the Governor shall on or before March 1 of each year, appoint or reappoint a member of the committee for a term of four years to succeed the member whose term expires. The members to be appointed must be residents of the district from which they are appointed. Any vacancy on the committee shall be filled for the unexpired term. A vacancy shall exist when a member of the committee ceases to be a resident of the district from which he or she was appointed or reappointed.

Sec. 31. That section 68-1103, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

68-1103. Members of the ~~Nebraska--Commission--on~~ Aging Department on Aging Advisory Committee shall meet within thirty days after their appointment to select from the members of the committee a chairman chairperson, and such other officers as committee members deem necessary, who shall serve for a period of two years. The committee shall elect a new chairman chairperson every two years thereafter. The committee shall meet at regular intervals at least once each year and may hold special meetings at the call of the chairman chairperson or at the request of a majority of the members of the committee. The committee shall meet at the seat of government or such other place as the members of the committee may designate.

Sec. 32. That section 68-1104, Revised Statutes Supplement, 1981, be amended to read as follows:

68-1104. ~~It shall be the duty of the--commission to The Department on Aging Advisory Committee shall advise the Department on Aging regarding:~~

(1) Collect The collection of facts and statistics and make special studies of conditions and problems pertaining to the employment, health, financial status, recreation, social adjustment, or other conditions and problems pertaining to the general welfare of the aging of the state;

(2) Make recommendations Recommendations to state and local agencies serving the aging for purposes of coordinating such agencies' activities, and request--and receive reports from the various state agencies and institutions on matters within the jurisdiction of the commission committee;

(3) ~~Keep-informed-of-the~~ The latest developments of research, studies, and programs being conducted throughout the nation on the problems and needs of the aging;

(4) ~~Serve-as-a-central-agency-and-advisory--board-for-the~~ The mutual exchange of ideas and information on the aging between federal, state, and local governmental agencies, private organizations, and individuals; and

(5) ~~Cooperate~~ Cooperation with agencies, federal, state, and local, or private organizations, in administering and supervising demonstration programs of services for aging designed to foster continued participation of older people in family and community life and to prevent insofar as possible the onset of dependency and the need for long-term institutional care.

The commission committee shall have the power to create special committees to undertake such special studies as members of the commission committee shall authorize and may include noncommission noncommittee members who are qualified in any field of activity related to the general welfare of the aging in the membership of such committees.

Sec. 33. That section 68-1105, Revised Statutes Supplement, 1981, be amended to read as follows:

68-1105. The members of the Nebraska--Commission on-Aging Department on Aging Advisory Committee, and noncommission noncommittee members serving on special committees, shall receive no compensation for their services other than reimbursement for actual and necessary expenses as provided in sections 84-306.01 to 84-306.05 for state employees. Commission Committee expenses and any office expenses shall be paid from funds made available to the commission committee by the Legislature.

Sec. 34. That section 81-102, Revised Statutes Supplement, 1981, be amended to read as follows:

81-102. The Governor shall appoint heads for the various departments, subject to confirmation by a majority vote of the members elected to the Legislature. Such appointments shall be submitted to the Legislature within sixty calendar days following the first Thursday after the first Tuesday in each odd-numbered year. The officers shall be designated as follows: (1) The Director of Agriculture for the Department of Agriculture; (2) the Commissioner of Labor for the Department of Labor; (3) the Director of Health for the

Department of Health; (4) the Director-State Engineer for the Department of Roads; (5) the Director of Water Resources for the Department of Water Resources; (6) the Director of Banking and Finance for the Department of Banking and Finance; (7) the Director of Insurance for the Department of Insurance; (8) the Director of Motor Vehicles for the Department of Motor Vehicles; (9) the Director of Public Welfare for the Department of Public Welfare; (10) the Director of Public Institutions for the Department of Public Institutions; (11) the Director of Administrative Services for the Department of Administrative Services; (12) the Director of Correctional Services for the Department of Correctional Services; (13) the Director of Economic Development for the Department of Economic Development; and (14) the Superintendent of Law Enforcement and Public Safety for the Nebraska State Patrol; and (15) the Director on Aging for the Department on Aging. Whoever shall be so nominated by the Governor and shall fail to receive the number of votes requisite for confirmation, shall not be subject to nomination or appointment for this or any other appointive state office requiring confirmation by the Legislature during the period for which his or her appointment was sought. In case of a vacancy in any of such offices during the recess of the Legislature, the Governor shall make a temporary appointment until the next meeting of the Legislature, when he or she shall nominate some person to fill such office. Any person so nominated who is confirmed by the Legislature, shall hold his or her office during the remainder of the term if a specific term has been provided by law, otherwise during the pleasure of the Governor subject to the provisions of this section; Provided, any such officers may be removed by the Governor pursuant to Article IV of the Constitution of Nebraska.

Sec. 35. On the effective date of this act, the Nebraska Commission on Aging shall transfer all office equipment, furniture, records, and personnel to the Department on Aging. Any balance remaining from appropriations made to the Nebraska Commission on Aging including appropriations made pursuant to Legislative Bill 761, Eighty-seventh Legislature, Second Session, 1982, shall be transferred to the Department on Aging.

Sec. 36. Whenever the words Nebraska Commission on Aging appear in the statutes, other than in sections of this act, after the effective date of this act, they shall be construed to mean and apply to the Department on Aging Advisory Committee. The Revisor of Statutes is authorized and directed to substitute the words Department on Aging Advisory Committee for Nebraska Commission on Aging in accordance with this act.

Sec. 37. That original sections 68-1101 and 68-1103, Reissue Revised Statutes of Nebraska, 1943, and sections 68-1104, 68-1105, and 81-102, Revised Statutes Supplement, 1981, are repealed.