

LEGISLATURE OF NEBRASKA  
ONE HUNDRED FIFTH LEGISLATURE  
FIRST SESSION

**LEGISLATIVE BILL 439**

Introduced by Wishart, 27.

Read first time January 17, 2017

Committee: Health and Human Services

1 A BILL FOR AN ACT relating to assisted-living facilities; to amend  
2 sections 71-406, 71-5803.05, 71-5902, 71-5903, 71-5904, and 71-5906,  
3 Reissue Revised Statutes of Nebraska, and sections 71-5905, 71-6725,  
4 and 71-9402, Revised Statutes Cumulative Supplement, 2016; to define  
5 and redefine terms; to change provisions relating to licensure of  
6 assisted-living facilities; to change requirements for and services  
7 provided to applicants for admission to and residents of assisted-  
8 living facilities; to harmonize provisions; and to repeal the  
9 original sections.

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

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

3 71-406 ~~(1) Assisted-living facility has the same meaning as in~~  
4 ~~section 71-5903 means a facility where shelter, food, and care are~~  
5 ~~provided for remuneration for a period of more than twenty-four~~  
6 ~~consecutive hours to four or more persons residing at such facility who~~  
7 ~~require or request such services due to age, illness, or physical~~  
8 ~~disability.~~

9 ~~(2) Assisted-living facility does not include a home, apartment, or~~  
10 ~~facility where (a) casual care is provided at irregular intervals or (b)~~  
11 ~~a competent person residing in such home, apartment, or facility provides~~  
12 ~~for or contracts for his or her own personal or professional services if~~  
13 ~~no more than twenty-five percent of persons residing in such home,~~  
14 ~~apartment, or facility receive such services.~~

15 Sec. 2. Section 71-5803.05, Reissue Revised Statutes of Nebraska, is  
16 amended to read:

17 71-5803.05 Assisted-living facility has the same meaning as in  
18 section 71-5903 ~~71-406~~.

19 Sec. 3. Section 71-5902, Reissue Revised Statutes of Nebraska, is  
20 amended to read:

21 71-5902 The purposes of the Assisted-Living Facility Act are to  
22 supplement provisions of the Health Care Facility Licensure Act relating  
23 to the licensure and regulation of assisted-living facilities, ~~and~~ to  
24 provide for the health and safety of residents of such facilities, and to  
25 promote the goals of individualized decisionmaking and personal autonomy.

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

28 71-5903 For purposes of the Assisted-Living Facility Act:

29 (1) Activities of daily living means activities such as bathing,  
30 continence, dressing, grooming, eating, mobility, toileting,  
31 transferring, and transfer, ambulation, exercise, toileting, eating,

1 self-administration of medication, and similar activities;

2 (2) Administrator means the person responsible for day-to-day  
3 operations operating officer of an assisted-living facility and includes  
4 a person with a title such as administrator, chief executive officer,  
5 manager, superintendent, director, or other similar designation;

6 (3) Assisted-living facility means a residential setting that  
7 provides assisted-living services for remuneration to four or more  
8 persons who reside in such residential setting and are not related to the  
9 owner of the residential setting and includes a home, an apartment, or a  
10 facility has the same meaning as in section 71-406;

11 (4) Assisted-living services means services that promote the health  
12 and safety of persons in a residential setting, including housing, three  
13 meals each day, access to staff for twenty-four hours each day,  
14 noncomplex nursing interventions, and support with activities of daily  
15 living;

16 (5) (4) Authorized representative means (a) a person authorized by a  
17 resident of an assisted-living facility, such as a person holding a power  
18 of attorney or a resident designee, or authorized by a court, such as a  
19 guardian, to manage the affairs of the resident holding a durable power  
20 of attorney for health care, (b) a guardian, or (c) a person appointed by  
21 a court to manage the personal affairs of a resident of an assisted-  
22 living facility other than the facility;

23 (6) (5) Chemical restraint means a psychopharmacologic drug that is  
24 used for discipline or convenience and is not required to treat medical  
25 symptoms;

26 (7) (6) Complex nursing interventions means interventions provided  
27 by an assisted-living facility to a resident of the facility, on a part-  
28 time or intermittent basis, which require nursing judgment to safely  
29 alter standard procedures in accordance with the needs of the resident,  
30 which require nursing judgment to determine how to proceed from one step  
31 to the next, or which require a multidimensional application of the

1 nursing process. ~~Complex nursing interventions does not include a nursing~~  
2 ~~assessment;~~

3 (8) ~~(7)~~ Department means the Department of Health and Human  
4 Services;

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

10 (10) Part-time or intermittent basis means not to exceed twenty-  
11 eight hours each week for each resident;

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

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

18 (12) Resident services agreement means an agreement entered into by  
19 the resident or the resident's authorized representative and the  
20 assisted-living facility that stipulates the responsibilities of the  
21 assisted-living facility and the resident, identifies service needs of  
22 the resident, outlines the services that will be provided to the resident  
23 by the assisted-living facility and from other sources, and specifies the  
24 cost of services provided by the assisted-living facility.

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

30 Sec. 5. Section 71-5904, Reissue Revised Statutes of Nebraska, is  
31 amended to read:

1           71-5904 Assisted living promotes resident self-direction and  
2 participation in decisions which emphasize independence, individuality,  
3 privacy, and dignity, ~~and residential surroundings.~~

4           It shall be unlawful for a residential setting which is not licensed  
5 as a health care facility and in which assisted-living services are  
6 provided for remuneration for fifty percent or more of the residents who  
7 are not related to the owner of the residential setting to operate  
8 without a license under the Health Care Facility Licensure Act.

9           ~~To be eligible for admission to an assisted-living facility, a~~  
10 ~~person shall be in need of or wish to have available room, board,~~  
11 ~~assistance with or provision of personal care, activities of daily~~  
12 ~~living, or health maintenance activities or supervision due to age,~~  
13 ~~illness, or physical disability.~~ The administrator shall have the  
14 discretion regarding admission or retention of residents of the assisted-  
15 living facility subject to the Assisted-Living Facility Act and rules and  
16 regulations adopted and promulgated under the act.

17           Sec. 6. Section 71-5905, Revised Statutes Cumulative Supplement,  
18 2016, is amended to read:

19           71-5905 (1) An assisted-living facility shall determine if an  
20 applicant for admission to the assisted-living facility is admitted or if  
21 a resident of the assisted-living facility is retained based on the care  
22 needs of the applicant or resident, the ability to meet those care needs  
23 within the assisted-living facility, and the degree to which the  
24 admission or retention of the applicant or resident poses a danger to the  
25 applicant or resident or others. ~~not admit or retain a resident who~~  
26 ~~requires complex nursing interventions or whose condition is not stable~~  
27 ~~or predictable unless:~~

28           ~~(a) The resident, if he or she is not a minor and is competent to~~  
29 ~~make a rational decision as to his or her needs or care, or his or her~~  
30 ~~authorized representative, and his or her physician or a registered nurse~~  
31 ~~agree that admission or retention of the resident is appropriate;~~

1           ~~(b) The resident or his or her authorized representative agrees to~~  
2 ~~arrange for the care of the resident through appropriate private duty~~  
3 ~~personnel, a licensed home health agency, or a licensed hospice; and~~

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

6           (2) Any complex nursing intervention or noncomplex intervention  
7 provided by the assisted-living facility shall be performed in accordance  
8 with applicable state law, including the nurse assessment of an applicant  
9 for admission or a resident for retention or discharge ~~Health maintenance~~  
10 ~~activities at an assisted-living facility shall be performed in~~  
11 ~~accordance with the Nurse Practice Act and the rules and regulations~~  
12 ~~adopted and promulgated under the act.~~

13           (3) Each assisted-living facility shall provide written information  
14 about the practices of the assisted-living facility to each applicant for  
15 admission to the facility or his or her authorized representative. The  
16 information shall include:

17           (a) A description of the services provided by the assisted-living  
18 facility and the staff available to provide the services;

19           (b) The charges for services provided by the assisted-living  
20 facility;

21           (c) Whether or not the assisted-living facility accepts residents  
22 who are eligible for the medical assistance program under the Medical  
23 Assistance Act and, if applicable, the policies or limitations on access  
24 to services provided by the assisted-living facility for residents who  
25 seek care paid by the medical assistance program;

26           (d) The criteria for admission to and continued residence in the  
27 assisted-living facility and the process for addressing issues that may  
28 prevent admission to or continued residence in the circumstance under  
29 which a resident would be required to leave an assisted-living facility;

30           (e) The process for developing and updating the resident services  
31 agreement; ~~and~~

1 (f) For facilities that have special care units for dementia, the  
2 additional services provided to meet the special needs of persons with  
3 dementia; and -

4 (g) Whether or not the assisted-living facility provides part-time  
5 or intermittent complex nursing interventions.

6 (4) Each assisted-living facility shall enter into a resident  
7 services agreement in consultation with each resident.

8 Sec. 7. Section 71-5906, Reissue Revised Statutes of Nebraska, is  
9 amended to read:

10 71-5906 (1) An assisted-living facility may provide complex nursing  
11 interventions on a part-time or intermittent basis. If an assisted-living  
12 facility chooses to provide complex nursing interventions, a registered  
13 nurse shall be available to the staff and residents of the assisted-  
14 living facility to consult on the delivery of the complex nursing  
15 interventions to residents and to evaluate the outcomes.

16 (2) Every ~~(1) On and after January 1, 2005,~~ every person seeking  
17 admission to an assisted-living facility or the authorized representative  
18 of such person shall, upon admission and annually thereafter, provide the  
19 facility with a list of drugs, devices, biologicals, and supplements  
20 being taken or being used by the person, including dosage, instructions  
21 for use, and reported use.

22 (3) ~~(2)~~ Every person residing in an assisted-living facility on  
23 January 1, 2005, or the authorized representative of such person shall,  
24 within sixty days after January 1, 2005, and annually thereafter, provide  
25 the facility with a list of drugs, devices, biologicals, and supplements  
26 being taken or being used by such person, including dosage, instructions  
27 for use, and reported use.

28 (4) ~~(3)~~ An assisted-living facility shall not be subject to  
29 disciplinary action by the department for the failure of any person  
30 seeking admission to or residing at such facility or the authorized  
31 representative of such person to comply with subsections ~~(1) and (2) and~~

1    (3) of this section.

2           (5) ~~(4)~~ Each assisted-living facility shall provide for a registered  
3 nurse to review medication administration policies and procedures and to  
4 be responsible for the training of medication aides at such facility.

5           Sec. 8. Section 71-6725, Revised Statutes Cumulative Supplement,  
6 2016, is amended to read:

7           71-6725 (1) The minimum competencies for a medication aide, a person  
8 licensed to operate a child care facility or a staff member of a child  
9 care facility, or a staff member of a school shall include (a)  
10 maintaining confidentiality, (b) complying with a recipient's right to  
11 refuse to take medication, (c) maintaining hygiene and current accepted  
12 standards for infection control, (d) documenting accurately and  
13 completely, (e) providing medications according to the five rights, (f)  
14 having the ability to understand and follow instructions, (g) practicing  
15 safety in application of medication procedures, (h) complying with  
16 limitations and conditions under which a medication aide may provide  
17 medications, and (i) having an awareness of abuse and neglect reporting  
18 requirements and any other areas as shall be determined by rules or  
19 regulations.

20           (2) The Department of Health and Human Services shall adopt and  
21 promulgate rules and regulations setting minimum standards for  
22 competencies listed in subsection (1) of this section and methods for  
23 competency assessment of medication aides. The Department of Health and  
24 Human Services shall adopt and promulgate rules and regulations setting  
25 methods for competency assessment of the person licensed to operate a  
26 child care facility or staff of child care facilities. The State  
27 Department of Education shall adopt and promulgate rules and regulations  
28 setting methods for competency assessment of the school staff member.

29           (3) A medication aide, except one who is employed by a nursing home,  
30 an intermediate care facility for persons with developmental  
31 disabilities, or an assisted-living facility, a person licensed to

1 operate a child care facility or a staff member of a child care facility,  
2 or a staff member of a school shall not be required to take a course. The  
3 medication aide shall be assessed to determine that the medication aide  
4 has the competencies listed in subsection (1) of this section.

5 (4) A medication aide providing services in an assisted-living  
6 facility as defined in section 71-5903 ~~71-406~~, a nursing home, or an  
7 intermediate care facility for persons with developmental disabilities  
8 shall be required to have completed a forty-hour course on the  
9 competencies listed in subsection (1) of this section and competency  
10 standards established through rules and regulations as provided for in  
11 subsection (2) of this section, except that a medication aide who has,  
12 prior to January 1, 2003, completed a twenty-hour course and passed an  
13 examination developed and administered by the Department of Health and  
14 Human Services may complete a second twenty-hour course supplemental to  
15 the first twenty-hour course in lieu of completing the forty-hour course.  
16 The department shall adopt and promulgate rules and regulations regarding  
17 the procedures and criteria for curriculum. Competency assessment shall  
18 include passing an examination developed and administered by the  
19 department. Criteria for establishing a passing standard for the  
20 examination shall be established in rules and regulations.

21 (5) Medication aides providing services in nursing homes or  
22 intermediate care facilities for persons with developmental disabilities  
23 shall also meet the requirements set forth in section 71-6039.

24 Sec. 9. Section 71-9402, Revised Statutes Cumulative Supplement,  
25 2016, is amended to read:

26 71-9402 For purposes of the Assisting Caregiver Transitions Act:

27 (1) Activities of daily living means transfer, ambulation, exercise,  
28 toileting, eating, self-administration of medication, and similar  
29 activities;

30 (2) Aftercare means assistance provided by a caregiver to a patient  
31 in the patient's residence after the patient's discharge from a hospital

1 following an inpatient stay and may include, but is not limited to, (a)  
2 assisting with activities of daily living and (b) carrying out medical or  
3 nursing tasks, including, but not limited to, managing wound care,  
4 assisting in administration of medication, and operating medical  
5 equipment;

6 (3) Caregiver means a person nineteen years of age or older who is  
7 designated by a patient or a patient's legal guardian to provide  
8 aftercare;

9 (4) Hospital means a general acute hospital as defined in section  
10 71-412; and

11 (5) Residence means the home in which a patient resides. Residence  
12 does not include an assisted-living facility as defined in section  
13 ~~71-5903~~ ~~71-406~~, a group home, a hospital as defined in section 71-419, an  
14 intermediate care facility as defined in section 71-420, a rehabilitation  
15 hospital as defined in section 71-427 or other rehabilitation facility, a  
16 nursing facility as defined in section 71-424, or a skilled nursing  
17 facility as defined in section 71-429.

18 Sec. 10. Original sections 71-406, 71-5803.05, 71-5902, 71-5903,  
19 71-5904, and 71-5906, Reissue Revised Statutes of Nebraska, and sections  
20 71-5905, 71-6725, and 71-9402, Revised Statutes Cumulative Supplement,  
21 2016, are repealed.