

LEGISLATIVE BILL 416

(CORRECTED)

Approved by the Governor April 9, 1984

Introduced by Public Health and Welfare Committee,
Fenger, 45, Chairperson;
Barrett, 39; Doyle, 14; Higgins, 9;
R. Peterson, 21; Rupp, 22; Wesely, 26

AN ACT relating to public health; to amend sections 71-2017.02, 71-5901, and 71-5902, Reissue Revised Statutes of Nebraska, 1943, and sections 71-6038 and 71-6039, Revised Statutes Supplement, 1983; to state intent; to define and redefine terms; to provide requirements for care staff members; to provide for training as prescribed; to provide powers and duties; to allow certain unlicensed persons to administer medication; to change provisions relating to boarding homes; to provide for inspections; to harmonize provisions; to repeal the original sections; and to declare an emergency.

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

Section 1. Nothing contained in sections 71-2017 to 71-2029 shall prohibit any rehabilitation or long-term care facility operated by a hospital, as defined in section 71-2017.01 and in any rules and regulations relating to hospital standards adopted and promulgated by the department, from utilizing care staff members who are authorized to administer oral and external medication.

Sec. 2. For purposes of sections 1 to 6 of this act, unless the context otherwise requires:

(1) Department shall mean the Department of Health; and

(2) Care staff member shall mean an individual who has been approved by a hospital which operates a rehabilitation or long-term care facility and the department to administer oral and external medication and who has completed the prescribed course of training for care staff members.

Sec. 3. (1) No person shall act as a care staff member, unless such person:

(a) Is at least eighteen years of age and has not been convicted of a crime involving moral turpitude; and

(b) Has successfully completed a current course of training approved by the department for care staff members.

(2) The department may prescribe a curriculum for training care staff members and may adopt and promulgate rules and regulations for such courses of training. The department may also approve courses of training developed by associations, educational institutions, hospitals, or other entities so long as such courses of training meet the criteria set out in the rules and regulations adopted and promulgated by the Department of Health. The courses of training shall include instruction on the responsibility of each care staff member to report suspected abuse or neglect pursuant to section 28-711. Such rules and regulations shall include procedures for hospitals to carry out approved courses of training within the rehabilitation or long-term care facility. The rules and regulations shall provide that the prescribed training be administered by a registered nurse. The courses of instruction shall be no less than ninety hours in duration and shall include at least fifteen hours of basic personal care training and five hours of basic therapeutic and emergency procedure training. This section shall not prohibit any hospital from exceeding the minimum hourly or training requirements.

Sec. 4. All courses, lectures, seminars, course materials, or other instructional programs used to meet the requirements of sections 1 to 6 of this act shall be subject to approval by the department.

Sec. 5. The department may adopt and promulgate such rules and regulations as are necessary for the effective administration of sections 1 to 6 of this act.

Sec. 6. The department shall have the authority to enforce sections 1 to 6 of this act and such rules and regulations adopted thereto by any of the following means: Denial, suspension, restriction, or revocation of a hospital's license, refusal of the renewal of a hospital's license, restriction of a hospital's admissions, or any other enforcement provision granted to the department.

Sec. 7. That section 71-2017.02, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

71-2017.02. Nothing contained in sections 71-2017 to 71-2029 and 81-604.01 shall prohibit the licensee, as a convenience, from administering to or assisting a resident of a domiciliary facility, residential care facility, mental health center, or center for the developmentally disabled in taking routine oral or external medications prescribed for the resident by a licensed physician and dispensed by a licensed pharmacist, or from providing storage and handling of such medication as long as there is such supervision as is determined necessary by the resident's physician. This service shall be permitted only pursuant to regulations adopted by the Department of Health which (1) approve existing training courses in a domiciliary facility, residential care

facility, mental health center, or center for the developmentally disabled, (2) provide for establishment of new training courses and their content, length of training, and requirements for certification for facility staff administering medications, and (3) to insure proper storage, handling, and disposal of controlled substances and all other drugs. Such regulations shall and must conform to all state and federal statutes, rules and regulations, and standards regarding the dispensing, prescribing, ~~administration~~, and storage of controlled substances and all other drugs. No unlicensed member of the staff of such a care facility shall provide the service of administering medications unless certified by the Department of Health to do so. Such certification may be denied or revoked by the department for violation of sections 71-2017 to 71-2029, section 81-604.01, or the rules and regulations of the department or for other due cause.

Sec. 8. That section 71-5901, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

71-5901. For the purposes of sections 71-5901 to 71-5909, a boarding home shall mean any facility, place, or building in which is provided for a period exceeding twenty-four consecutive hours to four or more individuals, not related to the owner, occupant, manager, or administrator thereof, who are essentially capable of managing their own affairs, at least two of the following for compensation: (1) Sleeping and other living accommodations; (2) a dining room, cafe, or common kitchen for the use of the individuals in connection therewith; and (3) domestic services, requested by the guest. ~~to assist such guest in daily living activities.~~ Boarding home shall not include hotels, motels, ~~or~~ homes operated by religious or fraternal organizations, dormitories at educational institutions, whether public or private, or any of the excluded categories listed in section 76-1408.

Sec. 9. That section 71-5902, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

71-5902. Boarding homes shall be subject to inspection and licensure by the Department of Health. ~~Such inspection and licensure shall be limited to standards for sanitation, fire prevention, safety, and building and construction codes applicable to and consistent with reasonable community standards for multiple family dwellings.~~ The Department of Health shall adopt, promulgate, and enforce, by rules and regulations, standards governing sanitary conditions and safety in boarding homes and building and construction codes for boarding homes that are applicable to and consistent with reasonable community standards for multiple family dwellings. Prior to licensure by the Department of Health, a boarding home must be inspected and approved as to fire safety by the State Fire Marshal or delegated qualified

local fire prevention personnel pursuant to the provisions of section 81-502, in compliance with fire safety standards and rules and regulations adopted, promulgated, and enforced by the State Fire Marshal.

Sec. 10. That section 71-6038, Revised Statutes Supplement, 1983, be amended to read as follows:

71-6038. For purposes of sections 71-6038 to 71-6042, unless the context otherwise requires:

(1) Department shall mean the Department of Health;

(2) Care staff member shall mean a nursing assistant who meets the following qualifications: (a) Has attained the age of eighteen; (b) has completed a basic resident care course which shall be not less than twenty hours and an advanced course which shall be not less than seventy hours, including thirty hours in anatomy, physiology, and advanced therapeutics and forty hours of pharmacology and medication administration; (c) has received a grade of eighty per cent or higher in an advanced course approved by the department or has successfully completed a course in another state which has been approved by the department; and (d) has been approved by the nursing home administrator and the department to administer oral and external medication. An individual who has been approved by the department as a care staff member shall be retested every three years on medication administration and shall receive a grade of eighty per cent or higher on such test. Individuals who have not worked for a period of three years as an approved care staff member shall complete an approved forty-hour pharmacology and medication administration course and receive a grade of eighty per cent or higher in such course. To maintain the status of an approved care staff member, such member shall attend, at least quarterly, in-service programs with topics dealing in medications or medication administration; and nurse's aide who has been approved by the nursing home administrator and the department to administer oral and external medication and who has completed the prescribed course of training for care staff members;

(3) Nurse's aide Nursing assistant shall mean any person, other than a licensed registered or practical nurse, employed by a nursing home for the purpose of aiding a registered or licensed practical nurse through the performance of nonspecialized tasks related to the personal care and comfort of residents; and

(4) Orderly shall mean an employee of the nursing home, other than a registered nurse, licensed practical nurse, care staff member, or nurse's aide, who performs routine or heavy work, but shall not include persons hired by a nursing home for the primary purpose of (a) preparing or aiding in the preparation of meals for residents or (b) maintaining the physical facilities of

the nursing home.

Sec. 11. That section 71-6039, Revised Statutes Supplement, 1983, be amended to read as follows:

71-6039. No person shall act as a nursing assistant nurse's aide, care staff member, or orderly in a nursing home, unless such person:

(1) Is at least sixteen years of age and has not been convicted of a crime involving moral turpitude;

(2) Is able to speak and understand the English language or a language understood by a substantial portion of the nursing home's residents;

(3) Has successfully completed a current course of training approved by the department for nursing assistants nurse's aides, care staff members, or orderlies not later than January 1, 1984, or within one hundred twenty days of initial employment in the capacity of a nursing assistant nurse's aide, care staff member, or orderly at any nursing home if employment begins after January 1, 1984. The department may prescribe a curriculum for training nursing assistants nurse's aides, care staff members, and orderlies and may adopt and promulgate rules and regulations for such courses of training. The department may also approve courses of training developed by associations, educational institutions, health care facilities, or other entities so long as such courses of training meet the criteria set out in the rules and regulations adopted and promulgated by the Department of Health. Such courses of training shall include instruction on the responsibility of each nursing assistant nurse's aide, care staff member, or orderly to report suspected abuse or neglect pursuant to section 28-711. Such rules and regulations shall include procedures for nursing homes to carry out approved courses of training within the nursing home. Such rules and regulations shall provide that the prescribed training be administered by a registered nurse. Such courses of instruction shall be no less than twenty hours in duration, and shall include at least fifteen hours of basic personal care training and five hours of basic therapeutic and emergency procedure training. This section shall not prohibit any facility from exceeding the minimum hourly or training requirements.

Sec. 12. That original sections 71-2017.02, 71-5901, and 71-5902, Reissue Revised Statutes of Nebraska, 1943, and sections 71-6038 and 71-6039, Revised Statutes Supplement, 1983, are repealed.

Sec. 13. Since an emergency exists, this act shall be in full force and take effect, from and after its passage and approval, according to law.