

LEGISLATIVE BILL 235

Approved by the Governor May 18, 1983

Introduced by Higgins, 9; Wesely, 26; Labeledz, 5;
Wiitala, 31

AN ACT to adopt the Nebraska Nursing Home Act; to provide for the regulation of nursing homes; to state intent; to harmonize provisions; to provide for penalties; to amend sections 71-2017, 71-2028, and 71-2040, Reissue Revised Statutes of Nebraska, 1943, and section 71-2024, Revised Statutes Supplement, 1982; to provide an operative date; to provide for severability; and to repeal the original sections.

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

Section 1. As used in sections 1 to 30 of this act, unless the context otherwise requires, the definitions found in sections 2 to 10 of this act shall apply.

Sec. 2. Care staff member shall mean a nurse's aide who has been approved by the nursing home administrator and the department to administer oral medication.

Sec. 3. Department shall mean the Department of Health.

Sec. 4. Director shall mean the Director of Health.

Sec. 5. Nursing home shall mean a nursing home as defined in section 71-2017.03.

Sec. 6. Resident shall mean any person domiciled, residing, or receiving care and treatment, for a period in excess of twenty-four hours, in a nursing home.

Sec. 7. Nurse's aide 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.

Sec. 8. 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 (1) preparing or aiding in the preparation of meals for residents or (2) maintaining the physical facilities of the nursing home.

Sec. 9. License shall mean a license to operate a nursing home issued pursuant to Chapter 71, article 20.

Sec. 10. Licensee shall mean the holder of a license.

Sec. 11. (1) The rules and regulations adopted and promulgated by the department pursuant to section 71-2024 shall require that the procedure for submitting complaints and initiating investigations pursuant to section 25 of this act be prominently displayed in plain view of the residents of the nursing home. Such rules and regulations shall also establish minimum standards relating to:

(a) The location and construction of nursing homes including, but not limited to, the plumbing, heating, lighting, ventilation, and other housing conditions of the nursing homes. Such standards shall ensure the safety and comfort of residents and provide protection from fire hazards;

(b) The number and qualifications of all personnel, including management and nursing personnel, having responsibility for any part of the care provided to residents;

(c) Sanitary conditions within the facility and its surroundings including, but not limited to, the water supply, sewage disposal, food handling, and general hygiene. Such standards shall ensure the health and comfort of residents;

(d) The diet of residents. Such standards shall be based on good nutritional practices and shall provide for consideration of the recommendations of a resident's attending physician and the individual needs of each resident;

(e) Equipment used in the nursing home that is essential to the health and welfare of the residents;

(f) The social and rehabilitative services provided for the residents; and

(g) Such other matters as are necessary to further the purposes of section 71-2017 and sections 1 to 30 of this act.

(2) The department may adopt by reference, with or without amendment, standards and rules which the department determines are nationally recognized standards and rules. Such rules and standards shall be specified by title and edition, date of publication, or similar information.

Sec. 12. Any employee or agent of the Department of Public Institutions, a law enforcement

agency, or the local county attorney shall be permitted access at any hour to any resident of any nursing home. Friends and relatives of a resident shall have access during normal visiting and business hours of the facility. Representatives of community legal services programs, volunteers, and members of community organizations shall have access, after making arrangements with proper personnel of the home, during regular visiting and business hours if the purpose of such access is to:

(1) Visit, talk with, and make personal, social, and legal services available to all residents;

(2) Inform residents of their rights and entitlements and their corresponding obligations under federal and state laws by means of educational materials and discussions in groups and with individual residents;

(3) Assist residents in asserting their legal rights regarding claims for public assistance, medical assistance, and social security benefits, as well as in all other matters in which residents are aggrieved. Assistance may include counseling and litigation; or

(4) Engage in other methods of asserting, advising, and representing residents so as to extend to them full enjoyment of their rights.

Sec. 13. Any person entering a nursing home pursuant to section 12 of this act shall first notify appropriate nursing home personnel of his or her presence. He or she shall, upon request, produce identification to establish his or her identity. No such person shall enter the immediate living area of any resident without first identifying himself or herself and then receiving permission from the resident to enter. The rights of other residents present in the room shall be respected.

Sec. 14. (1) Notwithstanding the provisions of sections 12 and 13 of this act, the administrator of a nursing home may refuse access to the nursing home to any person if the presence of that person in the nursing home would be injurious to the health and safety of a resident or would threaten the security of the property of a resident or the nursing home, or if the person seeks access to the nursing home for commercial purposes. Any person refused access to a nursing home may, within thirty days of such refusal, request a hearing by the department. The wrongful refusal of a nursing home to grant access to any person as required in sections 12 and 13 of this act shall constitute a violation of this act. A nursing home may appeal any citation issued pursuant to this section in the manner provided in sections 22 to 24 of this act.

(2) Nothing in sections 12 to 14 of this act shall be construed to prevent an employee of the Department of Health or Department of Public Welfare,

acting in his or her official capacity, from entering a nursing home for any inspection authorized by sections 1 to 30 of this act or any rule or regulation adopted and promulgated pursuant thereto.

Sec. 15. (1) A nursing home shall not transfer or discharge a resident except (a) upon his or her consent, (b) for medical reasons, (c) for the resident's safety or the safety of other residents or nursing home employees, (d) when rehabilitation is such that movement to a less restrictive setting is possible, or (e) for nonpayment for the resident's stay, except as prohibited by Title XVIII or XIX of the Social Security Act as amended.

(2) Involuntary transfer from a nursing home or discharge of a resident shall be preceded by a minimum written notice of thirty days, except when subdivision (d) of subsection (1) of this section applies, five days written notice shall be given to the resident or his or her representative and when subdivision (e) of subsection (1) of this section applies, a resident shall be given ten days written notice if his or her charges are five days or more in arrears. This subsection shall not apply when (a) an emergency transfer or discharge is mandated by the resident's health care needs and is in accord with the written orders and medical justification of the attending physician or (b) the transfer is mandated by the physical safety of other residents or nursing home employees, as documented in the nursing home records.

Sec. 16. (1) The notice required by subsection (2) of section 15 of this act shall contain:

(a) The stated reason for the proposed transfer or discharge;

(b) The effective date of the proposed transfer or discharge; and

(c) In not less than twelve-point type, the text of section 28 of this act.

(2) A copy of the notice required by subsection (2) of section 15 of this act shall be transmitted to the resident and the resident's representative, if a representative has been designated.

Sec. 17. The department may make or cause to be made an annual inspection of each nursing home to ensure compliance with sections 1 to 30 of this act. The department may provide advance notice of such inspection. In addition to the inspections which may occur in connection with the licensing of nursing homes and pursuant to sections 1 to 30 of this act, the department shall make or cause to be made such further unannounced inspections as it shall deem necessary. An inspector shall identify himself or herself to the person in charge of the nursing home and state that an inspection is to be made before beginning the

inspection. When conducting an inspection of a nursing home, the inspector shall respect the dignity of the residents. Any employee or agent of the department who gives unauthorized advance notice of an inspection shall be terminated or otherwise disciplined, as determined by the director.

Sec. 18. (1) If a nursing home commits a violation of sections 1 to 30 of this act or any rule or regulation adopted pursuant thereto which creates an imminent danger or substantial possibility of death or serious physical harm to one or more of the nursing home residents, the department shall prohibit the nursing home from admitting or readmitting any resident until necessary corrections are made, but in no case for a period exceeding eleven months from the date the department places a prohibition on admissions and readmissions. If such nursing home violates the prohibition on admissions and readmissions, the department shall charge the nursing home a fine of five thousand dollars for each violation. If the nursing home fails to make the necessary corrections within the prescribed admissions and readmissions prohibition period, the department shall automatically revoke the nursing home's license.

(2) If a nursing home commits a violation of sections 1 to 30 of this act or any rule or regulation adopted pursuant thereto which has a direct or immediate relationship to the health, safety, or security of the nursing home residents, but does not fall under subsection (1) of this section, the department shall issue a provisional license which gives the nursing home ninety days to correct such violations. If, after ninety days, the nursing home fails to make the necessary corrections or satisfactory progress toward the corrections, the department may institute actions in accordance with subsection (1) of this section or the department may automatically revoke the nursing home's license.

(3) If the nursing home seeks an injunction to prevent the department from enforcing the prohibition on admissions pursuant to subsection (1) of this section, no restraining order or temporary injunction shall be granted at the time of the commencement of the action.

Sec. 19. The department may set forth in its rules and regulations specific violations which shall result in a prohibition on admissions and readmissions or the issuance of a provisional license as prescribed in section 18 of this act and the criteria for determining the result of any violation not so listed. In doing so the department shall consider:

(1) The gravity of the violation, including the probability that death or serious physical or mental harm to a resident will result, the severity of the

actual or potential harm, and the extent to which the provisions of applicable statutes, rules, and regulations were violated;

(2) The reasonableness of the diligence exercised by the licensee in correcting the violation;

(3) Any previous violations committed by the licensee; and

(4) The financial benefit to the licensee of committing or continuing the violation.

Sec. 20. When the employee of the department conducting an inspection or investigation of a nursing home made pursuant to sections 1 to 30 of this act finds that the nursing home is in violation of any applicable provision of sections 1 to 30 of this act or any rule or regulation adopted and promulgated pursuant thereto, the employee shall promptly notify the licensee and the director of his or her findings. The director shall review each violation reported and, if the employee's findings are supported by the evidence, the director shall within seven working days after a finding of a violation is made, issue a written citation to the nursing home. The citation shall be served upon the administrator of the nursing home personally or by certified mail. Each citation shall specifically describe the nature of the violation, identifying the statute, rule, or regulation violated and whether a prohibition on admissions or a provisional license has been placed on the nursing home pursuant to section 18 of this act.

Sec. 21. (1) When a citation is served upon the administrator of a nursing home pursuant to section 20 of this act and the licensee for such nursing home is not actually involved in the daily operation of the facility, a copy of the citation shall be mailed to the licensee. If the licensee is a corporation, a copy of the citation shall be sent to the corporation's office of record.

(2) No nursing home shall be cited for any violation caused by any physician, if that physician is not the licensee, owner, director, or employee of the nursing home and the nursing home presents evidence that reasonable care and diligence have been exercised in notifying the physician of his or her duty to his or her patients in the nursing home.

Sec. 22. Within twenty working days after service of a citation pursuant to section 20 of this act, the licensee of the nursing home shall:

(1) Remit to the department a written response stating that the violation will be corrected within the time specified in the citation; or

(2) Notify the director that the nursing home desires to contest the citation and, request an informal conference with a representative of the department.

Sec. 23. The director shall assign a representative of the department, other than the inspector upon whose inspection the contested citation is based, to hold an informal conference with the licensee of the nursing home within ten working days after receipt of a request made pursuant to subdivision (2) of section 22 of this act. Within five working days of the conclusion of such conference the representative shall affirm, modify, or dismiss the citation. The representative shall state in writing the specific reasons for affirming, modifying, or dismissing the citation and shall immediately transmit copies of the statement to the director and the nursing home. The nursing home's copy of such statement shall be transmitted by certified mail. If the nursing home does not desire to further contest an affirmed or modified citation, it shall within five working days after the receipt of the written explanation of the representative, comply with subdivision (1) of section 22 of this act.

Sec. 24. (1) Except as provided in subsection (3) of section 18 of this act, a nursing home which desires to contest a citation or to further contest an affirmed or modified citation shall do so in the manner provided in Chapter 84, article 9, for contested cases. Notice of intent to formally contest a citation shall be given to the department in writing within (a) five working days after service of a citation or (b) five working days after the receipt of the written explanation of the representative delegated to hold the informal conference, in the case of an affirmed or modified citation.

(2) Hearings on petitions for judicial review of any final decision regarding a citation for an alleged violation of sections 1 to 30 of this act shall be set for trial at the earliest possible date. The times for pleadings and hearings in such action shall be set by the judge of the court with the object of securing a decision at the earliest possible time.

Sec. 25. Any person may request an inspection of any nursing home by submitting to the department a complaint of an alleged violation of applicable requirements of sections 1 to 30 of this act or rules and regulations adopted and promulgated pursuant thereto. The complaint may be submitted in writing, by telephone, or by personal visit. Any unwritten complaint shall be put in written form by the department. The complaint shall state in a reasonably specific manner the basis for the complainant's belief that a violation has occurred. A statement of the nature of the complaint shall be delivered to the nursing home at the time of the resulting inspection. The name of the complainant shall not be disclosed to

the nursing home unless the complainant consents to disclosure.

Sec. 26. Upon receipt of a complaint made in accordance with section 25 of this act, the department shall within twenty working days of receipt of the complaint make reasonable efforts, considering the seriousness of the complaint, to conduct an onsite inspection of the nursing home which is the subject of the complaint, unless (1) the complaint clearly pertains to a matter outside the department's authority, (2) the complaint is malicious, frivolous, vexatious, or not made in good faith, or (3) the complaint has been too long delayed to justify present examination of its merit. The complainant shall be promptly informed of the result of any action taken by the department.

Sec. 27. Following any inspection of a nursing home by the department, the findings of the inspection with respect to compliance by the nursing home with the provisions of sections 1 to 30 of this act and any rules and regulations adopted and promulgated pursuant thereto shall be made available to the public, together with the nursing home's response to any allegations, in a readily available form and place not later than twenty-one working days after the findings are made available to the nursing home. When the findings are made available to the public they shall include no reference to any cited violation which has been corrected to the department's satisfaction unless the same reference also clearly notes that the violation has been corrected. Other information relating to any nursing home obtained by the department through reports, investigations, complaints, or as otherwise authorized by sections 1 to 30 of this act and rules and regulations adopted and promulgated pursuant thereto, which is not a part of the department's findings from an inspection of the nursing home, shall not be made available to the public except in proceedings involving the citation of a nursing home.

Sec. 28. (1) A nursing home shall not discriminate or retaliate against a resident or employee of a nursing home who has initiated or participated in any proceeding authorized by sections 1 to 30 of this act or who has presented a grievance or information to the administrator of the nursing home or public officials. A nursing home which violates this subsection shall be subject to (a) a civil fine of not less than two hundred fifty nor more than five thousand dollars, to be assessed and collected by the director or (b) the immediate revocation of the nursing home's license to operate after notice and opportunity for hearing.

(2) A resident or an employee may compel the department to determine whether a violation of

subsection (1) of this section has occurred through a private action. A resident may maintain an action under sections 1 to 30 of this act for any other type of relief, including injunctive and declaratory relief, permitted by law.

Sec. 29. If the director determines that the health, safety, or welfare of the residents of a nursing home is in serious and immediate danger, he or she may order the immediate removal of such residents.

Sec. 30. Sections 1 to 30 of this act shall be known and may be cited as the Nebraska Nursing Home Act.

Sec. 31. That section 71-2017, Beissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

71-2017. The purpose of sections 71-2017 to 71-2029, and 81-604.01, and 1 to 30 of this act is to provide for the development, establishment, and enforcement of basic standards (1) for the care of persons in hospitals, maternity homes, health clinics, skilled nursing facilities, intermediate care facilities one, intermediate care facilities two, domiciliary facilities, mental health centers, centers for the developmentally disabled, alcoholic treatment centers, residential care facilities, and drug treatment centers; PROVIDED, any hospital or other health care facility owned or operated by a fraternal organization mentioned in section 21-608 and amendments thereof exclusively for its own members shall be exempt, except any such fraternal organization owning or operating such a hospital or other health care facility may be issued a license for such hospital or other health care facility upon its written application and upon its agreeing to comply with the provisions of sections 71-2017 to 71-2029 and sections 1 to 30 of this act, and (2) for the construction, maintenance, and operation of such health care facilities which, in the light of existing knowledge, will insure safe and adequate care of such persons in such health care facilities. Nothing in sections 71-2017 to 71-2029, sections 71-2031 to 71-2040, and 81-604.01, and sections 1 to 30 of this act, or in any rule or regulation adopted pursuant thereto, shall be construed to authorize or require any facility which is operated by and for members of a church which includes healing by prayer and spiritual means as a part of its religious practices to be licensed or inspected by the Department of Health except as such licensure and inspection pertain solely to sanitation, fire prevention, and safety standards, and building and construction codes applicable to the facilities mentioned in subdivision (1) of this section; nor shall any patients, residents, or personnel thereof be subjected to any medical supervision, regulation, or

control in connection with the operation of any such facility.

Sec. 32. That section 71-2024, Revised Statutes Supplement, 1982, be amended to read as follows:

71-2024. The Department of Health shall adopt, promulgate, and enforce rules, regulations, and standards with respect to the different types of hospitals and related institutions except nursing homes to be licensed hereunder as may be designed to further the accomplishment of the purposes of sections 71-2017 to 71-2029. Such rules, regulations, and standards shall be modified, amended, or rescinded from time to time in the public interest by the department. The Department of Health, with the advice of the Nursing Home Advisory Council, shall adopt, promulgate, and enforce rules, regulations, and standards with respect to nursing homes. Such rules, regulations, and standards shall be in compliance with sections 1 to 30 of this act. Such rules, regulations, and standards shall be modified, amended, or rescinded from time to time in the public interest by the department with the advice of the Nursing Home Advisory Council.

Sec. 33. That section 71-2028, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

71-2028. Any person, partnership, association, or corporation (1) establishing, conducting, managing, or operating any institution within the meaning of sections 71-2017 to 71-2029 without first obtaining a license therefor as herein provided, or (2) violating any of the provisions of sections 71-2017 to 71-2029 or regulations lawfully promulgated thereunder, shall be guilty of a Class IV misdemeanor, and each day such facility as defined in section 71-2017 shall operate after a first conviction shall be considered a subsequent offense, except that penalties for violating rules and regulations adopted pursuant to sections 1 to 30 of this act shall be the penalties set forth in sections 1 to 30 of this act.

Sec. 34. That section 71-2040, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

71-2040. It is the purpose and intent of sections 71-2024, 71-2025, and 71-2031 to 71-2040, and sections 1 to 30 of this act that licensing and regulation of nursing homes in this state shall be governed by the provisions of sections 71-2017 to 71-2029, and the provisions of sections 71-2024, 71-2025, and 71-2031 to 71-2040, and 1 to 30 of this act.

Sec. 35. This act shall become operative on October 1, 1983, except that the Department of Health

may, prior to the operative date of this act, take actions necessary to adopt and promulgate rules and regulations necessary to fully implement this act on October 1, 1983.

Sec. 36. If any section in this act or any part of any section shall be declared invalid or unconstitutional, such declaration shall not affect the validity or constitutionality of the remaining portions thereof.

Sec. 37. That original sections 71-2017, 71-2028, and 71-2040, Reissue Revised Statutes of Nebraska, 1943, and section 71-2024, Revised Statutes Supplement, 1982, are repealed.