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STATE OF NEBRASKA

STATUTES RELATING TO MEDICATION AIDE ACT

Department of Health and Human Services
Division of Public Health
Licensure Unit

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(a) STATUTES RELATING TO MEDICATION ASSISTANTS

71-6701 to 71-6717. Repealed. Laws 1998, LB 1354, §48.

(b) STATUTES RELATING TO MEDICATION AIDE ACT

71-6718. Act, how cited. Sections 71-6718 to 71-6742 shall be known and may be cited as the Medication Aide Act.

Source: Laws 1998, LB 1354, §8. Operative date April 19, 1998.

71-6719. Legislative findings. The Legislature finds that the administration of medications by persons other than oneself or one's caretaker should be a regulated act and there is a need to define a system to safely assist individuals to take medications who do not have the ability to take medications independently. The Medication Aide Act sets forth provisions of such a system.

Source: Laws 1998, LB 1354, §9. Operative date April 19, 1998.

71-6720. Purpose of act; applicability. (1) The purposes of the Medication Aide Act are to ensure the health, safety, and welfare of the public by providing for the accurate, cost-effective, efficient, and safe utilization of medication aides to assist in the administration of medications by (a) competent individuals, (b) caretakers who are parents, foster parents, family, friends or legal guardians, and (c) licensed health care professionals.

(2) The act applies to all settings in which medications are administered except the home, unless the in-home administration of medication is provided through a licensed home health agency or licensed or certified home and community-based provider.

(3) The act does not apply to the provision of reminders to persons to self-administer medication or assistance to persons in the delivery of nontherapeutic topical applications by in-home personal services workers. For purposes of this subsection, in-home personal services worker has the definition found in section 71-6501.

Source: Laws 1998, LB 1354, § 10; Laws 2007, LB236, § 44. Effective date September 1, 2007.

71-6721. Terms, defined. For purposes of the Medication Aide Act:

(1) Ability to take medications independently means the individual is physically capable of (a) the act of taking or applying a dose of a medication, (b) taking or applying the medication according to a specific prescription or recommended protocol, and (c) observing and monitoring himself or herself for desired effect, side effects, interactions, and contraindications of the medication and taking appropriate actions based upon those observations;

(2) Administration of medication includes, but is not limited to (a) providing medications for another person according to the five rights, (b) recording medication provision, and (c) observing, monitoring, reporting, and otherwise taking appropriate actions regarding desired effects, side effects, interactions, and contraindications associated with the medication;

(3) Caretaker means a parent, foster parent, family member, friend, or legal guardian who provides care for an individual;

(4) Child care facility means an entity or a person licensed under the Child Care Licensing Act;

(5) Competent individual means an adult who is the ultimate recipient of medication and who has the capability and capacity to make an informed decision about taking medications;

(6) Department means the Department of Health and Human Services;

(7) Direction and monitoring means the acceptance of responsibility for observing and taking appropriate action regarding any desired effects, side effects, interactions, and contraindications associated with the medication by a (a) competent individual for himself or herself, (b) caretaker, or (c) licensed health care professional;

(8) Facility means a health care facility or health care service as defined in section 71-413 or 71-415 or an entity or person certified by the department to provide home and community-based services;

(9) Five rights means getting the right drug to the right recipient in the right dosage by the right route at the right time;

(10) Health care professional means an individual for whom administration of medication is included in the scope of practice;

(11) Home means the residence of an individual but does not include any facility or school;

(12) Intermediate care facility for the mentally retarded has the definition found in section 71-421;

(13) Informed decision means a decision made knowingly, based upon capacity to process information about choices and consequences, and made voluntarily;

(14) Medication means any prescription or nonprescription drug intended for treatment or prevention of

disease or to affect body function in humans;

(15) Medication aide means an individual who is listed on the medication aide registry operated by the department;

(16) Nonprescription drug has the definition found in section 38-2829;

(17) Nursing home means any facility or a distinct part of any facility that provides care as defined in sections 71-420, 71-422, 71-424, and 71-429;

(18) Prescription drug has the definition of prescription drug or device as found in section 38-2841;

(19) Provision of medication means the component of the administration of medication that includes giving or applying a dose of a medication to an individual and includes helping an individual in giving or applying such medication to himself or herself;

(20) PRN means an administration scheme in which a medication is not routine, is taken as needed, and requires assessment for need and effectiveness;

(21) Recipient means a person who is receiving medication;

(22) Routine, with reference to medication, means the frequency of administration, amount, strength, and method are specifically fixed; and

(23) School means an entity or person meeting the requirements for a school set by Chapter 79.

Source: Laws 1998, LB 1354, § 11; Laws 2000, LB 819, § 138; Laws 2001, LB 398, § 81; Laws 2004, LB 1005, § 132; Laws 2007, LB296, § 663; Laws 2007, LB463, § 1286. The changes made by LB 296 became operative July 1, 2007. The changes made by LB 463 became operative December 1, 2008.

71-6722. Administration of medication; by whom. Administration of medication may be done by competent individuals to themselves, by caretakers of recipients receiving medication, or by licensed health care professionals for whom administration of medication is included in their scope of practice.

A medication aide, a person licensed to operate a child care facility or a staff member of a child care facility, or a staff member of a school may participate in medication administration, when directed and monitored by a competent individual, caretaker, or health care professional, by providing medications in compliance with the Medication Aide Act and rules and regulations adopted and promulgated under the act. In each case, the individual responsible for providing direction and monitoring shall be identified in writing and indication that such individual has accepted such responsibility shall also be identified in writing.

Source: Laws 1998, LB 1354, §12. Operative date April 19, 1998.

71-6723. Administration of medication; methods authorized; conditions; additional methods; requirements. (1) A medication aide, a person licensed to operate a child care facility or a staff member of a child care facility, or a staff member of a school may provide routine medications by the following routes: (a) Oral; (b) inhalation; (c) topical; and (d) instillation into the eyes, ears, and nose.

(2) A medication aide, a person licensed to operate a child care facility or a staff member of a child care facility, or staff member of a school may provide medication by additional routes not listed in subsection (1) of this section, provide PRN medication, or participate in observing and reporting for monitoring medications only under the following conditions:

(a) A determination has been made by a competent individual, a caretaker, or a licensed health care professional and placed in writing that the medication aide, person licensed to operate a child care facility or staff member of a child care facility, or staff member of a school is competent to perform these activities; and

(b) It has been determined by a licensed health care professional and placed in writing that these activities can be done safely for a specified recipient.

Direction for additional routes not listed in subsection (1) of this section must be for recipient-specific procedures and must be in writing. Direction for PRN medication must be in writing and include the parameters for provision of the PRN medication. Direction for observing and reporting for monitoring medication must be in writing and include the parameters for the observation and reporting. A medication aide, a person licensed to operate a child care facility or a staff member of a child care facility, or a staff member of a school acting under this subsection shall comply with the written directions. Subdivision (b) of this subsection does not apply to nonprescription drugs when direction and monitoring is done by a competent individual for himself or herself or by a caretaker.

Source: Laws 1998, LB 1354, §13. Operative date April 19, 1998.

71-6724. Medication administration records. A medication aide, a facility using a medication aide, a child care facility using the services of a person licensed to operate a child care facility or a staff member of a child care facility, or a school using the services of a staff member of the school shall keep and maintain accurate medication administration records. The medication administration records shall be available to the Department of Health and Human Services and the State Department of Education for inspection and copying. The medication

administration records shall include information and data the departments require by rules and regulations adopted under the Medication Aide Act.

Source: Laws 1998, LB 1354, § 14; Laws 2007, LB296, § 664. Operative date July 1, 2007.

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

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

(3) A medication aide (except one who is employed by a nursing home, an intermediate care facility for the mentally retarded, or an assisted-living facility), a person licensed to operate a child care facility or a staff member of a child care facility, or a staff member of a school shall not be required to take a course. The medication aide shall be assessed to determine that the medication aide has the competencies listed in subsection (1) of this section.

(4) A medication aide providing services in an assisted-living facility as defined in section 71-406, a nursing home, or an intermediate care facility for the mentally retarded shall be required to have completed a forty-hour course on the competencies listed in subsection (1) of this section and competency standards established through rules and regulations as provided for in subsection (2) of this section, except that a medication aide who has, prior to January 1, 2003, completed a twenty-hour course and passed an examination developed and administered by the Department of Health and Human Services may complete a second twenty-hour course supplemental to the first twenty-hour course in lieu of completing the forty-hour course. The department shall adopt and promulgate rules and regulations regarding the procedures and criteria for curriculum. Competency assessment shall include passing an examination developed and administered by the department. Criteria for establishing a passing standard for the examination shall be established in rules and regulations.

(5) Medication aides providing services in nursing homes or intermediate care facilities for the mentally retarded shall also meet the requirements set forth in section 71-6039.

Source: Laws 1998, LB 1354, § 15; Laws 2000, LB 819, § 139; Laws 2002, LB 1021, § 103; Laws 2007, LB296, § 665. Operative date July 1, 2007.

71-6726. Medication aide; registration; qualifications; report of conviction required; licensure as nurse; effect. (1) To register as a medication aide, an individual shall (a) have successfully completed the requirements in section 71-6725, (b) be at least eighteen years of age, (c) be of good moral character, (d) file an application with the department, and (e) pay the applicable fee.

(2) A registered nurse or licensed practical nurse whose license has been revoked, suspended, or voluntarily surrendered in lieu of discipline may not register as a medication aide.

(3) An applicant or medication aide shall report to the department, in writing, any conviction for a felony or misdemeanor. A conviction is not a disqualification for placement on the registry unless it relates to the standards identified in section 71-6725 or it reflects on the moral character of the applicant or medication aide.

(4) An applicant or medication aide may report any pardon or setting aside of a conviction to the department. If a pardon or setting aside has been obtained, the conviction for which it was obtained shall not be maintained on the Medication Aide Registry.

(5) If a person registered as a medication aide on the Medication Aide Registry becomes licensed as a registered nurse or licensed practical nurse, his or her registration as a medication aide becomes null and void as of the date of licensure.

Source: Laws 1998, LB 1354, § 16; Laws 2007, LB185, § 44; Laws 2007, LB463, § 1287. The changes made by LB 185 became operative September 1, 2007. The changes made by LB 463 became operative December 1, 2008.

71-6727. Medication Aide Registry; contents. (1) The department shall list each medication aide registration in the Medication Aide Registry as a Medication Aide-40-Hour, Medication Aide-20-Hour, or Medication

Aide. A listing in the registry shall be valid for the term of the registration and upon renewal unless such listing is refused renewal or is removed as provided in section 71-6730.

(2) The registry shall contain the following information on each individual who meets the conditions in section 71-6726: (a) The individual's full name; (b) information necessary to identify individuals, including those qualified to provide medications in nursing homes, intermediate care facilities for the mentally retarded, or assisted-living facilities; (c) any conviction of a felony or misdemeanor reported to the department; and (d) other information as the department may require by rule and regulation.

Source: Laws 1998, LB 1354, § 17; Laws 2007, LB463, § 1288. Operative date December 1, 2008.

71-6728. Registration; renewal; fee. Registration as a medication aide shall be renewed biennially based upon competency. The department may prescribe by rule and regulation how a medication aide can show competency for purposes of renewal. Payment of the applicable fee shall be a condition of renewal. After September 1, 2007, any registration that is renewed shall expire two years after the date the registration would have expired if it had not been renewed. A medication aide who provides medication aide services prior to registration or after the date the registration expires shall be subject to the civil penalty prescribed in section 38-198.

Source: Laws 1998, LB 1354, § 18; Laws 2007, LB283, § 2; Laws 2007, LB463, § 1289. The changes made by LB 283 became effective September 1, 2007. The changes made by LB 463 became operative December 1, 2008.

71-6729. Screening and review. The department may conduct periodic and random screening or review of entities conducting competency assessments or courses and of the activities of applicants and medication aides as may be necessary to ensure compliance with the Medication Aide Act and the rules and regulations.

Source: Laws 1998, LB 1354, §19. Operative date April 19, 1998.

71-6730. Failure to meet standards; violations; department; powers. (1) The department may deny registration or refuse renewal of or remove a registration from the Medication Aide Registry for failure to meet the standards in section 71-6725 or for violation of the Medication Aide Act or the rules and regulations.

(2) If the department proposes to deny, refuse renewal of, or remove a registration, it shall send the applicant or registrant a notice setting forth the action to be taken and the reasons for the determination. The denial, refusal to renew, or removal shall become final thirty days after mailing the notice unless the applicant or registrant gives written notice to the department of his or her desire for an informal conference or for a formal hearing.

(3) Notice may be served by any method specified in section 25-505.01, or the department may permit substitute or constructive service as provided in section 25-517.02 when service cannot be made with reasonable diligence by any of the methods specified in section 25-505.01.

Source: Laws 1998, LB 1354, §20. Operative date April 19, 1998.

71-6731. Informal conference; procedure. If an informal conference is requested, the department shall assign a representative of the department to hold an informal conference with the applicant or registrant within fifteen working days after receipt of a request. Within seven working days after the conclusion of such conference, the representative shall affirm, modify, or dismiss the action. The representative shall state in writing the specific reasons for affirming, modifying, or dismissing the action and shall immediately transmit copies of the statement to the department and to the applicant or the registrant. If the representative affirms or modifies the action, it shall become final unless the applicant or registrant, within ten working days after receipt of the written notice, requests in writing a formal hearing to contest the action.

Source: Laws 1998, LB 1354, §21. Operative date April 19, 1998.

71-6732. Contested actions; procedure. Except as provided by section 71-6731, an applicant or registrant who desires to contest an action or to further contest an affirmed or modified action shall do so in the manner provided in the Administrative Procedure Act for contested cases. The chief medical officer as designated in section 81-3115 shall be the decisionmaker in a contested case under this section. The hearings on a petition for judicial review of any final decision regarding an action for an alleged violation shall be set for hearing 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.

Source: Laws 1998, LB 1354, § 22; Laws 2007, LB296, § 666. Operative date July 1, 2007.

71-6733. Reapplication authorized; lifting of sanctions. A person whose registration has been denied, refused renewal, or removed from the Medication Aide Registry may reapply for registration or for lifting of the disciplinary sanction at any time after one year has elapsed since the date such registration was denied, refused

renewal, or removed from the registry, in accordance with the rules and regulations.

Source: Laws 1998, LB 1354, § 23; Laws 2007, LB185, § 45. Operative date September 1, 2007.

71-6734. Fees. The department shall establish and collect fees for credentialing activities under the Medication Aide Act as provided in sections 38-151 to 38-157.

Source: Laws 1998, LB 1354, § 24; Laws 2002, LB 1021, § 104; Laws 2003, LB 242, § 147; Laws 2007, LB463, § 1290. Operative date December 1, 2008.

71-6735. Facility, school, or child care facility; subject to discipline. A facility shall be subject to discipline under the Health Care Facility Licensure Act or other relevant statutes for violation of the Medication Aide Act or the rules and regulations. A school shall be subject to discipline under Chapter 79 for violation of the Medication Aide Act or the applicable rules and regulations. A child care facility shall be subject to discipline under the Child Care Licensing Act for violation of the Medication Aide Act or the rules and regulations.

Source: Laws 1998, LB 1354, § 25; Laws 2000, LB 819, § 140; Laws 2004, LB 1005, § 133. Operative date July 16, 2004.

71-6736. Alleged incompetence; reports required; confidential; immunity. (1) Any facility or person using the services of a medication aide shall report to the department, in the manner specified by the department by rule and regulation, any facts known to him, her, or it, including, but not limited to, the identity of the medication aide and the recipient, when it takes action adversely affecting a medication aide due to alleged incompetence. The report shall be made within thirty days after the date of the action or event.

(2) Any person may report to the department any facts known to him or her concerning any alleged incompetence of a medication aide.

(3) A report made to the department under this section shall be confidential. The facility, organization, association, or person making such report shall be immune from criminal or civil liability of any nature, whether direct or derivative, for filing a report or for disclosure of documents, records, or other information to the department under this section. The reports and information shall be subject to the investigatory and enforcement provisions of the regulatory provisions listed in the Medication Aide Act. This subsection does not require production of records protected by the Health Care Quality Improvement Act or section 25-12,123 or patient safety work product under the Patient Safety Improvement Act except as otherwise provided in either of such acts or such section.

Source: Laws 1998, LB 1354, § 26; Laws 2005, LB 361, § 34; Laws 2011, LB431, § 14. Effective Date: April 27, 2011.

71-6737. Complaints, investigational records, reports, and investigatonal files; disclosure; restrictions. Complaints, investigational records, reports, and investigational files of any kind of the department shall not be public record, shall not be subject to subpoena or discovery, and shall be inadmissible in evidence in any legal proceeding of any kind or character except an informal conference or formal hearing before the department. Such complaints, investigational records, reports, and investigational files shall be a public record if made part of the record of a formal hearing before the department. No person, including, but not limited to, department employees, having access to complaints, investigational records, reports, or investigational files, shall disclose such records or information except as required for investigation of the alleged violation or for purposes of a hearing before the department. Such information, files, and records may be disclosed to other law enforcement agencies by the department, and such disclosure shall not make the information, files, or records public records.

Source: Laws 1998, LB 1354, §27. Operative date April 19, 1998.

71-6738. Convictions; reports required. On and after July 1, 1999, the clerk of any county court or district court in this state shall report to the department the conviction in such court of any medication aide of any felony or any misdemeanor. The Attorney General or the city prosecutor or county attorney prosecuting any such criminal action shall provide the court with information concerning the registration of the defendant. Notice to the department shall be filed within thirty days after the conviction in a manner agreed to by the department and the State Court Administrator.

Source: Laws 1998, LB 1354, §28. Operative date April 19, 1998.

71-6739. Prohibited act; exceptions. On and after July 1, 1999, no person, facility, or school shall use or employ any individual to provide medications to a recipient unless the individual is a medication aide registered under the Medication Aide Act or is otherwise authorized to administer or provide medication, except that a child care facility may use or employ an individual licensed to operate a child care facility or a staff member of a child care facility or a school may use or employ a staff member of a school determined to be competent under the act.

On and after July 1, 1999, no individual shall provide medication to a recipient unless the individual is a medication aide registered under the act or is otherwise authorized to administer or provide medication. Nothing in the act shall be construed to require any school to employ or use a school nurse or medication aide in order to be in compliance with the act.

Source: Laws 1998, LB 1354, §29. Operative date April 19, 1998.

71-6740. Injunction. The department may maintain an action for an injunction in the name of the state for violation of the Medication Aide Act or the rules and regulations.

Source: Laws 1998, LB 1354, §30. Operative date April 19, 1998.

71-6741. Violation; penalty. Any person who intentionally violates the Medication Aide Act is guilty of a Class III misdemeanor.

Source: Laws 1998, LB 1354, §31. Operative date April 19, 1998.

71-6742. Eligibility for Licensee Assistance Program. Medication aides are eligible to participate in the Licensee Assistance Program as prescribed by section 38-175.

Source: Laws 1998, LB 1354, § 32; Laws 2007, LB463, § 1291. Operative date December 1, 2008.

(c) STATUTES RELATING TO STORAGE, HANDLING, AND DISPOSAL OF MEDICATION

71-6743. Rules and regulations. The Department of Health and Human Services may adopt and promulgate rules and regulations which shall ensure proper storage, handling, and disposal of medication in facilities and schools as defined in section 71-6721.

Source: Laws 1998, LB 1354, § 37; Laws 2007, LB296, § 667. Operative date July 1, 2007.

STATUTES RELATING TO OFFENSES AGAINST THE PERSON

28-372. Report of abuse, neglect, or exploitation; required; contents; notification; toll-free number established. (1) When any physician, psychologist, physician assistant, nurse, nursing assistant, other medical, developmental disability, or mental health professional, law enforcement personnel, caregiver or employee of a caregiver, operator or employee of a sheltered workshop, owner, operator, or employee of any facility licensed by the department, or human services professional or paraprofessional not including a member of the clergy has reasonable cause to believe that a vulnerable adult has been subjected to abuse, neglect, or exploitation or observes such adult being subjected to conditions or circumstances which reasonably would result in abuse, neglect, or exploitation, he or she shall report the incident or cause a report to be made to the appropriate law enforcement agency or to the department. Any other person may report abuse, neglect, or exploitation if such person has reasonable cause to believe that a vulnerable adult has been subjected to abuse, neglect, or exploitation or observes such adult being subjected to conditions or circumstances which reasonably would result in abuse, neglect, or exploitation.

(2) Such report may be made by telephone, with the caller giving his or her name and address, and, if requested by the department, shall be followed by a written report within forty-eight hours. To the extent available the report shall contain: (a) The name, address, and age of the vulnerable adult; (b) the address of the caregiver or caregivers of the vulnerable adult; (c) the nature and extent of the alleged abuse, neglect, or exploitation or the conditions and circumstances which would reasonably be expected to result in such abuse, neglect, or exploitation; (d) any evidence of previous abuse, neglect, or exploitation, including the nature and extent of the abuse, neglect, or exploitation; and (e) any other information which in the opinion of the person making the report may be helpful in establishing the cause of the alleged abuse, neglect, or exploitation and the identity of the perpetrator or perpetrators.

(3) Any law enforcement agency receiving a report of abuse, neglect, or exploitation shall notify the department no later than the next working day by telephone or mail.

(4) A report of abuse, neglect, or exploitation made to the department which was not previously made to or by a law enforcement agency shall be communicated to the appropriate law enforcement agency by the department no later than the next working day by telephone or mail.

(5) The department shall establish a statewide toll-free number to be used by any person any hour of the day or night and any day of the week to make reports of abuse, neglect, or exploitation.

Source: Laws 1988, LB 463, § 25; Laws 1996, LB 1044, § 66; Laws 2006, LB 994, § 52; Laws 2007, LB296, § 32; Laws 2012, LB1051, § 10. Effective Date: July 19, 2012.

28-711. Child subjected to abuse or neglect; report; contents; toll-free number. (1) When any physician, any medical institution, any nurse, any school employee, any social worker, the Inspector General appointed under section 43-4317, or any other person has reasonable cause to believe that a child has been subjected to child abuse or neglect or observes such child being subjected to conditions or circumstances which reasonably would result in child abuse or neglect, he or she shall report such incident or cause a report of child abuse or neglect to be made to the proper law enforcement agency or to the department on the toll-free number established by subsection (2) of this section. Such report may be made orally by telephone with the caller giving his or her name and address, shall be followed by a written report, and to the extent available shall contain the address and age of the abused or neglected child, the address of the person or persons having custody of the abused or neglected child, the nature and extent of the child abuse or neglect or the conditions and circumstances which would reasonably result in such child abuse or neglect, any evidence of previous child abuse or neglect including the nature and extent, and any other information which in the opinion of the person may be helpful in establishing the cause of such child abuse or neglect and the identity of the perpetrator or perpetrators. Law enforcement agencies receiving any reports of child abuse or neglect under this subsection shall notify the department pursuant to section 28-718 on the next working day by telephone or mail.

(2) The department shall establish a statewide toll-free number to be used by any person any hour of the day or night, any day of the week, to make reports of child abuse or neglect. Reports of child abuse or neglect not previously made to or by a law enforcement agency shall be made immediately to such agency by the department.

Source: Laws 1977, LB 38, § 150; Laws 1979, LB 505, § 2; Laws 1982, LB 522, § 4; Laws 1988, LB 463, § 43; Laws 2002, LB 1105, § 432; Laws 2005, LB 116, § 2; Laws 2012, LB821, § 39. Effective Date: April 12, 2012.