

TITLE 175 HEALTH CARE FACILITIES AND SERVICES LICENSURE

CHAPTER 4 ASSISTED-LIVING FACILITIES

Note: In these draft regulations, proposed fee changes are found on page 14. Technical, editing, and writing style changes are made throughout the chapter. Other proposed changes will revise or add regulations on:

- ◆ Definitions, pages 2, 3, and 6
- ◆ Renewal applications, page 10
- ◆ Events requiring notice to the Department, page 13
- ◆ Deemed compliance, pages 14-15
- ◆ Inspections, pages 15, 18, and 19
- ◆ Initial administrator training waiver, page 22-23
- ◆ Requirements to meet resident needs, pages 23 and 25
- ◆ Background checks on unlicensed direct care staff, pages 23-24
- ◆ Content of resident record, page 36
- ◆ Disaster preparedness, pages 39-40

4-001 SCOPE AND AUTHORITY: These regulations govern licensure of assisted-living facilities. The regulations are authorized by and implement the Assisted-Living Facility Act, Neb. Rev. Stat. §§ 71-5901 to 71-5908 and the Health Care Facility Licensure Act, Neb. Rev. Stat. §§ 71-401 to 71-459.

4-001.01 Assisted-living facility does not include a home, apartment, or facility where:

1. Casual care is provided at irregular intervals; or
2. A competent person residing in such home, apartment or facility provides for or contracts for his or her own personal or professional services if no more than 25% of persons residing in such home, apartment or facility receive such services.

4-002 DEFINITIONS: For the purposes of these regulations, the following definitions apply:

Abuse means any knowing, intentional or negligent act or omission on the part of a person which results in physical, sexual, verbal, or mental abuse, unreasonable confinement, cruel punishment, exploitation, or denial of essential care, treatment, and services to a resident.

Activities of daily living. (See definition of Care.)

Adjoining means located to allow access without having to enter a general corridor area used or observed by other facility occupants.

Administrator means the operating officer of an assisted-living facility and includes a person with a title such as administrator, chief executive officer, manager, superintendent, director, or other similar designation.

Apartment means portion of a building that contains living and sleeping areas, storage room(s), separate room(s) containing a toilet, lavatory, and bathtub or shower; and a kitchen area with a sink and cooking and refrigeration appliances.

Applicant means the individual, government, corporation, partnership, limited liability company, or other form of business organization who applies for a license.

Assisted-living facility means a facility where shelter, food, and care are provided for remuneration for a period of more than 24 consecutive hours to four or more persons residing at such facility who require or request such services due to age, illness, or physical disability.

This definition does not include a home, apartment or facility where:

1. Casual care is provided at irregular intervals, or
2. A competent person residing in such home, apartment or facility provides for or contracts for his or her own personal or professional services if no more than 25% of persons residing in such home, apartment, or facility receive such services.

Authorized representative means:

1. A person holding a durable power of attorney for health care;
2. A guardian; or
3. A person appointed by a court to manage the personal affairs of a resident of an assisted-living facility other than the facility. (See definition of Power of Attorney for Health Care.)

Bed capacity means the total number of beds which can be set up in an assisted-living facility for use by residents.

Biological means any virus, therapeutic serum, toxin, antitoxin, or analogous product applicable to the prevention, treatment, or cure of disease or injuries of humans.

Care means the exercise of concern or responsibility for the comfort, welfare, and habilitation of persons, including a minimum amount of supervision and assistance with or the provision of personal care, activities of daily living, health maintenance activities, or other supportive services. For purposes of this chapter:

1. Activities of daily living means transfer, ambulation, exercise, toileting, eating, self-administration of medication, and similar activities;
2. Health maintenance activities means noncomplex interventions which can safely be performed according to exact direction, which do not require alteration of the standard procedure, and for which the results and resident responses are predictable; and
3. Personal care means bathing, hair care, nail care, shaving, dressing, oral care, and similar activities.

Chemical restraint means a psychopharmacologic drug that is used for discipline or convenience and is not required to treat medical symptoms.

Complaint means an expression of a concern or dissatisfaction.

Completed application means an application that contains all the information specified in 175 NAC 4-003 and includes all required attachments and documentation and the licensure fee.

Complex nursing interventions means interventions which require nursing judgment to safely alter standard procedures in accordance with the needs of the resident, which require nursing judgment to determine how to proceed from one step to the next, or which require a multidimensional application of the nursing process. Complex nursing interventions does not include a nursing assessment.

Department means the Department of Health and Human Services Regulation and Licensure.

Device means an instrument, apparatus, implement, machine, contrivance, implant, in vitro reagent, or other similar or related article, including any component, part, or accessory, which is prescribed by a medical practitioner and dispensed by a pharmacist or other person authorized by law to do so.

Direct care staff means staff who provide assistance with activities of daily living, health maintenance activities, and personal care and does not include housekeeping, maintenance, dietary, laundry, administrative or clerical staff if they do not provide any of the above mentioned assistance.

Direction and monitoring means for the purpose of medication administration, the acceptance of responsibility for observing and taking appropriate action regarding any desired effects, side effects, interactions, and contraindications associated with the medication. Direction and monitoring can be done by a:

1. Competent individual for himself or herself,
2. Caretaker; or
3. Licensed health care professional.

Director means the Director of Regulation and Licensure.

Drug means substances as defined in Neb. Rev. Stat. § 71-1,142.

Dwelling means a building that contains living and sleeping areas, storage room(s), separate room(s) containing a toilet, lavatory, and bathtub or shower; and a kitchen area with a sink and cooking and refrigeration appliances.

Elopement means to run or slip away from the licensed facility without the knowledge of staff.

Existing facility means a licensed health care facility or a facility whose construction or remodeling plans were approved by the Department prior to the effective date of 175 NAC 4.

Facility means an assisted-living facility as defined.

Five rights means getting the right drug to the right recipient in the right dosage by the right route at the right time.

Food code means the Nebraska Food Code as defined in Neb. Rev. Stat. § 81-2,244.01 and as published by the Nebraska Department of Agriculture, except for compliance and enforcement provisions.

Foreign when applied to corporations means all those created by authority other than that of the State of Nebraska.

Grievance means a written expression of dissatisfaction which may or may not be the result of an unresolved complaint.

Health care facility means an ambulatory surgical center, an assisted-living facility, a center or group home for the developmentally disabled, a critical access hospital, a general acute hospital, a health clinic, a hospital, an intermediate care facility, an intermediate care facility for the mentally retarded, a long-term care hospital, a mental health center, a nursing facility, a pharmacy, a psychiatric or mental hospital, a public health clinic, a rehabilitation hospital, a skilled nursing facility, or a substance abuse treatment center.

Health care service means an adult day service, a home health agency, a hospice or hospice service, or a respite care service.

Health maintenance activities (see definition of Care).

Licensed health care professional means an individual for whom administration of medication is included in the scope of practice.

Licensee means the individual, government, corporation, partnership, limited liability company, or other form of business organization to whom the license is issued. The licensee has the primary responsibility for the overall operation of the assisted-living facility.

Medical practitioner means any licensed physician, osteopathic physician, dentist, podiatrist, optometrist, chiropractor, physician assistant, certified registered nurse anesthetist, advanced practice registered nurse, or certified nurse midwife.

Medication means any prescription or nonprescription drug intended for treatment or prevention of disease or to affect body function in humans.

Medication administration includes, but is not limited to:

1. Providing medications for another person according to the five rights;
2. Recording medication provision; and

3. Observing, monitoring, reporting, and otherwise taking appropriate actions regarding desired effects, side effects, interactions, and contraindications associated with the medication.

Medication aide means an individual who is listed on the medication aide registry operated by the Department as provided for in 172 NAC 95 and 172 NAC 96.

Medication provision 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.

Mental abuse means humiliation, harassment, threats of punishment, deprivation, or other actions causing mental anguish.

Misappropriation of money or property means the deliberate misplacement, exploitation, or use of a resident's belongings or money without the resident's consent.

NAC means Nebraska Administrative Code.

Neglect means a failure to provide goods or services necessary to avoid physical harm or mental anguish of a resident.

New construction means a facility or a distinct part of a facility in which care and treatment is to be provided and which is enlarged, remodeled or altered in any fashion or is built from the ground up on or after the effective date of 175 NAC 4.

New facility means a facility or a distinct part of a facility in which care and treatment is to be provided and which is not currently licensed. New facility also includes those facilities, which were previously licensed for care and treatment in another licensure category, and which now intend to seek licensure in a different category.

Personal care (See definition of Care.)

Physical abuse means hitting, slapping, pinching, kicking, or other actions causing injury to the body.

Physical restraint means any manual method or physical or mechanical device, material, or equipment attached or adjacent to the resident's body that he or she cannot remove easily and that restricts freedom of movement or normal access to his or her own body.

Power of attorney for health care means a power of attorney executed in accordance with Neb. Rev. Stat. §§ 30-3401 to 30-3432 which authorizes a designated attorney in fact to make health care decisions for the principal when the principal is incapable. A person holding the power of attorney for health care can make health care decisions to the extent allowed by the terms of the health care power of attorney.

Premises means a facility, the facility's grounds and each building or grounds on contiguous

property used for administering and operating a facility.

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

Qualified inspector means a professional architect or engineer licensed to practice in Nebraska, an official or employee of a local jurisdiction authorized by that jurisdiction to make inspections of particular building equipment or systems, or an individual certified by a nationally recognized organization to make such inspections.

Resident means a person residing and receiving care at an assisted-living facility.

Schematic plans means a diagram of the facility or service which describes the number and location of beds; the location of care and treatment rooms, Life Safety Code construction and occupancy classifications locations, fire compartments, and Fire Marshal approved points of safety.

Sexual abuse means sexual harassment, sexual coercion, or sexual assault.

Shelter means to provide lodging for compensation.

Stable or predictable means that a resident's clinical and behavioral status and nursing care needs are determined to be nonfluctuating and consistent or fluctuating in an expected manner with planned interventions, including an expected deteriorating condition.

Supplement means a product meant to satisfy dietary needs.

Supportive services means those services which support personal care, provision of medications, activities of daily living and health maintenance activities.

Treatment means a therapy, modality, product, device, or other intervention used to maintain well being or to diagnose, assess, alleviate, or prevent a disability, injury, illness, disease, or other similar condition.

Unlicensed direct care staff means personnel who are not licensed, certified, or registered under the Uniform Licensing Law or other state laws governing the practice of health care and whose primary responsibility is to manage, supervise, and/or provide direct care to residents. These include nursing assistants and medication aides.

Verbal abuse means the use of oral, written or gestured language including disparaging and derogatory terms to residents or within their hearing distance.

4-003 LICENSING REQUIREMENTS AND PROCEDURES: Any person intending to establish, operate, or maintain an assisted-living facility must first obtain a license from the Department. A facility must not hold itself out as an assisted-living facility or as providing health care services unless licensed under the Assisted-Living Facility Act and the Health Care Facility Licensure Act. An applicant for an initial or renewal license must demonstrate that the assisted-living

facility meets the care, treatment, and operational and physical plant standards contained in 175 NAC 4.

4-003.01 Initial License: The initial license process occurs in two stages. The first stage consists of the applicant's submission of affirmative evidence of the ability to comply with the operational and physical plant standards contained in 175 NAC 4-006 and 175 NAC 4-007. The application is not complete until the Department receives documents specified in 175 NAC 4-003.01.

The second stage consists of the Department's review of the completed application together with an inspection of the assisted-living facility. The Department determines whether or not the applicant for an initial license meets the standards contained in 175 NAC 4, the Assisted-Living Facility Act and the Health Care Facility Licensure Act.

4-003.01A Applicant Responsibilities: An applicant for an initial assisted-living facility license must:

1. Intend to provide assisted-living services as defined.
2. Comply with the applicable codes, guidelines, and standards specified in 175 NAC 4-007.
3. Submit a written application to the Department as provided in 175 NAC 4-003.01B.
4. Receive approval in writing, from the Department, of schematic plan and, if new construction, of construction plans; and
5. Notify the Department at least 30 days prior to planned occupancy so the Department can conduct an on-site inspection.

4-003.01B Application Requirements: The applicant may construct an application or obtain an application form from the Department. The application must include:

1. Full name of the assisted-living facility to be licensed, street and mailing address, telephone and facsimile number, if any;
2. Type of assisted-living facility to be licensed;
3. Name of the administrator;
4. Name and address of the assisted-living facility owner(s);
5. Ownership type;
6. Mailing address for the owner(s);
7. The preferred mailing address for the receipt of official notices from the Department;
8. List of names and addresses of all persons in control of the assisted-living facility. The list must include all individual owners, partners, limited liability company members, parent companies, in any, and members of boards of directors owning or managing the operations and any other persons with financial interests or investments in the assisted-living facility. In the case of publicly held corporations, the individual owners listed must include any stockholders who own 5% or more of the company's stock;

9. The legal name of the individual or business organization (government, corporation, partnership, limited liability company or other type) to whom the license should be issued and a statement that the individual or organization accepts the legal responsibility for compliance with these regulations;
10. Applicant's federal employer identification number, if not an individual;
11. Applicant's social security number if the applicant is an individual. To ensure social security numbers are not part of public records and are used only for administrative purposes, applicants may submit social security numbers in a separate document;
12. Number of beds;
13. Signature(s) of:
 - a. The owner, if the applicant is an individual or partnership;
 - b. Two of its members, if the applicant is a limited liability company;
 - c. Two of its officers, if the applicant is a corporation; or
 - d. The head of the governmental unit having jurisdiction over the assisted-living facility to be licensed, if the applicant is a governmental unit;
14. Copy of the registration as a foreign corporation filed with the Nebraska Secretary of State, if applicant is a foreign corporation;
15. Schematic plans;
16. For new construction, plans completed in accordance with the Engineers and Architects Regulation Act, Neb. Rev. Stat. §§ 81-3401 to 81-3455. An applicant may construct a project description and/or certification document, or obtain a form from the Department. Construction plans must include the following:
 - a. Project name, description of the project with quantity and floor area information on bed, care, treatment, bathing, toileting, dining, and activity locations, building systems, medical equipment, street address, and contact person;
 - b. Site plan, floor plans, elevations, wall and building sections, construction details, plumbing and electrical diagrams, construction component schedules;
 - c. Complete list of names, titles and telephone numbers of other authorities reviewing or inspecting the construction;
 - d. Upon Department request, such additional information that may be required for review, such as structural and mechanical calculations, electrical system calculations, and product and equipment information; and
 - e. Certification, if any, from a licensed architect or engineer that the schematic plans, construction plans, and any revisions thereof meet the requirements of 175 NAC 4-007;
17. Planned occupancy date;

18. Copies of zoning approval from the relevant jurisdiction;
19. Occupancy certificates issued by the State Fire Marshal or delegated authority;
20. The required licensure fee specified in 175 NAC 4-004.09; and
21. If applicable, the disclosure information required by Neb. Rev. Stat. §§ 71-516.01 to 71-516.04, the Alzheimer's Special Care Disclosure Act. The following information must be submitted:
 - a. The Alzheimer's special care unit's written statement of its overall philosophy and mission which reflects the needs of residents afflicted with Alzheimer's disease, dementia, or a related disorder;
 - b. The process and criteria for placement in, transfer to, or discharge from the unit;
 - c. The process used for assessment and establishment of the plan of care and its implementation, including the method by which the plan of care evolves and is responsible to changes in condition;
 - d. Staff training and continuing education practices;
 - e. The physical environment and design features appropriate to support the functioning of cognitively impaired adult residents;
 - f. The frequency and types of resident activities;
 - g. The involvement of families and the availability of family support programs; and
 - h. The costs of care and any additional fees.

4-003.01C Department Responsibilities: The Department will:

1. Review the application for completeness;
2. Provide notification to the applicant of any information needed to complete the application;
3. Confirm, either by Department review or by accepting certification from an architect or engineer, that the schematic plans and, if new construction, the construction plans meet the standards of 175 NAC 4-007;
4. Upon receipt of the requested information, conduct an on-site inspection in accordance with 175 NAC 4-005 prior to the issuance of an assisted-living facility license; and
5. Issue or deny a license based on the results of the initial inspection.

4-003.01D Denial of License: See 175 NAC 4-008.01 and 4-008.02 for grounds and procedures for the Department's denial of an initial license.

4-003.02 Renewal Licenses

4-003.02A Licensee Responsibilities: Licensees must submit a written application to the Department. The licensee may construct an application or obtain an application form from the Department. The licensure application must include:

1. Full name of the assisted-living facility to be licensed, street and mailing address, telephone and facsimile number, if any;
2. Type of assisted-living facility to be licensed;
3. Name of the administrator;
4. Name and address of the assisted-living facility owner(s);
5. Ownership type;
6. Mailing address for the owner(s);
7. The preferred mailing address for the receipt of official notices from the Department;
8. List of names and addresses of all persons in control of the assisted-living facility. The list must include all individual owners, partners, limited liability company members, parent companies, if any, and members of boards of directors owning or managing the operations and any other persons with financial interests or investments in the assisted-living facility. In the case of publicly held corporations, the individual owners listed must include any stockholders who own 5% or more of the company's stock;
9. The legal name of the individual or business organization (government, corporation, partnership, limited liability company or other type) to whom the license should be issued and a statement that the individual or organization accepts the legal responsibility for compliance with these regulations;
10. Applicant's federal employer identification number, if not an individual;
11. Applicant's social security number if the applicant is an individual. To ensure social security numbers are not part of public records and are used only for administrative purposes, applicants may submit social security numbers in a separate document;
12. Number of beds;
13. Signature(s) of:
 - a. The owner, if the applicant is an individual or partnership;
 - b. Two of its members, if the applicant is a limited liability company;
 - c. Two of its officers, if the applicant is a corporation; or
 - d. The head of the governmental unit having jurisdiction over the assisted-living facility to be licensed, if the applicant is a governmental unit;
- ~~14. Copy of the registration as a foreign corporation filed with the Nebraska Secretary of State, if applicant is a foreign corporation;~~
- ~~15.~~ 14. Occupancy certificates issued by the State Fire Marshal or delegated authority dated within the ~~42~~ 18 months prior to the license expiration date;
- ~~15.~~ 15. Required licensure fee specified in 175 NAC 4-004.09; and
- ~~16.~~ 16. If applicable, the disclosure information required by Neb. Rev. Stat. §§ 71-516.01 to 71-516.04, the Alzheimer's Special Care Disclosure Act. The following information must be submitted:

- a. The Alzheimer's special care unit's written statement of its overall philosophy and mission which reflects the needs of residents afflicted with Alzheimer's disease, dementia, or a related disorder;
- b. The process and criteria for placement in, transfer to, or discharge from the unit;
- c. The process used for assessment and establishment of the plan of care and its implementation, including the method by which the plan of care evolves and is responsive to changes in condition;
- d. Staff training and continuing education practices;
- e. The physical environment and design features appropriate to support the functioning of cognitively impaired adult residents;
- f. The frequency and types of resident activities;
- g. The involvement of families and the availability of family support programs; and
- h. The costs of care and any additional fees.

4-003.02B Department Responsibilities: The Department will:

1. Send a notice of expiration and an application for renewal to the licensee's preferred mailing address not later than 30 days prior to the expiration date. The licensure renewal notice specifies:
 - a. Date of expiration;
 - b. Fee for renewal;
 - c. License number; and
 - d. Name and address of the assisted-living facility.
2. Issue a renewal when it determines that the licensee has submitted a completed application;
3. Send to each licensee that fails to renew its license a second notice, which is the final notice and specifies that:
 - a. The licensee failed to pay the renewal fee or submit an application or both;
 - b. The license has expired;
 - c. The Department will suspend action for 30 days following the date of expiration;
 - d. Upon receipt of the renewal fee and completed renewal application, the Department will issue the renewal license; and
 - e. Upon failure to receive the renewal fee and completed renewal application, the license will be lapsed.
4. Place the assisted-living facility license on lapsed status for nonpayment of fees if the licensee fails to renew the license. During this time, the assisted-living facility may not operate. The license remains in lapsed status until it is reinstated.

4-003.02C Refusal to Renew: See 175 NAC 4-008.01 and 4-008.02 for grounds and procedures for the Department's refusal to renew a license.

4-003.03 Reinstatement from Lapsed Status: An assisted-living facility requesting reinstatement of its lapsed license must submit to the Department an application for reinstatement and pay the required licensure fee specified in 175 NAC 4-004.09. The application must conform to the requirements specified in 175 NAC 4-003.02.

4-003.03A The Department will review the application for completeness and decide if an onsite inspection is needed to determine compliance with the operation, care, treatment, and physical plant requirements of 175 NAC 4-006 and 4-007. The decision is based on the following factors:

1. The length of time that has transpired from the date the license was placed on lapsed status to the date of the reinstatement application; and
2. Whether the assisted-living facility has provided care from the site under a license that is different from the lapsed license.

4-003.03B When the Department decides that a reinstatement inspection is warranted, it will conduct the inspection in accordance with 175 NAC 4-005.

4-003.03C When the Department decides that a reinstatement inspection is not warranted, it will reinstate the license.

4-003.03D Refusal to Reinstatement: See 175 NAC 4-008.01 and 4-008.02 for grounds and procedures for the Department's refusal to reinstate a lapsed license.

4-004 GENERAL REQUIREMENTS

4-004.01 Separate License: An applicant must obtain a separate license for each type of health care facility or health care service that the applicant seeks to operate. All buildings in which care and treatment is provided must comply with 175 NAC 4-006 and if applicable, 175 NAC 4-007. A single license may be issued for:

1. An assisted-living facility operating in separate buildings or structures on the same premises under one management;
2. An inpatient facility that provides services on an outpatient basis at multiple locations; or
3. A health clinic operating satellite clinics on an intermittent basis within a portion of the total geographic area served by such health clinic and sharing administration with such clinics.

4-004.02 Single License Document: The Department may issue one license document that indicates the various types of health care facilities or health care services for which the entity is licensed.

4-004.03 Effective Date and Term of License: An assisted-living facility license expires on April 30 of each year.

4-004.04 License Not Transferable: A license is issued only for the premises and persons named in the application and is not transferable or assignable. Change of ownership (sale, whether of stock, title, or assets, lease, discontinuance of operations) or premises terminates the license. If there is a change of ownership and the assisted-living facility remains on the same premises, the inspection in 175 NAC 4-005 is not required. If there is a change of premises, the assisted-living facility must pass the inspection specified in 175 NAC 4-005.

4-004.05 Bed Capacity, Usage and Location: The licensee must not put into use more beds than the total number of beds for which the assisted-living facility is licensed. Changes in the use and location of beds may occur at any time without prior Departmental approval for licensure purposes. A licensee must not locate more residents in a resident room than the capacity for which the room was originally approved.

4-004.06 Change of Ownership or Premises Location: The licensee must notify the Department in writing 30 days before ~~within five working days~~ when an assisted-living facility is sold, leased, discontinued, or moved to a new premises location.

4-004.07 Notification: An applicant or licensee must notify the Department in writing by electronic mail, facsimile, or regular mail:

1. At the time of licensure renewal, of any change in the location of beds;
2. At least 30 working days prior to the date it wishes to increase the number of beds for which the assisted-living facility is licensed;
3. To request a single license document;
4. To request simultaneous facility or service licensure inspections for all types of licensure held or sought; ~~or~~
5. If new construction is planned, and submit construction plans for Department approval prior to any new construction affecting resident care and treatment areas of the assisted-living facility. The Department may accept certification from an architect or engineer in lieu of Department review.;
6. Within 24 hours of any resident death that occurred due to a resident elopement, suicide, or a violent act;
7. Within 24 hours if a facility has reason to believe that a resident death was due to abuse or neglect by staff;
8. Within 24 hours of an accident or natural disaster resulting in damage to the physical plant and having a direct or immediate adverse effect on the health, safety, and security of residents; or
9. Within 24 hours of all facility fires.

4-004.08 Information Available to Public: The licensee must make available for public inspection upon request licenses, license record information, and inspection reports. This information may be displayed on the licensed premises.

4-004.09 Fees: The licensee must pay fees for licensure as set forth below:

1. Initial and Renewal Licensure fees:
 - a. 1 to 10 Beds \$ ~~800~~ \$ 950
 - b. 11 to 20 Beds \$ ~~950~~ \$1,450
 - c. 21 to 50 Beds \$1,025 \$1,650
 - d. 51 or more Beds \$1,050 \$1,950
2. Duplicate original license: \$10
3. Refunds for denied applications:
 - a. If the Department did not perform an inspection, the license fee is refunded except for an administrative fee of \$25.
 - b. If the Department performed an inspection, the license fee is not refunded.

4-004.10 Accreditation Deemed Compliance

4-004.10A Accreditation: The Department ~~will~~ may deem a licensee in compliance with 175 NAC 4-006 based on acceptance of accreditation as an assisted-living facility by a recognized independent accreditation body or public agency, which has standards that are at least as stringent as those of the State of Nebraska, as evidence that the assisted-living facility complies with rules and regulations adopted and promulgated under the Assisted-Living Facility Act.

4-004.10A1 ~~A licensee may~~ must request the Department to deem its facility in compliance with 175 NAC 4-006 based on accreditation. The request must be:

1. Made in writing;
2. Submitted within 30 days of receipt of a report granting accreditation; and
3. Accompanied by a copy of the accreditation report.

4-004.10A2B Upon receipt of the request and acceptance of accreditation, the Department will deem the facility in compliance with 175 NAC 4-006 and will provide written notification of the decision to the facility within ten working days of receipt of the request.

4-004.10A3 The Department will exclude an assisted-living facility that has been deemed in compliance with 175 NAC 4-006 from the random selection of up to 25% of assisted-living facilities for compliance inspections under 175 NAC 4-005.04A. The assisted-living facility may be selected for a compliance inspection under 175 NAC 4-005.04B.

4-004.10A4C To maintain deemed compliance, the licensee must maintain the accreditation on which the license was issued. If the accreditation is sanctioned, modified, terminated, or withdrawn, the licensee must, within 15 days of receipt of notification of an action, notify the Department in writing of

the action and the cause for the action. If the cause for action indicates possible regulatory violation, the Department will inspect the assisted-living facility within 90 days of receipt of notice. The assisted-living facility may continue to operate unless the Department determines that the assisted-living facility no longer meets the requirements for licensure under the Assisted-Living Facility Act and Health Care Facilities Licensure Act. If the Department determines the facility no longer qualifies for deemed compliance, the facility is subject to inspections under 175 NAC 4-005.

4-004.09B Food Code: The Department will deem an applicant or licensee to be in compliance with the food service physical environment and equipment portions of the Food Code when:

1. The facility is located in a jurisdiction where there is a local health authority that inspects the facility's on-site food service using the Food Code;
2. The facility has been issued a certificate or similar document by the local health authority as evidence of compliance with the Food Code; and
3. The facility has provided the Department with a copy of the certificate or other similar document issued by the local health authority. The document must have been issued within 18 months of the date the Department conducts the licensure inspection.

4-004.09B1 The facility must maintain compliance with the Food Code as evidenced by the Food Code compliance certificate not having been modified or terminated by the issuing local health authority.

4-004.09B2 The facility must notify the Department when the local health authority modifies or terminates the Food Code compliance certificate. The notification must be sent to the Department in writing within 15 days after the facility receives notification from the local health authority of any change.

4-004.09B3 The Department will inspect dietary services provided by the facility to determine compliance with 175 NAC 4-006.10, except for 006.10C, to ensure that resident dietary needs are being met.

4-004.09B4 If the facility contracts with an entity to provide food service, the contractor must meet the requirements of the Food Code, and the facility must show proof of such approval to the Department.

4-005 INSPECTIONS: To determine compliance with operational, care, treatment, and physical plant standards, the Department inspects an assisted-living facility prior to and following licensure. The Department determines compliance through on-site inspections, review of schematic and construction plans, and reports of qualified inspectors. Re-inspections are conducted by on-site inspection or review of documentation requested by the Department.

4-005.01 Initial Inspection: The Department will conduct an announced initial on-site inspection to determine compliance with 175 NAC 4-006 and 4-007. The inspection will be conducted within 30 working days, or later if requested by the applicant, of receipt of a completed application for an initial license. The Department will provide a copy of the inspection report to the assisted-living facility within 10 working days after completion of an inspection.

4-005.02 Results of Initial Inspection

4-005.02A When the Department finds that the applicant fully complies with the requirements of 175 NAC 4-006 and 4-007, the Department will issue a license.

4-005.02B When the Department finds that the applicant had complied substantially but has failed to comply fully with the requirements of 175 NAC 4-006 and 4-007 and the failure(s) would not pose an imminent danger of death or physical harm to persons residing in the assisted-living facility, the Department may issue a provisional license. The provisional license:

1. Is valid for up to one year; and
2. Is not renewable.

4-005.02C When the Department finds the applicant has one or more violations that create no imminent danger of death or serious physical harm and no direct or immediate adverse relationship to the health, safety, or security of the persons residing in the facility, the Department may send a letter to the facility requesting a statement of compliance. The letter will include:

1. A description of each violation;
2. A request that the facility submit a statement of compliance within ten working days; and
3. A notice that the Department may take further steps if the statement of compliance is not submitted.

4-005.02D The statement of compliance must indicate any steps that have been or will be taken to correct each violation and the estimated time to correct each violation. Based on the statement of compliance, the Department will take one of the following actions:

1. If the facility submits and implements a statement of compliance that indicates a good faith effort to correct the violations, the Department will issue either a regular license or a provisional license; or
2. If the facility fails to submit and implement a statement of compliance that indicates a good faith effort to correct the violations, the Department may deny the license.

4-005.02E When the Department finds the applicant fails to meet the requirements of 175 NAC 4-006 and 4-007 and the failure(s) would create an imminent danger of death or serious physical harm, the Department will deny the license.

4-005.03 Physical Plant Inspections: The Department will conduct inspections for conformity with construction plans and compliance with 175 NAC 4-007 at new facilities or new construction prior to use or occupancy.

4-005.03A On-site progress inspections of the physical plant by qualified inspectors for conformity to construction documents and compliance with code requirements may occur at any time after construction has begun and prior to the concealment of essential components.

4-005.03B The Department will conduct an on-site final inspection of the physical plant prior to use or occupancy. In lieu of an on-site final inspection by the Department, the Department may accept a certification from a licensed architect or engineer that the physical plant meets the requirements of the Assisted-Living Facility Act, the Health Care Facility Licensure Act and 175 NAC 4, and that the facility is complete and ready for occupancy in accordance with Department-approved plans. The architect or engineer may construct a certification form or obtain a certification form from the Department.

4-005.03B1 The certification must state:

1. Name of the architect or engineer;
2. Name of the professional entity with which he or she is affiliated, if any;
3. Address and telephone number;
4. Type of license held, the state in which it is held, and the license number;
5. Name and location of the facility;
6. Name(s) of the owner(s) of the facility;
7. New construction had the building structure and plumbing rough-in inspected by a qualified inspector prior to the time these would be concealed and preclude observation;
8. All new construction, care and treatment room sizes, bedroom sizes, handrails, grab bars, hardware, building systems, protective shielding, privacy curtains, appropriate room finishes, and other safety equipment are completed in accordance with approved construction plans; and
9. The facility is furnished, cleaned, and equipped for the care and treatment to be performed in compliance with 175 NAC 007, and approved for use and occupancy.

4-005.03B2 The certification must have attached to it:

1. Copies of documents from other authorities having jurisdiction verifying that the facility meets the codes specified in 175 NAC 4-007.03A, and approved for use and occupancy;
2. Copies of certifications and documentation from equipment and building system installers verifying that all equipment and systems installed are operating and approved for use and occupancy; and
3. Schematic floor plans documenting actual room numbers and titles, bed locations, capacity, and life safety information.

4-005.04 Timing of Compliance Inspections: The Department may, following the initial licensure of an assisted-living facility, conduct an unannounced onsite inspection at any time as it deems necessary to determine compliance with 175 NAC 4-006 and 4-007. The inspection may occur based on random selection or focused selection.

4-005.04A Random Selection: Each year the Department may inspect up to 25% of the assisted-living facilities based on a random selection of licensed assisted-living facilities.

4-005.04B Focused Selection: The Department may inspect an assisted-living facility when the Department is informed of one or more of the following:

1. An occurrence resulting in resident death or serious physical harm;
2. An occurrence resulting in imminent danger to or the possibility of death or serious physical harm to residents;
3. An accident or natural disaster resulting in damage to the physical plant and having a direct or immediate adverse effect on the health, safety, and security of residents;
4. The passage of five years without an inspection;
5. A complaint alleging violation of the Assisted-Living Facility Act, the Health Care Facility Licensure Act or 175 NAC 4;
6. Complaints that, because of their number, frequency, or type, raise concerns about the maintenance, operation, or management of the facility;
7. Financial instability of the licensee or of the licensee's parent company;
8. Outbreaks or recurrent incidents of physical health problems at an assisted-living facility such as dehydration, pressure sores, or other illnesses;
9. Change of services, management or ownership; or
10. Any other event that raises concerns about the maintenance, operation, or management of the assisted-living facility.

4-005.05 Results of Compliance Inspections

4-005.05A When the inspection reveals violations that create imminent danger of death or serious physical harm or have a direct or immediate adverse effect on the health, safety, or security of residents residing in the assisted-living facility, the Department will review the inspection findings within 20 working days after the

inspection. If the evidence from the inspection supports the findings, the Department will impose discipline in accordance with 175 NAC 4-008.03.

4-005.05B When the inspection reveals one or more violations that create no imminent danger of death or serious physical harm and no direct or immediate adverse effect on the health, safety, or security of residents residing in the assisted-living facility, the Department may request a statement of compliance from the facility. The statement of compliance must indicate any steps that have been or will be taken to correct each violation and the estimated time to correct each violation. Based on the statement of compliance, the Department will take one of the following actions:

1. If the assisted-living facility submits and implements a statement of compliance that indicates a good faith effort to correct the violations, the Department will not take any disciplinary action against the license; or
2. If the assisted-living facility fails to submit and implement a statement of compliance, the Department will initiate disciplinary action against the assisted-living facility license, in accordance with 175 NAC 4-008.

4-005.06 Re-Inspections

4-005.06A The Department may conduct re-inspections to determine if the assisted-living facility fully complies with the requirements of 175 NAC 4-006 and 4-007. ~~The re-inspection must occur within 90 days of the first inspection, or sooner as requested by the licensee. The re-inspection may occur after the Department~~ Re-inspection may consist of an on-site inspection or a review of documentation requested by the Department. Re-inspection occurs:

1. After the Department has issued a provisional license;
 2. Before a provisional license is converted to a regular license;
 3. After the Department has imposed disciplinary action;
 4. Before a disciplinary action is modified or terminated; or
 5. After the Department receives a statement of compliance for cited violations.
-
- ~~1. Receives a statement of compliance;~~
 - ~~2. Has imposed disciplinary action; or~~
 - ~~3. Has issued a provisional license.~~

4-005.06B Following a re-inspection, the Department may:

1. Convert a provisional license to a regular license;
2. Affirm that the provisional license is to remain effective; ~~or~~
3. Modify a disciplinary action in accordance with 175 NAC 4-008.02-; or
4. Grant full reinstatement of the license.

4-006 STANDARDS OF OPERATION, CARE AND TREATMENT: To provide adequate protection to assisted-living residents and compliance with state statutes, an assisted-living facility must meet the following:

4-006.01 Licensee Responsibilities: The licensee of each assisted-living facility must assume the responsibility for the total operation of the facility. The licensee responsibilities include:

1. Monitoring policies to assure the appropriate administration and management of the assisted-living facility;
2. Maintaining the assisted-living facility's compliance with all applicable state statutes and relevant rules and regulations;
3. Providing quality care to residents whether care is furnished by assisted-living facility staff or through contract with the facility;
4. Designating an administrator who is responsible for the day to day management of the assisted-living facility and defining the duties and responsibilities of the administrator in writing;
5. Notifying the Department in writing within five working days when a vacancy in the administrator position occurs including who will be designated as the administrator until another administrator is appointed;
6. Notifying the Department in writing within five working days when the vacancy is filled including effective date and name of person appointed administrator; and
7. Assuring that after January 1, 2005, any person designated as administrator of the assisted-living facility meets the initial training requirements specified in 175 NAC 4-006.02A within the first six months of employment as the administrator.

4-006.02 Administration: Each assisted-living facility must have an administrator who is responsible for the overall operation of the facility. The administrator is responsible for planning, organizing, and directing the day to day operation of the assisted-living facility. The administrator must report all matters related to the maintenance, operation, and management of the assisted-living facility and be directly responsible to the licensee or to the person or persons delegated governing authority by the licensee. The administrator must:

1. Be responsible for the facility's compliance with rules and regulations;
2. Be responsible for the facility's promotion of resident self-direction and participation in decisions which incorporate independence, individuality, privacy and dignity;
3. Be on the premises a sufficient number of hours to permit adequate attention to the management of the facility;
4. Maintain staff with appropriate training and skills and sufficient in number to meet resident needs as defined in resident service agreements;
5. Designate a substitute to act in his or her absence who must be responsible and accountable for management of the facility;
6. Monitor that resident service agreements are established and implemented;

7. Monitor that facility staff identify and review incidents and accidents, resident complaints and concerns, patterns and trends in overall facility operation such as provisions of resident care and service and take action to alleviate problems and prevent recurrence;
8. Develop and implement procedures that require the reporting of any evidence of abuse, neglect, or exploitation of any resident residing in the assisted-living facility in accordance with Neb. Rev. Stat. §§ 28-372 of the Adult Protective Services Act or in the case of a child, in accordance with Neb. Rev. Stat. § 28-711;
9. Complete an investigation on suspected abuse, neglect, or misappropriation of money or property and take action to prevent reoccurrence until the investigation is completed;
10. Be at least 21 years of age; and
11. Meet the administrator training requirements as specified in 4-006.02A.

4-006.02A Initial Administrator Training Requirements: After January 1, 2005, the administrator must have completed training consisting of a total of at least 30 hours, including, but not limited to:

1. Resident care and services;
2. Social services;
3. Financial management;
4. Administration;
5. Gerontology; and
6. Rules, regulations, and standards relating to the operation of an assisted-living facility.

4-006.02B Verification of Initial Administrator Training: Verification of initial training completed must be submitted to the Department for approval. Training documentation may include but is not limited to:

1. Evidence of completion of training including documentation of date of training, number of hours, description of training, and trainer qualifications;
2. Evidence of successful completion of college courses and/or degree which includes topics in 4-006.02A; or
3. Evidence of completion of a Department approved training course.

4-006.02B1 Initial training requirements do not apply to an assisted-living facility administrator who also holds an active nursing home administrator license or who is currently employed as a hospital administrator. Verification of nursing home or hospital administrator status must be submitted to the Department. Such verification includes:

1. Proof of current licensure as a nursing home administrator in Nebraska or other jurisdiction; or

2. A statement from the governing authority of the hospital or other authorizing entity that could verify administrator status.

4-006.02C Department Responsibilities for Approval of Initial Administrator Training Programs: The Department will:

1. Determine whether the administrator training program meets the course requirements of 175 NAC 4-006.02A and provide written notification of program approval within 90 days of receipt of application; and
2. Establish and maintain a registry of persons who have met the initial training requirements. The registry will contain information the Department deems necessary.

4-006.02D Initial Administrator Training Waiver: ~~Persons employed as assisted-living administrators on January 1, 2005 were allowed to apply within 90 days of that date for a Department waiver of the initial administrator training requirements. The Department may waive the initial training requirements for persons employed as assisted-living facility administrators on January 1, 2005 and who apply within 90 days. Such application may be obtained from the Department or designed by the applicant. The application must include the following:~~

- ~~1. Full name of administrator;~~
- ~~2. Mailing address of administrator;~~
- ~~3. Social security number;~~
- ~~4. Number of years and dates employed as an assisted-living facility administrator;~~
- ~~5. Full name of the assisted-living facility where employed, telephone and facsimile number, if any; and~~
- ~~6. An attestation from the assisted-living governing authority where employed on January 1, 2005 or from two individuals who can attest to the employment.~~
- ~~7. Documentation of equivalent training or experience, which may include but is not limited to:
 - ~~a. Verification of employment at least one out of the past three years as an assisted-living facility administrator;~~
 - ~~b. Evidence of having completed an assisted-living facility administrator training course prior to January 1, 2005; or~~
 - ~~c. Licensure as a health care professional with documentation of administrative experience in a health care facility;~~~~

~~4-006.02D1 Waiver Approval: If the application is found complete and documentation of equivalent training or experience is satisfactory to the Department, the Department will inform the administrator in writing that the waiver is approved.~~

~~4-006.02D2 Waiver Denial: If the application is found incomplete or documentation of equivalent training or experience is not satisfactory to the Department, the Department will inform the administrator in writing that the waiver is denied and the reasons for the denial.~~

4-006.02E Ongoing Administrator Training: Each year of employment, a facility administrator must complete 12 hours of ongoing training in areas related to care and facility management of the population served. The record of such training must be available for Department review and include topic of training, date and length of training and name and title of person providing training. Nursing home and hospital administrators verified under 175 NAC 4-006.02B1 are not required to fulfill the annual training requirement.

4-006.03 Staff Requirements: The facility must maintain a sufficient number of staff with the required training and skills necessary to meet the resident population's requirements for assistance or provision of personal care, activities of daily living, health maintenance activities, supervision and other supportive services, ~~as defined in resident service agreements.~~

4-006.03A Employment Eligibility: Each assisted-living facility must ensure and maintain evidence of the following:

4-006.03A1 Criminal Background Check: The facility must complete criminal background checks on each member of the unlicensed direct care staff of the facility.

4-006.03A1a Such checks must be done on all new unlicensed direct care staff hired.

4-006.03A1b Such checks ~~may~~ must be made through a governmental law enforcement agency or a private entity that maintains criminal background information.

4-006.03A1c It is the responsibility of the facility to:

1. Determine how to use this criminal background information in making hiring decisions; ~~and~~
2. Decide whether employment can begin prior to receiving the criminal background information; ~~and~~
3. Document any decision to hire a person with a criminal background. The documentation must include how that decision was made and how the facility plans to reduce risk to residents and provide protection, as necessary.

4-006.03A2 Registry Checks: ~~In addition to a criminal background check, t~~ The facility must have evidence of contact to verify that check

each unlicensed direct care staff ~~has no~~ for adverse findings entered on the following registries:

1. Nurse Aide Registry;
2. Adult Protective Services Central Registry of ~~Abuse and Neglect~~; and
3. ~~Child Central Registry~~ Register of Child Protection Cases Abuse and Neglect; and
4. Nebraska State Patrol Sex Offender Registry.

4-006.03A2a Each facility must determine whether to employ or continue employment of any person as direct care staff ~~when adverse findings are evident on the initial check of the Adult and Child Central Registries.~~ with adverse registry findings, except for the Nurse Aide Registry.

4-006.03A2b The facility must document any decision to hire as direct care staff a person with adverse registry findings, except for the Nurse Aide Registry. The documentation must include how that decision was made and how the facility plans to reduce risk to residents and provide protection, as necessary.

4-006.03A2b Each facility must not employ or continue employment of any person as direct care staff who has adverse findings on the Nurse Aide Registry regarding resident abuse, neglect, or misappropriation of resident property.

4-006.03A3 Health Status: Each assisted-living facility must establish and implement policies and procedures regarding the health status of staff to prevent the transmission of disease to residents.

4-006.03A3a A health history screening for each staff person must be completed prior to assuming job responsibilities. A physical examination is at the discretion of the employer based on results of the health history screening.

4-006.03B Direct Care Staff Training: Each assisted-living facility must ensure direct care staff receive training in order to perform job responsibilities. The facility must provide for and maintain evidence of the following training;

4-006.03B1 Orientation: Orientation must be given within two weeks of employment to each direct care staff person of the facility and must include as a minimum, but is not limited to:

1. Resident's rights;
2. Resident service agreement;

3. Infection Control practices including handwashing techniques, personal hygiene and disposal of infectious material;
4. The facility's emergency procedures and information regarding advance directives;
5. Information on any physical and mental special care needs of the residents in the facility;
6. Information on abuse, neglect and misappropriation of money or property of a resident and reporting procedures; and
7. Disaster preparedness plans.

4-006.03B2 Ongoing Training: Ongoing training must be given to each direct care staff person and must consist of at least 12 hours per year on topics appropriate to the employee's job duties including meeting the physical and mental special care needs of residents in the facility. The record of such training must include topic of training, name of staff, date and length of training and name of person providing the training.

4-006.03C Staffing Resources: The assisted-living facility must ensure that staffing resources and training are sufficient to meet the level of supervision and assistance with activities of daily living, personal care and health maintenance activities that are required by the residents ~~as defined in the resident service agreements.~~

4-006.03C1 The facility must have at least one staff person on the premises at all times when necessary to meet the needs of the residents ~~as required in the resident service agreements.~~

4-006.03C2 Registered Nurse: Each assisted-living facility must provide for a registered nurse to review medication administration policies and procedures and to provide or oversee the training of medication aides at such facility. Training of medication aides must include, but is not limited to:

1. Facility procedures for storing, handling and providing medications;
2. Facility procedures for documentation of medications;
3. Facility procedures for documentation and reporting medication errors and adverse reactions;
4. Identification of person(s) responsible for direction and monitoring of medication aides; and
5. Other resident-specific training on providing medications in accordance with the limits and conditions of the Medication Aide Act.

4-006.03D General Staff: The assisted-living facility must provide staffing to ensure that services to residents are provided in a safe and timely manner to meet the resident needs ~~as required in the resident service agreements.~~

4-006.03E Employment Record: A current employment record must be maintained for each staff person. The record must contain at a minimum, information on orientation, in-services, credentialing and health history screening.

4-006.04 Resident Rights: The assisted-living facility must provide residents their rights in writing upon admission and for the duration of their stay. The operations of the facility must afford residents the opportunity to exercise their rights. At a minimum, the resident must have the right to:

1. Be treated with dignity and provided care by competent staff;
2. Be an equal partner in the development of the resident service agreement while retaining final decision making authority;
3. Be informed in advance about care and treatment and of any changes in care and treatment that may affect the resident's well-being;
4. Be informed in writing of the pricing structure and/or rates of all facility services;
5. Self direct activities, participate in decisions which incorporate independence, individuality, privacy and dignity and make decisions regarding care and treatment;
6. Choose a personal attending physician;
7. Voice complaints and grievances without discrimination or reprisal and have those complaints/grievances addressed;
8. Examine the results of the most recent survey of the facility conducted by representatives of the Department;
9. Refuse to perform services for the facility;
10. Refuse to participate in activities;
11. Privacy in written communication including sending and receiving mail;
12. Receive visitors as long as this does not infringe on the rights and safety of other residents in the facility;
13. Have access to the use of a telephone with auxiliary aides where calls can be made without being overheard;
14. Have the right to have a telephone in his/her room at the resident's expense;
15. Retain and use personal possessions, including furnishings, and clothing, as space permits, unless to do so would infringe upon the rights and safety of other residents;
16. Share a room with a person of his or her choice upon consent of that person;
17. Self-administer medications if it is safe to do so;
18. Be free of chemical and physical restraints;
19. Exercise his or her rights as a resident of the facility and as a citizen or resident of the United States;

20. Form and participate in an organized resident group that functions to address facility issues;
21. Review and receive a copy, within two working days, of their permanent record, as referred to in 175 NAC 4-006.12;
22. Be free from abuse, neglect, and misappropriation of their money and personal property; and
23. Be free from involuntary transfer or discharge without 30 days advance written notice except in situations where the transfer or discharge is necessary to protect the health and safety of the resident, other residents or staff.

4-006.04A Grievances: Each assisted-living facility must establish and implement a process for addressing all grievances received from residents, employees and others. The process includes, but is not limited to:

1. A procedure on submission of grievances available to residents, employees and others;
2. Documentation of efforts to address grievances received from residents, employees and others; and
3. The telephone number and address of the Department is readily available to residents, employees and others who wish to lodge complaints or grievances.

4-006.05 Consumer Satisfaction/Improvement: Each assisted-living facility must develop and implement a process to measure consumer satisfaction.

4-006.06 Resident Service Agreements: The assisted-living facility must evaluate each resident and must have a written service agreement negotiated with the resident and authorized representative, if applicable, to delineate the services to be provided to meet the needs identified in the evaluation.

4-006.06A The agreement must contain the following basic components:

1. Services to be provided by the assisted-living facility and from other sources, how often and when the services are provided and by whom, to meet the needs of individuals including those for special populations as specified in 175 NAC 4-006.11E. Such services must not exceed those which are defined in these regulations as shelter, food, activities of daily living, personal care, health maintenance, other supportive services or those which involve complex nursing interventions that are allowed by 175 NAC 4-006.07B;
2. Rights and responsibilities of the facility and of the resident;
3. Costs of services and terms of payment; and
4. Terms and conditions of continued residency.

4-006.06B The Resident Service Agreement must be reviewed and updated as the resident's needs change.

4-006.07 Admission and Retention Requirements: The assisted-living facility must ensure that the resident admission and retention practices conform with the following:

4-006.07A Eligibility Criteria: To be eligible for admission to an assisted-living facility, a person must be in need of or wish to have available shelter, food, assistance with or provision of personal care, activities of daily living, or health maintenance activities or supervision due to age, illness, or physical disability. The administrator has the discretion regarding admission or retention of residents subject to the Assisted-Living Facility Act and rules and regulations adopted and promulgated under the act.

4-006.07A1 The assisted-living facility must establish and implement procedures to request that:

1. On and after January 1, 2005, every person seeking admission to an assisted-living facility or the authorized representative of such person must, upon admission and annually thereafter, provide the facility with a list of drugs, devices, biologicals, and supplements being taken or being used by the person, including dosage, instructions for use, and reported use; and
2. Every person residing in an assisted-living facility on January 1, 2005, or the authorized representative of such person must, within 60 days after January 1, 2005, and annually thereafter, provide the facility with a list of drugs, devices, biologicals, and supplements being taken or being used by such person, including dosage, instructions for use, and reported use.

4-006.07B Restrictions on Eligibility Criteria: Residents requiring complex nursing interventions or whose conditions are not stable or predictable must not be admitted, readmitted, or retained by the assisted-living facility unless:

4-006.07B1 The resident, if the resident has sufficient mental ability to understand the situation and make a rational decision as to his or her needs or care and is not a minor, or the resident's authorized representative, and the resident's physician or the registered nurse agree that admission or retention of the resident is appropriate;

4-006.07B2 The resident or his or her authorized representative assumes responsibility for arranging for the resident's care through

appropriate private duty personnel, a licensed home health agency, or a licensed hospice agency; and

4-006.07B3 The resident's care does not compromise the assisted-living facility operations or create a danger to others in the facility.

4-006.07C Assisted-living facility staff while on duty must not provide complex nursing interventions for facility residents, except that a registered nurse assessment to determine the suitability of the resident or potential resident for admission to and/or continued residence in the assisted-living facility is permitted.

4-006.08 Activities: The assisted-living facility must plan and provide activities designed to meet the interests and promote the physical, mental, and psychosocial well-being of residents. Such activities must be on-going and all residents informed of the opportunity to participate. Information about activities must be posted and made available to residents.

4-006.09 Provision of Medication: Provision of medications may be provided by the assisted-living facility as requested by the resident and in accordance with licensed health care professional statutes and the statutes governing medication provision by unlicensed personnel.

4-006.09A Self-Administration of Medications: The following requirements apply in those instances when residents self-administer medications. Residents must:

1. Be at least 19 years of age;
2. Have cognitive capacity to make informed decision about taking medication;
3. Be physically able to take or apply a dose of medication;
4. Have capability and capacity to take or apply a dose of medication according to specific directions for prescribed medications or according to a recommended protocol for nonprescription medication; and
5. Have capability and capacity to observe and take appropriate action regarding any desired effects, side effects, interactions, and contraindications associated with a dose of medication.

4-006.09A1 In the event self-administration could potentially result in adverse health consequences, the facility must counsel the resident and the authorized representative, if applicable.

4-006.09A2 Medications may be stored in a resident's room if the resident keeps the room locked when not present; or the medications are stored in a secure location or locked container.

4-006.09A3 Residents who self-medicate must be encouraged to have their medications reviewed on a regular basis by a licensed health care professional.

4-006.09B Administration of Medication: The assisted-living facility must establish and implement policies and procedures to ensure residents receive medications only as legally prescribed by a medical practitioner, in accordance with the Five Rights and prevailing professional standards. The assisted-living facility must ensure that a registered nurse reviews and documents the review of medication administration policies and procedures at least annually.

4-006.09B1 Methods of Administration: When the facility is responsible for the administration or provision of medications, it must be accomplished by the following methods:

4-006.09B1a Self-Administration of Medication: The facility must allow residents of the facility to self-administer medications, with or without supervision, when assessment determines resident is capable of doing so.

4-006.09B1b Licensed Health Care Professional: When the facility utilizes licensed health care professionals for whom medication administration is included in the scope of practice, the facility must ensure the medications are properly administered in accordance with prevailing professional standards.

4-006.09B1c Provision of Medication by a Person Other Than a Licensed Health Care Professional: When the facility utilizes persons other than a licensed health care professional in the provision of medications, the facility must follow 172 NAC 95 Regulations Governing the Provision of Medications by Medication Aides and Other Unlicensed Persons and 172 NAC 96 Regulations Governing the Medication Aide Registry. Each facility must establish and implement policies and procedures:

1. To ensure that medication aides who provide medications are trained and have demonstrated the minimum competency standards specified in 172 NAC 95-004;
2. To ensure that competency assessments and/or courses for medication aides have been completed in accordance with the provisions of 172 96-005;
3. That specify how direction and monitoring will occur when the facility allows medication aides to perform the routine/acceptable activities authorized by 172 NAC 95-005 and as follows:

- a. Provide routine medication; and
 - b. Provision of medications by the following routes:
 - (1) Oral, which includes any medication given by mouth including sublingual (placing under the tongue) and buccal (placing between the cheek and gum) routes and oral sprays;
 - (2) Inhalation, which includes inhalers and nebulizers, including oxygen given by inhalation;
 - (3) Topical application of sprays, creams, ointments, and lotions, and transdermal patches; and
 - (4) Instillation by drops, ointments and sprays into the eyes, ears and nose.
4. That specify how direction and monitoring will occur when the assisted-living facility allows medication aides to perform the additional activities authorized by 172 NAC 95-009, which include, but are not limited to:
 - a. Provision of PRN medications;
 - b. Provision of medications by additional routes, including, but not limited to, gastrostomy tube, rectal, and vaginal; and/or
 - c. Participation in monitoring.
 5. That specify how competency determinations will be made for medication aides to perform routine and additional activities pertaining to medication provision;
 6. That specify how written direction will be provided for medication aides to perform the additional activities authorized by 172 NAC 95-009;
 7. That specify how records of medication provision by medication aides will be recorded and maintained; and
 8. That specify how medication errors made by medication aides and adverse reactions to medications will be reported. The reporting must be:
 - a. Made to the identified person responsible for direction and monitoring;
 - b. Made immediately upon discovery; and
 - c. Documented in resident medical records.

4-006.09C Handling of Medications: Each assisted-living facility must have procedures to ensure that residents receive medications as prescribed by a

medical practitioner including a method for verifying the identity of each resident.

4-006.09C1 Medications sent with a resident for temporary absences from the assisted-living facility must be in containers identified for the resident.

4-006.09C2 Medications must be sent with a resident upon discharge upon resident request.

4-006.09C3 Medications authorized for one resident must not be used for another resident or staff.

4-006.09C4 Any errors in administration or provision of prescribed medications must be reported to the resident's licensed health care professional in a timely manner upon discovery and a written report of the error prepared.

4-006.09C5 Any adverse reaction to a medication must be reported immediately upon discovery to the resident's licensed health care professional and recorded in the resident's record.

4-006.09D Medication Record: The assisted-living facility must maintain records in sufficient detail to assure that residents receive the medications authorized by a medical practitioner and maintain records to protect medications against theft and loss.

4-006.09D1 When facility staff administer or provide medication, each resident must have an individual medication administration record which includes:

1. The identification of the resident;
2. The name of the medication given;
3. The date, time, dosage, method of administration or provision for each medication, the identification of the person who administered or provided the medication and any refusal by the resident; and
4. The resident's medication allergies and sensitivities, if any.

4-006.09E Storage: All medications must be stored in locked areas and stored in accordance with the manufacturer's or dispensing pharmacist's instructions for temperature, light, humidity, or other storage instructions. Only authorized personnel who are designated by the facility responsible for administration or provision of medications must have access to the medications.

4-006.09E1 Medications for external use must be stored separately from other medications.

4-006.09F Disposal of Medications: Medications that are discontinued by the medical practitioner, those medications leftover at the time of death or those medications which are beyond their expiration date, must be destroyed in accordance with facility policy.

4-006.10 Food Service: The assisted-living facility must provide food service as specified in the resident service agreement and may include special diets if offered by the facility.

4-006.10A Menus: When the facility provides food service, meals and snacks must be appropriate to the resident's needs and preferences and must meet daily nutritional requirements.

4-006.10A1 Menus must be planned and written based on the Food Guide Pyramid or equivalent and modified to accommodate special diets and texture adaptations as needed by the resident and specified in the resident services agreement. Menus are made accessible to residents.

4-006.10A2 Menus should reflect the food preferences of the resident population to the extent possible.

4-006.10A3 Records of menus with food actually served must be maintained for a period not less than 14 days.

4-006.10B Nutritional Supervision: The facility must monitor residents for potential problems involving nutritional status as follows:

1. Weigh each resident at the time of admission and record the weight in the resident's record; and
2. Weigh each resident identified as having potential problems with nutritional status at least quarterly and record the weight in the resident's record. The facility must follow up to address or rectify any weight gains or losses that equal or exceed: 7.5% gain or loss in three months or 10% gain or loss in 6 months.

4-006.10C Food Safety: The assisted-living facility must store, prepare, protect, serve and dispose of food in a safe and sanitary manner and in accordance with the Food Code.

4-006.11 Resident Care: Each assisted-living facility must provide residents care and services in accordance with their established resident service agreements which maximize the residents' dignity, autonomy, privacy and independence.

4-006.11A Evidence that the facility is meeting each resident's needs for personal care, assistance with activities of daily living and health maintenance include the following outcomes for residents:

4-006.11A1 Physical well-being of the resident:

1. Clean and groomed hair, skin, teeth and nails;
2. Nourished and hydrated;
3. Free of pressure sores, skin breaks, chaps and chaffing;
4. Appropriately dressed for the season in clean clothes;
5. Protected from accident, injury and infection; and
6. Receives prompt emergency care for the following but not limited to: illnesses, injuries, and life threatening situations.

4-006.11A2 Behavioral/emotional well-being of the resident:

1. Opportunity to participate in age appropriate activities that are meaningful to the resident, if desired;
2. Sense of security and safety;
3. Reasonable degree of contentment; and
4. Feeling of stable and predictable environment.

4-006.11A3 In agreement that the resident:

1. Is free to go to bed at the time desired;
2. Is free to get up in the morning at the time desired;
3. Is free to have visitors;
4. Has privacy;
5. Is free to self direct his/her own care and treatment and change their plan at any time;
6. Is assisted to maintain a level of self-care and independence;
7. Is assisted as needed to have good oral hygiene;
8. Has been made as comfortable as possible by the facility;
9. Is free to make choices and assumes the risk of those choices;
10. Is fully informed of the services he/she can expect to be provided by the facility;
11. Is free of abuse, neglect and exploitation;
12. Is treated with dignity; and
13. Has the opportunity to participate in activities, if desired.

4-006.11B Health Maintenance Activities: All health maintenance activities must be performed in accordance with the Nurse Practice Act and the rules and regulations adopted and promulgated under the act.

4-006.11C Other Supportive Services: A assisted-living facility may provide other supportive services to assist residents. These services could include, but are not limited to: transportation, laundry, housekeeping, financial assistance/management,

behavioral management, case management, shopping, beauty/barber and spiritual services.

4-006.11D Special Populations Services: Each assisted-living facility that provides services to special populations such as, but not limited to, those individuals with disabilities, mental impairments, dementia, or other disorders must:

1. Evaluate each resident to identify the abilities and special needs;
2. Ensure the administrator and staff assigned to provide care are trained to meet the special needs of those residents. Such training must be done by a person(s) qualified by experience and knowledge in the area of special services being provided;
3. Prepare and implement each resident service agreement to address the special needs; and
4. Provide a physical environment that maintains the safety and dignity of residents and accommodates residents' special needs, such as physical limitations, and visual and cognitive impairments.

4-006.11E Requirements for Facilities or Special Care Units for Persons with Alzheimer's Disease, Dementia or a Related Disorder: Each assisted-living facility or special care unit that specializes in providing care for persons who have Alzheimer's disease, dementia or a related disorder must meet the following requirements:

1. Care and services must be provided in accordance with the resident service agreement and the stated mission and philosophy of the facility.
2. Prior to admission, the facility must inform the resident or authorized representative in writing of the facility's criteria for admission, discharge, transfer, resident conduct and responsibilities.
3. The facility or unit must maintain a sufficient number of direct care staff with the required training and skills necessary to meet the resident population's requirements for assistance or provision of personal care, activities of daily living, health maintenance activities, supervision and other supportive services. Such staff must remain awake, fully dressed and be available in the facility or unit at all times to provide supervision and care to the residents.
4. The administrator and direct care staff must be trained in:
 - a. The facility or unit's philosophy and approaches to providing care and supervision for persons with Alzheimer's disease;
 - b. The Alzheimer's disease process; and
 - c. The skills necessary to care for, and intervene and direct residents who are unable to perform activities of daily living, personal care, or health maintenance and who may exemplify behavior problems or wandering tendencies.

5. The facility must not admit or retain residents if any one of the following conditions exists, unless the criteria in 4-006.07B ~~is~~ are met:
 - a. The resident poses a danger to self or to others; or
 - b. The resident requires complex nursing interventions.

4-006.12 Record Keeping Requirements: Each assisted-living facility must maintain records and reports in such a manner to ensure accuracy.

4-006.12A Resident Records: Each assisted-living facility must ensure a permanent record of all assisted-living services is established for each resident. The record must be established within five working days of admission.

4-006.12A1 Content: Entries in the permanent resident record must be dated, legible and ~~indelible~~ ~~indelibly~~ ~~verified~~. The author of each entry must be identified and authenticated. Authentication must include signature, written initials or computer entry. Resident records must contain information that includes, but is not limited to:

1. Date of admission;
2. Name of resident;
3. Gender and date of birth;
4. Physical description or photo of resident;
4. Resident Services Agreement;
5. Licensed practitioner's orders where applicable;
6. Significant medical conditions;
7. Medications and any special diet;
8. Allergies;
9. Any unusual event or occurrence;
10. Person to contact in emergency situations;
11. Designated physician or registered nurse;
12. Advance directives if available; ~~and~~
13. Monthly documentation of assistance with activities of daily living, personal care, health maintenance activities or supervision, if such is required or requested by the resident; and
15. Discharge or transfer information.

4-006.12A2 Retention: Each assisted-living facility must maintain and preserve all resident records in original, microfilm, electronic or other similar form, for a period of at least two years from date of resident's discharge. If a resident is transferred to another licensed health care facility or service, a copy of the record or abstract must be sent with the resident. When an assisted-living facility ceases operation, all resident records must be transferred to the licensed health care facility or health care service to which the resident is transferred. All other resident records that have not reached the required time for destruction must be stored to assure confidentiality and the Department must be notified of the address where stored.

4-006.12A3 Confidentiality: The facility must keep such records confidential and available only for use by authorized persons or as otherwise permitted by law. Records must be available for examination by authorized representatives of the Department.

4-006.12A4 Access: Resident information and/records will be released only with consent of the resident or authorized representative, if applicable, or as permitted by law.

4-006.12A5 Destruction: Resident records may be destroyed only when they are in excess of retention requirements specified in 175 NAC 4-006.12A2. In order to ensure the resident's right of confidentiality, resident records must be destroyed or disposed of by shredding, incineration, electronic deletion or another equally effective protective measure.

4-006.13 Environmental Services: An assisted-living facility must provide a safe, clean, comfortable and homelike environment, allowing residents to use personal belongings to the extent possible. Every detached building on the same premises used for care and treatment must comply with these regulations.

4-006.13A Housekeeping and Maintenance: The assisted-living facility must provide the necessary housekeeping and maintenance to protect the health and safety of residents.

4-006.13A1 The facility's buildings and grounds must be kept clean, safe and in good repair.

4-006.13A2 The facility must take into account resident habits and lifestyle preferences when housekeeping services are provided in the resident bedrooms/living area.

4-006.13A3 All garbage and rubbish must be disposed of in such a manner as to prevent the attraction of rodents, flies, and all other insects and vermin. Garbage must be disposed in such a manner as to minimize the transmission of infectious diseases and minimize odor.

4-006.13A4 The facility must maintain adequate lighting, environmental temperatures and sound levels in all areas that are conducive to the care provided.

4-006.13A5 The facility must maintain and equip the premises to prevent the entrance, harborage, or breeding of rodents, flies, and all other insects and vermin.

4-006.13B Equipment, Fixtures, Furnishings: The assisted-living facility must provide and maintain all facility owned equipment, fixtures, and furnishings clean, safe and in good repair.

4-006.13B1 Any specialized assistive devices or equipment needed to meet resident needs must be provided as specified in each resident service agreement.

4-006.13B2 Common areas and resident sleeping areas must be furnished with beds, chairs, sofas, tables, and storage items that are comfortable and reflective of resident needs and preferences. Furnishings may be provided by either the resident or the facility.

4-006.13B3 A process must be established and implemented for routine and preventative maintenance of facility-owned equipment and furnishings to ensure that such equipment and furnishings are safe and function to meet the intended use.

4-006.13C Laundry Services: Bed and bath linens must be provided as specified in the resident service agreement by either the resident or the facility. The resident service agreement must also address if the facility or the resident will be responsible for laundering of resident personal items.

4-006.13C1 When bed and bath linens are provided by the facility, the facility must maintain an adequate supply of clean linens in good repair.

4-006.13C2 The facility must establish and implement procedures for the storage and handling of soiled and clean linens.

4-006.13C3 When the facility launders bed and bath linens and items for more than one resident together, water temperatures to laundry equipment must exceed 140 degrees Fahrenheit or the laundry may be appropriately sanitized or disinfected by another acceptable method in accordance with manufacturer's instructions.

4-006.13D Pets: The assisted-living facility must assure any facility owned pet does not negatively affect residents. The assisted-living facility must have policies and procedures regarding pets that include:

1. An annual examination by a licensed veterinarian;
2. Vaccinations as recommended by the licensed veterinarian that include, at a minimum, current vaccination for rabies for dogs, cats and ferrets;
3. Provision of pet care necessary to prevent the acquisition and spread of fleas, ticks and other parasites; and
4. Responsibility for care or supervision of the pet by facility staff.

4-006.13E Environmental Safety: The assisted-living facility is responsible for maintaining the facility in a manner that minimizes accidents.

4-006.13E1 The facility must maintain the environment to protect the health and safety of residents by keeping surfaces smooth and free of sharp edges, mold or dirt; keeping floors free of objects and slippery or uneven surfaces and keeping the environment free of other conditions which may pose a potential risk.

4-006.13E2 The facility must maintain all doors, stairways, passageways, aisles or other means of exit in a manner that provides safe and adequate access for care.

4-006.13E3 The facility must provide and maintain water for bathing and handwashing at safe and comfortable temperatures to protect residents from potential for burns or scalds. The water temperature at resident bathing fixtures must not exceed 115 degrees Fahrenheit, except in existing and new facilities where the resident is capable of managing water temperatures.

4-006.13E4 The facility must ensure hazardous/poisonous materials utilized by the facility are properly handled and stored to prevent accidental ingestion, inhalation, or consumption of the hazardous/poisonous materials by residents.

4-006.13E5 The facility must restrict access to mechanical equipment which may pose a danger to residents.

4-006.13F Disaster Preparedness and Management: The assisted-living facility must establish and implement disaster preparedness plans and procedures to ensure that resident care, safety, and well-being are provided and maintained during and following instances of natural (tornado, flood, etc.) or other disasters, disease outbreaks, or other similar situations. Such plans and procedures must address and delineate:

1. How the facility will maintain the proper identification of each resident to ensure that care coincides with the resident's needs;

2. How the facility will move residents to points of safety or provide other means of protection when all or part of the building is damaged or uninhabitable due to natural or other disaster. This must include:

a. Specification of the number and type of transportation vehicles that are to be used;

b. The method by which such vehicles will be accessed, whether owned and operated by the facility or under contract with another entity. If transportation is to be provided by a contracted entity, the name, address, telephone number, and the type of vehicle to be used must be included in the disaster preparedness plan; and

- c. The timeline for transportation of residents to points of safety;
- 3. How the facility will protect residents during the threat of exposure to the ingestion, absorption, or inhalation of hazardous substances or materials;
- 4. How the facility will provide food, water, medicine, medical supplies, and other necessary items for care in the event of a natural or other disaster; and
- 5. How the facility will provide for the comfort, safety, and well-being of residents in the event of 24 or more consecutive hours of:
 - a. Electrical or gas outage;
 - b. Heating, cooling, or sewer system failure; or
 - c. Loss or contamination of water supply.

~~4-006.13F1 The facility must establish plans to move residents to points of safety or provide other means of protection in case of fire, tornado, or other natural disasters or the threat of ingestion, absorption or inhalation of hazardous materials.~~

~~4-006.13F2 The facility must ensure that food, water, medicine and medical supplies, and other necessary items for care and treatment are available and obtainable from alternate sources.~~

~~4-006.13F3 The facility must ensure that plans are in place to move and house residents in points of safety when the building or a portion of the building is damaged to the point it is uninhabitable. Such damage may be due to fire, tornadoes or other disasters.~~

~~4-006.13F4 The facility must ensure that plans are in place to provide for the comfort, safety, and well being of residents in the event of electrical or gas outage, heating, cooling, or sewage systems failure, or loss or contamination of water supply.~~

4-007 PHYSICAL PLANT STANDARDS: Assisted-living facilities must be designed, constructed and maintained in a manner that is safe, clean, and functional for the type of care and treatment to be provided. The physical plant standards for assisted-living facilities, which include support services, care and treatment areas, construction standards, building systems and waivers, are set forth below.

4-007.01 Support Areas: The assisted-living facility may share the following support service areas among detached structures, care and treatment areas, or with other licensed facilities.

4-007.01A Dietary: If food preparation is provided on site, the assisted-living facility must dedicate space and equipment for the preparation of meals. Food service

physical environment and equipment must comply with the Food Code. Locations providing food services for 16 or fewer residents, or used only for training or activity purposes, must comply with the Food Code, except that:

1. Instead of a three compartment food preparation and handwashing sink, a two-compartment sink may be used for clean-up, dishwashing, and handwashing;
2. Instead of a final rinse cycle temperature of not less than 160 degrees Fahrenheit, an automatic dishwasher may have a final rinse cycle temperature not less than 150 degrees Fahrenheit;
3. Instead of storage space for food items and cooking and serving utensils no less than six inches above the floor, such space may be no less than four inches above the floor; and
4. Service sink and indirect waste plumbing connections are optional.

4-007.01B Laundry: If the assisted-living facility provides laundry services, such service may be provided by contract or on-site by the facility.

4-007.01B1 Contract: If contractual services are used, the facility must provide and utilize areas for soiled linen awaiting pickup and separate areas for storage and distribution of clean linen.

4-007.01B2 On-site: If on-site services are provided, the facility must have areas dedicated to laundry.

4-007.01B2a If personal laundry areas are provided, the areas must be equipped with a washer and dryer for use by residents. In new construction, the facility must provide a conveniently located sink for soaking and hand washing of laundry.

4-007.01B2b When the facility launders items for more than one resident together, the bulk laundry area must be divided into separate soiled (sort and washer areas) and clean (drying, folding and mending areas) rooms. In new construction, the facility must provide a conveniently located sink for soaking and hand washing of laundry and a housekeeping room.

4-007.01C Waste Processing: The assisted-living facility must provide areas to collect, contain, process, and dispose of waste produced within the facility in such a manner as to prevent the attraction of rodents, flies, and all other insects and vermin, and to minimize the transmission of infectious diseases.

4-007.01D Cosmetology and Barber: When provided, cosmetology and barber services must be in conformance with the Nebraska Cosmetology Act, Neb. Rev.

Stat. §§ 71-340 to 71-3,238, and the Barber Act, Neb. Rev. Stat. §§ 71-201 to 71-248.

4-007.01E Pharmaceutical: When provided, pharmacy services must be in conformance with Neb. Rev. Stat. §§ 71-1,142 to 71-1,147.61.

4-007.02 Care and Treatment Areas: The assisted-living facility must not share the following care and treatment areas among detached structures or with other facilities operated by another licensee:

4-007.02A Equipment and Supplies: The facility must have space for equipment and supplies required for the care of residents as specified in the resident service agreements.

4-007.02B Alzheimer's, Dementia, and Related Disorders: In a facility or a distinct part of a facility that provides services to residents with Alzheimer's, dementia, and related disorders there must be personalized resident bedrooms, private and group activity areas, separate dining areas, features that support resident orientation to their surroundings, secured storage for equipment and supplies, call and security systems, and an area for medication storage and distribution.

4-007.02C Outpatient Areas: Areas for the care and treatment of residents not residing in the facility must:

1. Not interfere with residents living in the facility; and
2. Have a toilet room that is easily accessible from all program areas.

4-007.03 Construction Standards: All assisted-living facilities must be designed, constructed, and maintained in a manner that is safe, clean, and functional for the type of care and treatment to be provided. The standards for such facilities are set forth below.

4-007.03A Codes and Guidelines

4-007.03A1 New Construction: New construction must comply with the following codes and guidelines to provide a safe and accessible environment that is conducive to the care and treatment to be provided:

1. Building: Building Construction Act, Neb. Rev. Stat. §§ 71-6401 to 71-6407;
2. Plumbing: Plumbing Ordinance or Code, Neb. Rev. Stat. § 18-1915;
3. Electrical: State Electrical Act, Neb. Rev. Stat. §§ 81-2101 to 81-2143;
4. Elevators: Nebraska Elevator Code, Neb. Rev. Stat. § 48-418.12 and Department of Labor Regulations, 230 NAC 1;
5. Boiler: Boiler Inspection Act, Neb. Rev. Stat. §§ 48-719 to 48-743;

6. Accessibility: Nebraska Accessibility Requirements, State Fire Marshal Regulations, 156 NAC 1 to 12; and
7. Energy: Nebraska Energy Code, Neb. Rev. Stat. §§ 81-1608 to 81-1626, for construction initiated on or after July 1, 2005.

4-007.03A2 All Facilities: All facilities must comply with the following applicable codes and standards to provide a safe environment.

1. Fire Codes: Nebraska State Fire Code Regulations State Fire Marshal, 153 NAC 1; and
2. Food Code: Neb. Rev. Stat. § 81-2,244.01, as published by the Nebraska Department of Agriculture, except for compliance and enforcement provisions.

4-007.03A3 Existing and New Facilities: Existing and new facilities must comply with the physical plant standards contained in 175 NAC 4-007. The facility must maintain all building materials and structural components so that total loads imposed do not stress materials and components more than one and one-half times the working stresses allowed in the building code for new buildings of similar structure, purpose or location.

4-007.03B Conflicts in Standards: In situations where the referenced codes and guidelines conflict with these regulations, the adopted rules and regulations of the Department and the Nebraska State Fire Marshal will prevail.

4-007.03C Interpretations: Floor area means dimension, sizes, and quantities; noted herein must be determined by rounding fractions to the nearest whole number.

4-007.03D Floor Area: Floor area means space with ceilings at least seven feet in height and does not include areas such as enclosed storage, toilets and bathing rooms, corridors and halls. The space beyond the first two feet of vestibules and alcoves less than five feet in width must not be included in the required floor area. In rooms with sloped ceilings, at least half of the ceiling must be at least seven feet in height with areas less than five feet in height, not included in the required floor area.

4-007.03E Dining Areas: Dining areas for residents must have an outside wall with windows for natural light and ventilation.

4-007.03E1 Dining areas must be furnished with tables and chairs that accommodate or conform to resident's needs.

4-007.03E2 Dining areas must have a floor area of 15 square feet per resident in existing facilities and 20 square feet per resident in new construction.

4-007.03E3 Dining areas must allow for group dining at the same time in either separate dining areas or a single dining area, or dining in two shifts, or dining during open dining hours.

4-007.03E4 Dining areas must not be used for sleeping, offices or corridors.

4-007.03F Activity Areas: An assisted-living facility must have space for resident socialization and leisure time activities.

4-007.03F1 Activity areas must have furnishings to accommodate group and individual activities.

4-007.03F2 Activity areas must not be used for sleeping, offices, or as a corridor.

4-007.03G Bathing Rooms: An assisted-living facility must provide a bathing room consisting of a tub and/or shower adjacent to each bedroom or provide a central bathing room. Tubs and showers regardless of location must be equipped with hand grips or other assistive devices as needed or desired by the bathing resident.

4-007.03G1 In new construction where a central bathing room is provided, the room must open off the corridor and contain a toilet and sink or have an adjoining toilet room. A bathing room must not directly open into a dining/kitchen area.

4-007.03G2 Bathing Fixtures: The facility must have the following minimum number of bathing fixtures:

1. One fixture per 16 licensed beds in existing facilities; and
2. One fixture per eight licensed beds in new facilities and new construction.

4-007.03H Toilet Rooms: The assisted-living facility must provide toilet rooms with handwashing sinks for resident use.

4-007.03H1 Facilities must have a toilet and sink adjoining each bedroom or shared toilet rooms may be provided as follows:

1. One toilet fixture per six licensed beds in existing facilities;
2. One toilet fixture per four licensed beds in new facilities; and
3. One toilet room adjoining each resident's bedroom in new construction.

4-007.03I Resident Bedrooms: The assisted-living facility must provide resident bedrooms which allow for sleeping, afford privacy, provide access to furniture and belongings, and accommodate the care and treatment provided to the resident.

4-007.0311 Resident Bedrooms:

1. Must not be located in any garage, storage area, shed or similar detached buildings;
2. Must be a single room located within an apartment, dwelling, or dormitory-like structure;
3. Must not be accessed through a bathroom, food preparation area, laundry or another bedroom;
4. Must be located on an outside wall with an operable window and a minimum size of six square feet per resident. Such window must be provided an unobstructed view of at least ten feet;
5. Must contain at least 45 cubic feet of enclosed storage volume per resident in dressers, closet, or wardrobes; and
6. Which contain multiple beds must allow for an accessible arrangement of furniture, which provides a minimum of 3 feet between beds.

4-007.0312 Existing or New Facility: Resident bedrooms in existing and new facilities must have at least the following floor areas:

1. Floor areas for single resident rooms must be 80 square feet;
2. Floor areas for multiple bed resident rooms must be 60 square feet per occupant with a maximum of four beds; or
3. Floor area for apartments or dwellings must have 120 square feet for one resident plus 100 square feet for each additional resident.

4-007.0313 New Construction: Resident bedrooms in new construction must have at least the following floor areas:

1. Floor areas for single resident rooms must be 100 square feet;
2. Floor areas for multiple bed resident rooms must be 80 square feet per bed with a maximum of 2 beds; or
3. Floor area for apartments or dwellings must have 150 square feet for one resident plus 110 square feet for each additional resident.

4-007.03J Examination Rooms: If provided, each examination room must have a minimum floor area of 80 square feet and a minimum of 3 feet clear dimension around 3 sides of the examination table or chair. A handwashing sink equipped with towel and soap dispenser must be in the room.

4-007.03K Areas Used by All Residents: Existing licensed facilities, new facilities and new construction must comply with the following:

1. The facility corridors and doors must be wide enough to allow passage and be equipped as needed by the residents with safety and assistive devices to minimize resident injury;

2. All stairways and ramps must have handrails;
3. Doors to resident rooms must provide privacy yet not create seclusion or prohibit staff access for routine or emergency care;
4. The facility must provide space for administrative offices, and storage space for such things as records, supplies and equipment; and
5. The facility must provide an outdoor area for resident usage. It must be equipped and situated to allow for resident safety.

4-007.04 Building Systems: Assisted-living facilities must have building systems that are designed, installed and operated in such a manner as to provide for the safety, comfort, and well being of the resident.

4-007.04A Water and Sewer Systems: The assisted-living facility must have and maintain an accessible, adequate, safe and potable supply of water. Where an authorized public water supply of satisfactory quantity, quality, and pressure is available, the facility must be connected to it and its supply used exclusively.

4-007.04A1 The collection, treatment, storage, and distribution potable water system of a facility that regularly services 25 or more individuals must be constructed, maintained, and operated in accordance with all provisions of the Nebraska Safe Drinking Water Act and Title 179 Regulations Governing Public Water Systems.

4-007.04A2 The collection, treatment, storage and distribution potable water system of a facility that serves less than 25 individuals on a regular basis must be maintained and operated as if it were a public water system in accordance with the Regulations Governing Public Water Systems, 179 NAC 2-002, 3 and 4. The facilities must report to the Department the result of all tests that indicate the water is in violation of the standards set out in 179 NAC 2-002 or 3. The facilities must construct all water wells in accordance with 178 NAC 12, Water Well Construction, Pump Installation, and Water Well Decommissioning Standards ~~Rules and Regulations Governing a Private Water Well.~~

4-007.04A3 The water distribution system must be protected with anti-siphon devices, and air-gaps to prevent potable water system and equipment contamination.

4-007.04A4 The facility must maintain a sanitary and functioning sewage system.

4-007.04B Hot Water System: The hot water system must have the capacity to provide continuous hot water temperatures as required by these regulations.

4-007.04C Heating and Cooling Systems: The assisted-living facility must provide a heating and air conditioning system for the comfort of the resident and capable of producing temperatures in resident care and treatment areas as follows:

4-007.04C1 In existing and new facilities the systems must be capable of producing a temperature of at least 70 degrees Fahrenheit during heating conditions and a temperature that does not exceed 85 degrees Fahrenheit during cooling conditions.

4-007.04C2 In new construction the systems must be capable of producing a temperature of at least 75 degrees Fahrenheit during heating conditions and a temperature that does not exceed 80 degrees Fahrenheit during cooling conditions.

4-007.04C3 In new construction the central air distribution and return systems must be equipped with filters.

4-007.04C4 Airflow must move from clean to soiled locations. In new construction, air movement must be designed to reduce the potential of contamination of clean areas.

4-007.04D Ventilation System: All assisted-living facilities must provide exhaust and clean air to prevent the concentrations of contaminants which impair health or cause discomfort to residents and employees.

4-007.04D1 Existing facilities must have adequate ventilation.

4-007.04D2 New construction and new facilities must provide mechanical exhaust ventilation for windowless toilets, baths, laundry rooms, housekeeping rooms, kitchens, and similar rooms at five air changes per hour.

4-007.04E Electrical System: The assisted-living facility must have an electrical system that has sufficient capacity to maintain the care and treatment services that are provided and that properly grounds care and treatment areas.

4-007.04E1 New construction and new facilities must have ground fault circuit interrupters protected outlets in wet areas and within 6 feet of sinks.

4-007.04E2 All facilities must provide the minimum average illumination levels as follows:

1. General purpose areas 5 foot candles;
2. General corridors and resident living areas 10 foot candles;
3. Personal care and dining areas 20 foot candles;
4. Reading and activity areas 30 foot candles;
5. Food preparation areas 40 foot candles;
6. Hazardous work surfaces 50 foot candles;
7. Examination task lighting 100 foot candles;
and
8. Reduced night lighting in corridors, resident toilet and bathing rooms.

4-007.04F Call Systems: Call system(s) must be operable from resident rooms, care and treatment locations, and all toilet and bathing areas used by residents. The system must transmit a receivable (visual, audible, tactile, or other) signal to on-duty staff which readily notifies and directs the staff to the location where the call was activated.

4-007.04F1 New facilities and new construction with a capacity of more than 16 residents must be equipped with a call system or other call devices which may be worn.

4-007.04F2 Wireless call systems must have dedicated devices in all resident occupied central toilet and bathing locations to promptly summon staff to the location where the call was activated.

4-007.04F3 Existing facilities without a call system are not required to provide a call system.

4-007.05 Waivers: The Department may waive any provision of 175 NAC 4 relating to construction or physical plant requirements of an assisted-living facility upon proof by the licensee satisfactory to the Department (1) that the waiver would not unduly jeopardize the health, safety, or welfare of the persons residing in the facility, (2) that the provision would create an unreasonable hardship for the facility, and (3) that the waiver would not cause the State of Nebraska to fail to comply with any applicable requirements of Medicare or Medicaid so as to make the state ineligible for the receipt of all funds to which it might otherwise be entitled.

4-007.05A Unreasonable Hardship: In evaluating the issue of unreasonable hardship, the Department will consider the following:

1. The estimated cost of the modification or installation;
2. The extent and duration of the disruption of the normal use of areas used by persons residing in the assisted-living facility resulting from construction work;
3. The estimated period over which the cost would be recovered through reduced insurance premiums and increase reimbursement related to costs;
4. The availability of financing; and
5. The remaining useful life of the building.

4-007.05B Waiver Terms and Conditions: Any waiver may be granted under the terms and conditions and for such period of time as are applicable and appropriate to the waiver. Terms and conditions and period of waiver include but are not limited to:

1. Waivers that are granted to meet the special needs of a resident remain in effect as long as required by the resident;

2. Waivers may be granted for a period of time that ends at the time the conditions of approval no longer exist;
3. Waivers may be granted to permit an assisted-living facility time to come into compliance with the physical plan standards for a period of one year. Upon submission of proof of ongoing progress, the waiver may be continued for an additional year; and
4. An applicant or licensee must submit a request for waiver of any construction or physical plant requirements set forth in 175 NAC 4. An applicant for a waiver may construct a request for waiver form or obtain a form from the Department.

4-007.05C Denial of Waiver: If the Department denies an assisted-living facility's request for waiver, the facility may request an administrative hearing as provided in the Administrative Procedure Act (APA) and the Department's rules and regulations adopted and promulgated under the APA.

4-008 DENIAL, REFUSAL TO RENEW, OR DISCIPLINARY ACTION

4-008.01 Grounds for Denial, Refusal to Renew, or Disciplinary Action

4-008.01A The Department may deny or refuse to renew an assisted-living facility license for failure to meet the requirements for licensure, including:

1. Failing an inspection specified in 175 NAC 4-005;
2. Having had a license revoked within the two-year period preceding an application; or
3. Any of the grounds specified in 175 NAC 4-008.01B.

4-008.01B The Department may take disciplinary action against an assisted-living facility license for any of the following grounds:

1. Violation of any of the provisions of the Assisted-Living Facility Act, the Health Care Facility Licensure Act or 175 NAC 4;
2. Committing, permitting, aiding, or abetting the commission of any unlawful act;
3. Conduct or practices detrimental to the health or safety of an assisted-living resident or employee;
4. A report from an accreditation body or public agency sanctioning, modifying, terminating, or withdrawing the accreditation or certification of the assisted-living facility;
5. Failure to allow an agent or employee of the Department of Health and Human Services, the Department of Health and Human Services Finance and Support, or the Department of Health and Human Services Regulation and Licensure access to the assisted-living facility for the purposes of inspection, investigation, or other information collection activities necessary to carry out the duties of the departments;

6. Discrimination or retaliation against an assisted-living facility resident or employee who has submitted a complaint or information to the Department of Health and Human Services, the Department of Health and Human Services Finance and Support, or the Department of Health and Human Services Regulation and Licensure;
7. Discrimination or retaliation against an assisted-living facility resident or employee who has presented a grievance or information to the office of the state long-term care ombudsman;
8. Failure to allow a state long-term care ombudsman or an ombudsman advocate access to the assisted-living facility for the purposes of investigation necessary to carry out the duties of the office of the state long-term care ombudsman as specified in 15 NAC 3;
9. Violation of the Emergency Box Drug Act;
10. Failure to file a report of payment or action taken due to a liability claim or an alleged violation, as required by Neb. Rev. Stat. § 71-168.02;
11. Violation of the Medication Aide Act; or
12. Failure to file a report of suspected abuse or neglect as required by Neb. Rev. Stat. §§ 28-372 and 28-711.

4-008.02 Procedures for Denial, Refusal to Renew, or Disciplinary Action

4-008.02A If the Department determines to deny, refuse renewal of, or take disciplinary action against a license, the Department will send a notice to the applicant or licensee, by certified mail to the last address shown on its records. The notice will state the determination, including a specific description of the nature of the violation and the statute or regulation violated, and the type of disciplinary action pending.

4-008.02B The denial, refusal to renew, or disciplinary action will become final 15 days after the mailing of the notice unless the applicant or licensee, within the 15-day period, makes a written request to the Director for an informal conference or an administrative hearing.

4-008.02C Informal Conference

4-008.02C1 At the request of the applicant or licensee, the Department will hold an informal conference within 30 days of the receipt of the request. The conference must be held in person or by other means, at the request of the applicant or licensee.

If the pending action is based on an inspection, the Department's representative at the conference will not be the individual who did the inspection.

4-008.02C2 Within 20 working days of the conference, the Department representative will state in writing the specific reasons for affirming, modifying, or dismissing the notice. The representative will send a copy of the statement

to the applicant or licensee by certified mail to the last address shown in the Department's records and a copy to the Director.

4-008.02C3 If the applicant or licensee successfully demonstrates at the informal conference that the deficiencies should not have been cited in the notice, the Department will remove the deficiencies from the notice and rescind any sanction imposed solely as a result of those cited deficiencies.

4-008.02C4 If the applicant or licensee contests the affirmed or modified notice, the applicant or licensee must submit a request for hearing in writing to the Director within five working days after receipt of the statement.

4-008.02D Administrative Hearing

4-008.02D1 When an applicant or a licensee contests the notice and request a hearing, the Department will hold a hearing in accordance with the Administrative Procedure Act (APA) and the Department's rules and regulations adopted and promulgated under the APA. Either party may subpoena witnesses, who must be allowed fees at the rate prescribed by Neb. Rev. Stat. §§ 33-139 and 33-139.01.

4-008.02D2 On the basis of evidence presented at the hearing, the Director will affirm, modify, or set aside the determination. The Director's decision will:

1. Be in writing;
2. Be sent by registered or certified mail to the applicant or licensee; and
3. Become final 30 days after mailing unless the applicant or licensee, within the 30-day period, appeals the decision.

4-008.02D3 An applicant or a licensee's appeal of the Director's decision must be in accordance with the APA .

4-008.03 Types of Disciplinary Action

4-008.03A The Department may impose any one or a combination of the following types of disciplinary action against the license:

1. A fine not to exceed \$10,000 per violation;
2. A prohibition on admissions or re-admissions, a limitation on enrollment, or a prohibition or limitation on the provision of care or treatment;
3. A period of probation not to exceed two years during which the assisted-living facility may continue to operate under terms and conditions fixed by the order of probation;
4. A period of suspension not to exceed three years during which the assisted-living facility may not operate; and

5. Revocation, which is a permanent termination of the license. The licensee may not apply for a license for a minimum of two years after the effective date of the revocation.

4-008.03B In determining the type of disciplinary action to impose, the Department will consider:

1. The gravity of the violation, including the probability that death or serious physical or mental harm will result;
2. The severity of the actual or potential harm;
3. The extent to which the provisions of applicable statutes, rules, and regulations were violated;
4. The reasonableness of the diligence exercised by the assisted-living facility in identifying or correcting the violation;
5. Any previous violations committed by the assisted-living facility; and
6. The financial benefit to the assisted-living facility of committing or continuing the violation.

4-008.03C If the licensee fails to correct a violation or to comply with a particular type of disciplinary action, the Department may take additional disciplinary action as described in 175 NAC 4-008.03A.

4-008.03D Temporary Suspension or Temporary Limitation: If the Department determines that residents of the assisted-living facility are in imminent danger of death or serious physical harm, the Director may:

1. Temporarily suspend or temporarily limit the assisted-living facility license, effective when the order is served upon the assisted-living facility. If the licensee is not involved in the daily operation of the assisted-living facility, the Department will mail a copy of the order to the licensee, or if the licensee is a corporation, to the corporation's registered agent;
2. Order the immediate removal of residents; or
3. Order the temporary closure of the assisted-living facility pending further action by the Department.

The Department will simultaneously institute proceedings for revocation, suspension, or limitation of the license, and will conduct an administrative hearing no later than ten days after the date of the temporary suspension or temporary limitation.

4-008.03D1 The Department will conduct the hearing in accordance with the Administrative Procedure Act (APA) and the Department's rules and regulations adopted and promulgated under the APA. Either party may subpoena witnesses, who must be allowed fees at the rate prescribed by Neb. Rev. Stat. §§ 33-139 and 33-139.01.

4-008.03D2 If the licensee makes a written request for continuance of the hearing, the Department will grant a continuance, which may not exceed 30 days.

4-008.03D3 On the basis of evidence presented at the hearing, the Director will:

1. Order the revocation, suspension, or limitation of the license; or
2. Set aside the temporary suspension or temporary limitation.

If the Director does not reach a decision within 90 days of the date of the temporary suspension or temporary limitation, the temporary suspension or temporary limitation will expire.

4-008.03D4 Any appeal of the Department's decision after hearing must be in accordance with the APA.

4-008.04 Reinstatement from Disciplinary Probation or Suspension, and Re-Licensure After Revocation

4-008.04A Reinstatement at the End of Probation or Suspension

4-008.04A1 Reinstatement at the End of Probation: A license may be reinstated at the end of probation after the successful completion of an inspection, if the Department determines an inspection is warranted.

4-008.04A2 Reinstatement at the End of Suspension: A license may be reinstated at the end of suspension following:

1. Submission of an application to the Department for renewal that conforms to the requirements of 175 NAC 4-003.02;
2. Payment of the renewal fee as specified in 175 NAC 4-004.09; and
3. Successful completion of an inspection.

The Department will reinstate the license when it finds, based on an inspection as provided for in 175 NAC 4-005, that the assisted-living facility is in compliance with the operation, care, treatment, and physical plant requirements of 175 NAC 4-006 and 4-007.

4-008.04B Reinstatement Prior to Completion of Probation or Suspension

4-008.04B1 Reinstatement Prior to the Completion of Probation: A licensee may request reinstatement prior to the completion of probation and must meet the following conditions:

1. Submit a petition to the Department stating:

- a. The reasons why the license should be reinstated prior to the probation completion date; and
 - b. The corrective action taken to prevent recurrence of the violation(s) that served as the basis of the probation; and
2. Successfully complete any inspection that the Department determines necessary.

4-008.04B2 Reinstatement Prior to Completion of Suspension: A licensee may request reinstatement prior to the completion of suspension and must meet the following conditions:

1. Submit a petition to the Department stating:
 - a. The reasons why the license should be reinstated prior to the suspension completion date; and
 - b. The corrective action taken to prevent recurrence of the violation(s) that served as the basis of the suspension;
2. Submit a written renewal application to the Department as specified in 175 NAC 4-003.02;
3. Pay the renewal fee as specified in 175 NAC 4-004; and
4. Successfully complete an inspection.

4-008.04B3 The Director will consider the petition submitted and the results of any inspection or investigation conducted by the Department and:

1. Grant full reinstatement of the license;
2. Modify the probation or suspension; or
3. Deny the petition for reinstatement.

4-008.04B4 The Director's decision is final 30 days after mailing the decision to the licensee unless the licensee requests a hearing within the 30-day period. The requested hearing will be held according to rules and regulations of the Department for administrative hearings in contested cases.

4-008.04C Re-Licensure After Revocation: An assisted-living facility license that has been revoked is not eligible for re-licensure until two years after the date of revocation.

4-008.04C1 An assisted-living facility seeking re-licensure must apply for an initial license and meet the requirements for initial licensure in 175 NAC 4-003.01.

4-008.04C2 The Department will process the application for re-licensure in the same manner as specified in 175 NAC 4-003.01.