

NEBRASKA DEPARTMENT OF HEALTH AND HUMAN SERVICES
NOTICE OF PUBLIC HEARING

November 30, 2020
10:00 a.m. Central Time
Nebraska State Office Building – Lower Level A
301 Centennial Mall South, Lincoln, Nebraska
Phone call information: 888-820-1398; Participant code: 3213662#

The purpose of this hearing is to receive comments on proposed changes to Title 172, Chapter 105 of the Nebraska Administrative Code (NAC) – *Paid Dining Assistants*. The proposed changes remove all duplicative statutory language, regulatory language, and unnecessary language from the regulations. Additional changes include: updating definitions; clarifying language regarding course, curriculum, and training requirements; changing nursing assistants to nurse aides to reflect the terminology of 172 NAC 108; clarifying and updating the Paid Dining Assistant Registry section; and restructuring and reformatting the chapter.

Authority for these regulations is found in Neb. Rev. Stat. § 81-3117(7).

Due to the current public health crisis, the agency will enforce any Directed Health Measure Order on the size of gatherings that is in effect at the time of the hearing. In order to encourage participation in this public hearing, a phone conference line will be set up for any member of the public to call in and provide oral comments.

Interested persons may provide verbal comments by participating via phone conference line by calling 888-820-1398; Participant code: 3213662#.

Interested persons may provide written comments by mail, fax, or email, no later than the day of the hearing to: DHHS Legal Services, PO Box 95026, Lincoln, NE 68509-5026, (402) 742-2382 or dhhs.regulations@nebraska.gov, respectively.

A copy of the proposed changes is available online at <http://www.sos.ne.gov>, or by contacting DHHS at the mailing address or email above, or by phone at (402) 471-8417. The fiscal impact statement for these proposed changes may be obtained at the office of the Secretary of State, Regulations Division, 1201 N Street, Suite 120, Lincoln, NE 68508, or by calling (402) 471-2385.

Auxiliary aids or reasonable accommodations needed to participate in a hearing can be requested by calling (402) 471-8223. Individuals with hearing impairments may call DHHS at (402) 471-9570 (voice and TDD) or the Nebraska Relay System at 711 or (800) 833-7352 TDD at least 2 weeks prior to the hearing.

FISCAL IMPACT STATEMENT

Agency: Department of Health and Human Services	
Title: 172	Prepared by: Dan Taylor, RN
Chapter: 105	Date prepared: 06/21/2019
Subject: PAID DINING ASSISTANTS	Telephone: 402-471-4969

Type of Fiscal Impact:

	State Agency	Political Sub.	Regulated Public
No Fiscal Impact	(<input checked="" type="checkbox"/>)	(<input checked="" type="checkbox"/>)	(<input checked="" type="checkbox"/>)
Increased Costs	(<input type="checkbox"/>)	(<input type="checkbox"/>)	(<input type="checkbox"/>)
Decreased Costs	(<input type="checkbox"/>)	(<input type="checkbox"/>)	(<input type="checkbox"/>)
Increased Revenue	(<input type="checkbox"/>)	(<input type="checkbox"/>)	(<input type="checkbox"/>)
Decreased Revenue	(<input type="checkbox"/>)	(<input type="checkbox"/>)	(<input type="checkbox"/>)
Indeterminable	(<input type="checkbox"/>)	(<input type="checkbox"/>)	(<input type="checkbox"/>)

Provide an Estimated Cost & Description of Impact: None

State Agency:

Political Subdivision:

Regulated Public:

If indeterminable, explain why:

TITLE 172 PROFESSIONAL AND OCCUPATIONAL LICENSURE

CHAPTER 105 PAID DINING ASSISTANTS

001. SCOPE AND AUTHORITY. These regulations implement Nebraska Revised Statute (Neb. Rev. Stat.) §§ 71-6038 to 71-6042 that govern registration of paid dining assistants and identify the circumstances and conditions under which paid dining assistants may feed residents in nursing homes.

002. DEFINITIONS. Definitions are found in Neb. Rev. Stat. § 71-6038 and this chapter.

002.01 CURRICULUM. A detailed outline of the course content including specific content areas.

002.02 IMMEDIATELY AVAILABLE. The registered or licensed practical nurse is available to respond at any time in person or by electronic communication, including pagers, intercom or call light systems, telephone and cell phones.

002.03 SUPERVISION. The provision of oversight to a paid dining assistant by a registered or licensed practical nurse who is on duty, physically present in the nursing home, and immediately available.

002.04 SUPERVISOR. Any person employed by the nursing home in a supervisory nursing capacity and who would be available for the paid dining assistant to notify in an emergency situation related to feeding residents.

003. ROLE OF THE PAID DINING ASSISTANT. Paid dining assistants must not perform nursing or nursing-related services. Paid dining assistants are only to supplement and not to substitute for licensed, registered, or practical nurses or nurse aides.

004. COURSE CURRICULUM AND TRAINING REQUIREMENTS FOR PAID DINING ASSISTANTS. Paid dining assistant courses must be approved by the Department and be taught by a single entity or person who meets the requirements of this chapter.

004.01 COURSE APPLICATION. The course provider must submit a completed application provided by the Department that includes the following:

- (A) Name of the entity or person providing the course;
- (B) Course curriculum, including all course materials that will be utilized to meet the content areas;
- (C) A detailed description of methods used to determine competency of each paid dining assistant, including copies of exams and procedures;

- (D) Name and license number of the registered nurse administering the course; and
- (E) Signature of the registered nurse administering the course.

004.02 COURSE CONTENT. The course must contain the following elements:

- (A) At least 8 documented hours of classroom and clinical instruction;
- (B) Be administered by a licensed registered nurse who has authority to practice in the State of Nebraska; and
- (C) Include instruction and competency evaluation in the following content areas:
 - (i) Feeding techniques, including levels of assistance, cueing, proper positioning, and use of assistive devices as appropriate;
 - (ii) Assistance with feeding and hydration, including basic nutrition, age-related changes related to feeding and nutrition, dehydration, weight loss, therapeutic diets and dining preparation;
 - (iii) Communication and interpersonal skills, including basic communication skills including verbal and non-verbal communication, and barriers to communication;
 - (iv) Appropriate responses to resident behavior, including identification of common behavior problems and suggested management approaches;
 - (v) Safety and emergency procedures including abdominal thrusts, general safety procedures when feeding residents, fire and disaster procedures, and basic emergency care including falls, scalds and burns, seizures, chest pain, shortness of breath and reporting procedures;
 - (vi) Infection control, including personal hygiene, hand washing, proper handling of food, and standard precautions;
 - (vii) Resident rights, including resident rights as set forth in 175 Nebraska Administrative Code (NAC) 12;
 - (viii) Recognizing changes in residents that are inconsistent with their normal behavior and the importance of reporting these changes to the supervisory nurse including objective and subjective observations, what to report, to whom to report changes and the time frame of reporting;
 - (ix) Special needs of residents in relation to feeding who may have additional medical conditions including stroke, dementia, physical limitations, or mental illness; and
 - (x) Abuse and neglect including the definitions of such terms and the responsibility to report suspected abuse or neglect as required by Neb. Rev. Stat. §§ 28-372 and 28-711.

004.03 COMPETENCY. Persons completing a paid dining assistant training course must demonstrate the minimum acceptable competency in performing tasks or duties connected with each content area listed in 172 NAC 105-004.02. Minimum competency must be determined by a registered nurse.

004.04 CURRICULUM CHANGES. Any changes to the approved curriculum or the licensed registered nurse administering the paid dining assistant course must be submitted in writing to the Department for prior approval.

004.05 DEPARTMENT REQUIRED COURSE ADMINISTRATION DOCUMENTATION. Course providers must submit to the Department within 30 days of completion the following information for each individual who has successfully completed the paid dining assistant

course and competency evaluation. This information must include the following about the individual:

- (A) Name;
- (B) Address;
- (C) Date of birth; and
- (D) Date of course completion and competency evaluation.

004.06 COURSE ATTENDANCE RECORDS. Course providers must maintain, for a minimum of 2 years, course attendance records for each paid dining assistant course taught that include the following:

- (A) Name and title of the instructor of each course topic;
- (B) Names of individuals completing the course; and
- (C) Dates and hours completed in each course topic.

005. PAID DINING ASSISTANT REGISTRY. The Department will maintain a registry of persons who successfully complete an approved paid dining assistant course and competency evaluation. The registry will include the following about the individual:

- (A) Name;
- (B) Address;
- (C) Date of birth; and
- (D) Date of course completion and competency evaluation.

006. NURSING HOME REQUIREMENTS. Each nursing home must maintain the following:

- (A) A listing of all paid dining assistants employed at the facility and the number of hours worked; and
- (B) Verification of successful completion of an approved paid dining assistant training course and competency evaluation for each individual paid dining assistant.

006.01 POLICIES AND PROCEDURES. Facilities utilizing paid dining assistants must have policies and procedures that address how supervision of paid dining assistants will occur and how paid dining assistants will be identified as single-task workers for the purposes of this chapter.

EFFECTIVE DATE
January 3, 2005

NEBRASKA HEALTH AND HUMAN SERVICES
REGULATION AND LICENSURE

172 NAC 105

~~TITLE 172 ————— PROFESSIONAL AND OCCUPATIONAL LICENSURE~~

~~CHAPTER 105 ————— PAID DINING ASSISTANTS~~

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172 NAC 105

~~TITLE 172 ————— PROFESSIONAL AND OCCUPATIONAL LICENSURE~~

~~CHAPTER 105 ————— PAID DINING ASSISTANTS~~

~~105-001 SCOPE AND AUTHORITY: These regulations implement Neb. Rev. Stat. §§ 71-6038 to 71-6042, and identify the circumstances and conditions under which paid dining assistants may feed residents in nursing homes.~~ Reformatted and remains in section 001 as modified.

~~105-002 DEFINITIONS~~

~~Complicated feeding problems include, but are not limited to—~~

- ~~1. ————— Difficulty swallowing;~~
- ~~2. ————— Recurrent lung aspirations; and~~
- ~~3. ————— Tube or parenteral or intravenous feedings.~~ 71-6038(1)

~~Curriculum means a detailed outline of the course content including specific content areas.~~ Reformatted and remains in section 002 as modified.

~~Department means the Department of Health and Human Services Regulation and Licensure.~~ 71-6038(2)

~~Immediately available means that the registered or licensed practical nurse is available to respond at any time in person or by electronic communication, including but not limited to pagers, intercom or call light systems, telephone and cell phones. This DOES NOT mean that the registered or licensed practical nurse must be in the same room, or “looking over the shoulder” of the paid dining assistant.~~ Remains in section 002 as modified.

~~Nursing assistant means any person employed by a nursing home for the purpose of aiding a licensed registered or practical nurse through the performance of nonspecialized tasks related to the personal care and comfort of residents other than a paid dining assistant or a licensed registered or practical nurse.~~ 71-6038(2)

~~Nursing home means any facility or a distinct part of any facility that provides care as defined in Neb. Rev. Stat. §§ 71-420, 71-421, 71-422, 71-424, and 71-429. This includes intermediate care facilities, intermediate care facilities for persons with mental retardation, long-term care hospitals, nursing facilities, and skilled nursing facilities.~~ 71-6038(2)

~~Paid dining assistant means any person employed by a nursing home for the purpose of aiding a licensed registered or practical nurse through the feeding of residents other than a nursing assistant or a licensed registered or practical nurse.~~ 71-6038(2)

~~Supervision means the provision of oversight to a paid dining assistant by a registered or licensed practical nurse who is on duty, physically present in the nursing home, and immediately available.~~
Remains in section 002 as modified.

~~Supervisor means any person employed by the nursing home in a supervisory nursing capacity and who would be available for the paid dining assistant to notify in an emergency situation related to feeding residents.~~ Remains in section 002 as modified.

~~105-003 QUALIFICATIONS OF PAID DINING ASSISTANTS: A person may act as a paid dining assistant in a nursing home only if s/he:~~

- ~~1. Is at least 16 years of age;~~
- ~~2. Is able to speak and understand the English language or a language understood by the nursing home resident being fed by that person;~~
- ~~3. Has successfully completed at least eight hours of training as prescribed by the Department for paid dining assistants;~~
- ~~4. Has no adverse findings on the Nurse Aide Registry or the Adult Protective Services Central Registry; and~~
- ~~5. Has no adverse findings on the central register of child protection cases maintained by the Department of Health and Human Services if the nursing home which employs the person as a paid dining assistant has at any one time more than one resident under the age of 19 years.~~ 71-6039.01

~~105-004 ROLE OF THE PAID DINING ASSISTANT: Paid dining assistants are single-task workers who:~~

- ~~1. Only feed residents who have no complicated feeding problems as selected by the nursing home based on the resident's latest assessment, plan of care, and determinations by the charge nurse that the resident's condition at the time of such feeding meets that plan of care and that the paid dining assistant is competent to feed that particular resident;~~
- ~~2. Work under the supervision of a licensed registered or practical nurse who is on duty, physically present in the nursing home, and immediately available; and~~
- ~~3. Must call a supervisor for help in an emergency.~~ 71-6039.03

~~Paid dining assistants must not perform nursing or nursing-related services. Paid dining assistants are only to supplement and not to substitute for licensed registered or practical nurses or nursing assistants.~~ Remains but moved to section 003 and nursing assistants was changed to nurse aides which reflects the language in the nurse aide regulations.

~~105-005 COURSE, CURRICULUM AND TRAINING REQUIREMENTS FOR PAID DINING ASSISTANTS: Paid dining assistant courses must be approved by the Department.~~

~~105-005.01 The course provider must submit an application to the Department that includes—~~

- ~~1. The name of the entity or person providing the course;~~

2. The course curriculum, including all course materials that will be utilized to meet the content areas;
3. A detailed description of methods used to determine competency of each paid dining assistant, including copies of exams and/or procedures;
4. The name and license number of the registered nurse administering the course; and
5. The signature of the registered nurse administering the course.

~~105-005.02~~ The course must—

1. Be taught by a single entity or person who meets the requirements of 172 NAC 105; **Moved to the heading at 004.**
2. Consist of at least eight documented hours of classroom and clinical instruction;
3. Be administered by a licensed registered nurse who has authority to practice in the State of Nebraska; and
4. Include instruction and competency evaluation in the following content areas:
 - a. Feeding techniques, including but not limited to levels of assistance, cueing, proper positioning, and use of assistive devices as appropriate;
 - b. Assistance with feeding and hydration, including but not limited to basic nutrition, age-related changes related to feeding and nutrition, dehydration, weight loss, therapeutic diets and dining preparation;
 - c. Communication and interpersonal skills, including but not limited to basic communication skills including verbal and non-verbal communication, and barriers to communication;
 - d. Appropriate responses to resident behavior, including but not limited to identification of common behavior problems and suggested management approaches;
 - e. Safety and emergency procedures including but not limited to abdominal thrusts, general safety procedures when feeding residents, fire and disaster procedures, and basic emergency care including falls, scalds and burns, seizures, chest pain, shortness of breath and reporting procedures;
 - f. Infection control, including but not limited to personal hygiene, handwashing, proper handling of food, and standard precautions;
 - g. Resident rights, including but not limited to resident rights as set forth in 175 NAC 12-006.05;
 - h. Recognizing changes in residents that are inconsistent with their normal behavior and the importance of reporting these changes to the supervisory nurse including but not limited to objective and subjective observations, what to report, to whom to report changes and the time frame of reporting;
 - i. Special needs of residents in relation to feeding who may have additional medical conditions including but not limited to stroke, dementia, physical limitations, and/or mental illness; and

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~~j. Abuse and neglect including but not limited to the definitions of such terms and the responsibility to report suspected abuse or neglect as required by Neb. Rev. Stat. §§ 28-372 and 28-711.~~

~~105-005.03 Persons completing a paid dining assistant training course must demonstrate the minimum acceptable competency in performing tasks or duties connected with each content area listed in 175 NAC 105-005.02. Minimum competency must be determined by a registered nurse.~~ Has a new heading at 004.03

~~105-005.04 Courses may exceed the minimum hour or training requirements set forth in 175 NAC 105.~~

~~105-005.05 Any changes to the approved curriculum or the licensed registered nurse administering the paid dining assistant course must be submitted in writing to the Department for prior approval.~~ Has new heading at 004.04

~~105-005.06 Course providers must submit to the Department the following information for each individual who has successfully completed the paid dining assistant course and competency evaluation within 30 days of completion. This information must include the individual's~~ Has new heading at 004.05

- ~~1. Name;~~
- ~~2. Address;~~
- ~~3. Date of birth; and~~
- ~~4. Date of course completion and competency evaluation.~~

~~105-005.07 Course providers must maintain, for a minimum of two years, course attendance records for each paid dining assistant course taught including~~ Has new heading at 004.06.

- ~~1. Name and title of the instructor of each course topic;~~
- ~~2. Names of individuals completing the course; and~~
- ~~3. Dates and hours completed in each course topic.~~ Most of this remains as section 004. Language at 005.02#1 is moved to the heading of 004. Language at 005.04 was removed.

~~105-006 PAID DINING ASSISTANT REGISTRY: The Department will maintain a registry of persons who successfully complete an approved paid dining assistant course and competency evaluation. The registry will include~~

- ~~1. Name;~~
- ~~2. Address;~~
- ~~3. Date of birth; and~~
- ~~4. Date of course completion and competency evaluation.~~ Remains in section 005.

~~The registry will not contain information regarding abuse or neglect of residents during employment as a paid dining assistant. Complaints and/or registry checks regarding abuse or~~

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neglect must be referred to the Adult Protective Services Central Registry and/or the child central registry. ~~Removed as not needed in regulation. This is the Department's policy.~~

~~105-007 NURSING HOME REQUIREMENTS: Each nursing home must maintain—~~

- ~~1. A listing of all paid dining assistants employed at the facility and the number of hours worked;~~
- ~~2. For each individual dining assistant—~~
 - ~~a. Verification of successful completion of an approved paid dining assistant training course and competency evaluation; remains in section 006. -and~~
 - ~~b. Verification that the facility has made checks with the Nurse Aide Registry, the Adult Protective Services Central Registry, and the central register of child protection cases maintained by the Department of Health and Human Services if applicable. -28-372 and 28-711~~

~~105-007.01 Facilities utilizing paid dining assistants must have policies and procedures that address how supervision of paid dining assistants will occur and how paid dining assistants will be identified as single task workers for the purposes of this chapter. Remains in section 006 under new heading.~~