

Proposal 2007-8 (Emergency)
Oppose Use of Restriction of RN's Legal Scope of Practice
For the Purpose of Defining Assisted Living

Subject

Regulations Governing the Practice of RNs in Assisted Living Facilities

Proposed by

Rosalee Yeaworth, Member, NNA, District Two

Contact Person

Rosalee Yeaworth, Member, NNA District Two (402) 393-8834

Type of Proposal

Renewed Action Proposal

Rationale

Assisted living is the fastest growing residential option providing personal care for adults. It is estimated that more than a million Americans live in some 20,000 assisted living residences¹, while about 1.5 million Americans are in nursing homes. The number of licensed facilities in Nebraska grew from 134 in 1998 to 266 by 2005².

Because of Medicare and Medicaid, the federal government legislates overall regulations for nursing homes, but regulations governing assisted living are legislated by individual states. In Nebraska, lobbyists for nursing homes and assisted living have attempted to use statutes to differentiate assisted living from nursing homes on the basis of whether the residents get (not need) complex nursing interventions. Complex nursing interventions are those that require nursing judgment to safely alter standard procedures in accordance with the needs of the patient³. Because the laws states that "an assisted living facility (ALF) shall not admit or retain a resident who requires complex nursing interventions or whose condition is not stable or predictable unless arrangements are made for visiting nurses to provide for this complex care," the regulations state that no RN while on duty in an ALF shall provide any complex nursing interventions. Taken literally, this means that if a patient (resident) reacts to a medication, chokes on food, vomits and aspirates, falls, shows signs of an infection, an RN, hired by the facility, (and a national survey showed that 55% of facilities had an RN on staff either full or part-time), is not supposed to use judgment to intervene.

LB 1005, the 2004 annual Health and Human Services Committee "cleanup bill," required each assisted living facility to provide for a registered nurse to review medication administration policies and procedures and to be responsible for training of medication aides at the facility⁴. Thus legally, ALFs must hire an RN as staff or consultant to review procedures, but are not supposed to have that RN review medications or residents' reactions to them. This is hardly the procedure for nurse delegation. In most facilities it is unclear under whose direction the medication aides are acting, especially with residents with dementia. A September, 2007 report in the Archives of Internal Medicine states that the number of deaths and serious adverse effects blamed on prescription drugs has nearly tripled since 1998; and a third of these

are in the elderly.

LB 1005, also changed the definition of what constitutes a complex nursing intervention. It states, "The definition of 'complex nursing interventions' is amended to provide, for purposes of the Assisted-Living Facility Act only, and only as it pertains to assisted-living facilities, that such interventions do not include nursing assessments, to permit assisted-living facilities to utilize registered nurses to do assessments of applicants for residence or residents of the facility"(4). What RNs can and cannot do should be defined by the Nurse Practice Act, not the ALF regulations!

The ANA Code states: "The nurse promotes, advocates for, and strives to protect the health, safety, and rights of the patient"⁵. When an RN cannot provide a complex nursing intervention even if the situation calls for it in a setting in which she or he has been hired, it puts the nurse between the law and moral, ethical principles. Residents or families are supposed to arrange through outside facilities to bring in RNs for complex nursing interventions, but when the typical resident is a woman in her eighties who may suffer from dementia and need help with incontinence and mobility⁶, there may not be time when the need arises.

The differentiation between the ALF and nursing homes ought to be based on the condition and needs of the resident, not by trying to split hairs on the RN's scope of practice. Statutes are not written to say that the physician, physical therapist, social worker or other professional has to restrict their scope of practice in assisted living in order to differentiate it from nursing homes. A survey of the 2005 Assisted Living State Regulatory Review shows that most other states list admission and retention criteria on the basis of the resident's condition, e.g., must be ambulatory, not a danger to self or others, must not require continuous or 24 hour nursing care, must not require ongoing skilled nursing care or for more than 120 days a year, must be able to evacuate in an emergency or evacuate with the help of one person, must not be ventilator dependent, must not require IV therapy or have stage III or IV decubitus ulcers⁷. If other states can determine admission and retention in ALFs on the basis of the condition and needs of the resident, Nebraska can do so rather than restrict the RNs legal scope of practice for criteria.

Mitty noted that in some states the state assisted living regulations supercede the nurse practice act in regard to medication administration. In Nebraska, assisted living regulations are being used to supercede the nurse practice act in regard to the nurse's legal scope of practice. Mitty also stated that, "As more nurses practice in assisted living facilities (whether on staff, under contract, or as visiting or hospice nurses), they will need nurse practice acts that acknowledge the scope of their practice and accountability"⁸. Nurses and the professional nursing organization should be very concerned when others are trying to restrict the nurse's legal scope of practice through legislation that supercedes the nurse practice act.

Nebraska AARP has also been concerned about ALF regulations: 1) Characterizing the industry as providing services to healthy individuals who only need meals, some personal assistance, and housekeeping, and then participating in the Medicaid Home and Community-Based Services for the Aged and Disabled Waiver which requires that an ALF cannot receive reimbursement for care provided to a Medicaid-eligible individual over the age of 65 unless that individual has limitations in three or more activities of daily living (ADL) and needs medical treatment or

observation, or has three ADL limitations and one or more risk factors (behavior, frailty, safety), or three ADL limitations and one or more cognition factors (memory, orientation, communication, judgment) (480 NAC 5-003A2(d), deciding to discharge residents who could no longer pay privately and had to be covered by Medicaid, and the training practices. AARP's Associate Director for Advocacy is working to change legislation to remove the language about not admitting people who need complex nursing intervention or whose condition must be stable and predictable and putting in language to state that the ALF shall disclose the median monthly cost, of care, the policy in regard to acceptance of Medicaid, the standards for admission and retention, and the services offered, including the additional services offered in special care or special needs units. They are also specifying training requirements, that one direct care staff person be on the premises and awake at all times, and that there be an annual survey of ALFs with a one year exemption for facilities found to have no deficiencies in their survey. (Currently, a survey is only required every five years unless there are complaints or catastrophic events).

Recommendations

1. The Nebraska Nurses Association shall publish information in the *Nebraska Nurse* so that RNs are aware that RNs' legal scope of practice is being restricted by assisted living regulations.
2. The Nebraska Nurses Association shall work closely with the Nebraska Board of Nursing, Nebraska AARP, and the Alzheimer's Association to support legislation that prevents restriction of the legal scope of nursing practice from being used to differentiate between nursing homes and assisted living.

Past House Actions

Aside from some editing and updating, this is the same proposal that the house approved in 2004 and 2005. Because of the NNA approval, Senator Marion Price introduced LB 744 in 2004, but with term limits and the short session, she did not introduce a bill in 2005. With the turnover in the Legislature, the growing cost of AL, and discharging Medicaid residents against their will, more action needs to be taken.

Relation To Mission and Vision Statements

Directly relates to ANA's and NNA's core issue of Patient Safety/Advocacy

References

1. Assisted Living Federation of America. Online at www.alfa.org 2004
2. Nebraska Health and Human Services System, Assisted Living Facility Roster, 2/10/2005.
3. Nebraska Health and Human Services System (2001). Title 175, Chapter 4: Regulations Governing Licensure of Assisted-Living Facilities. Lincoln, NE: Department of Health and Human Services Regulation and Licensure.
4. Nebraska Legislature (2004) Health and Human Services Committee. LB 1005 Final Reading Summary.
5. American Nurses Association. Code for Nurses
6. www.alfa.org 2007
7. National Center for Assisted Living (March, 2005). Assisted Living State

Regulatory Review 2005.

8. Mitty, E. Assisted living & the role of nursing. AJN 2003;103(8):32-43.

Proposed Implementation Activities

The Nebraska Nurses shall work with the Nebraska Board of Nursing and the Nebraska Legislature to be certain that the nurse practice act is what defines nurses' scope of practice and accountability and to convince the organizations representing assisted living facilities that it is in the best interest of resident safety not to restrict the legal scope of practice of RNs who are hired by assisted living facilities.

Range of Direct Costs

None

Funding Available From Alternative Sources

NA
