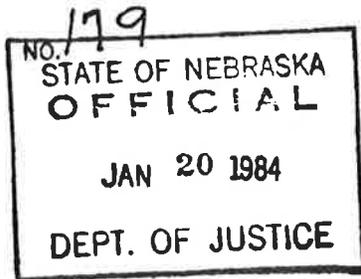


DEPARTMENT OF JUSTICE

STATE OF NEBRASKA

TELEPHONE 402/471-2682 • STATE CAPITOL • LINCOLN, NEBRASKA 68509



January 18, 1984

PAUL L. DOUGLAS
Attorney General
GERALD S. VITAMVAS
Deputy Attorney General
JOHN R. THOMPSON
Deputy Attorney General

Senator Marge Higgins
Nebraska State Legislature
State Capitol
Lincoln, Nebraska 68509

Re: Training for care staff members, nurse's aides
and orderlies employed in nursing homes

Dear Senator:

At your request we have reconsidered our opinion to the Department of Health on June 22, 1983, that it may not require training courses of more than 20 hours in duration for nurse's aides, care staff members and orderlies. We have concluded it can, within the limitations discussed below.

Since a care staff member is defined in both Laws 1983, LB 235, sec. 2, and LB 273, sec. 1(2) as one approved not only by the nursing home administrator but also by the Department of Health to administer oral medication, we viewed this as the licensing of an occupation for which the Legislature itself had to set the qualifications. Thus the minimum of 20 hours of training the Legislature set as necessary to protect the public from such practitioners was also the maximum.

However, we have now determined that the above bills do not involve the licensing of care staff members, nurse's aides and orderlies, but the licensing of nursing homes. Training requirements for such staff members are not enforced by actions against the staff members, but by actions against the licenses of the nursing homes employing them. In such a situation the Legislature can delegate to the Department of Health the authority to specify staff qualifications so long as the Legislature specifies guidelines for doing so. Since such staff members must complete a current course of training within 120

Assistants

Bernard L. Packett
Mel Kammerlohr
Harold I. Mosher
Ralph H. Gillan
Terry R. Schaaf
Marilyn E. Hutchinson

Patrick T. O'Brien
J. Kirk Brown
Royce N. Harper
Sharon M. Lindgren
Ruth Anne E. Galtier
G. Roderic Anderson

Dale A. Comer
Martel J. Bundy
Mark D. Starr
Dale D. Brodkey
Frank J. Hutfless
Linda L. Willard

John D. Boehm
Henry M. Grether III
Michaela M. White
Calvin D. Hansen

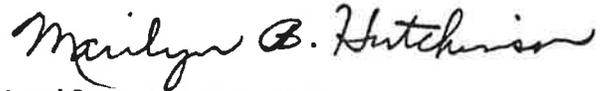
Senator Marge Higgins
January 18, 1984
Page -2-

days of initial employment, it follows that this is the maximum period of training that can be required of them. Within those time limits, the amount of training that can actually be required for care staff members, nurse's aides and orderlies will depend on the amount of training that will cover the required subjects and be reasonably related to ensuring competent performance by persons in each of those staff positions.

In conclusion, the Department of Health may adopt and promulgate rules and regulations prescribing a course of training for nurse's aides, care staff members and orderlies which may not be less than 20 hours in duration and may not be more than 120 days in duration.

Sincerely,

PAUL L. DOUGLAS
Attorney General



Marilyn B. Hutchinson
Assistant Attorney General

MBH:ejg

cc Mr. Patrick J. O'Donnell
Clerk of the Legislature