

AN ACT

ENTITLED, An Act to revise certain statutes and administrative rules regarding licensure of nursing facility administrators and to increase certain fees.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

Section 1. That § 36-28-1 be amended to read as follows:

36-28-1. Terms used in this chapter mean:

- (1) "Board," the South Dakota Board of Nursing Facility Administrators;
- (2) "Nursing facility," any institution or facility defined as such for licensing purposes under South Dakota law or pursuant to the rules for nursing facilities and homes for the aged by the State Department of Health, whether proprietary or nonprofit, including nursing facilities owned or administered by the federal or state government or an agency or political subdivision thereof;
- (3) "Nursing facility administrator," a person who administers, manages, supervises, or is in general administrative charge of a nursing facility, whether the individual has an ownership interest in such facility and whether the function and duties are shared with one or more individuals. However, no person serving as a member of a nursing facility's board of directors is a nursing facility administrator unless the person is also serving in the requisite administration capacity as here defined; and
- (4) "Administrator-in-training program," an internship completed under the supervision of a preceptor that meets the requirements established by the board pursuant to chapter 1-26.

Section 2. That § 36-28-2 be amended to read as follows:

36-28-2. The board consists of five members. The members of the board shall be appointed by the Governor and shall include four members who are licensed nursing facility administrators who are actively practicing in South Dakota and one member of the general public who is not an

administrator or employee of a nursing facility and who has no direct financial interest in a nursing facility. The terms of all members are to be three years. No member may serve more than three consecutive full terms. The terms of members begin on October thirty-first of the calendar year in which the Governor appoints the member, unless otherwise designated by the Governor. The appointee's term expires on October thirtieth in the third year of appointment. The appointment to an unexpired term is not considered a full term.

Any member's term ending June 30, 2013, or thereafter is extended to October thirtieth in the year the term is to expire.

Section 3. That § 36-28-4 be amended to read as follows:

36-28-4. The board shall annually elect from its membership a president, vice president, and secretary-treasurer, and shall adopt rules pursuant to chapter 1-26 to govern its proceedings. No officer may serve more than three consecutive one-year terms. The board may expend funds for administrative, consultant, and other necessary services for the board with the amount of the expenditures to be set by the board.

Section 4. That chapter 36-28 be amended by adding thereto a NEW SECTION to read as follows:

The board shall meet at least annually. A majority of the members constitute a quorum. A majority vote of those present constitutes a decision of the entire board.

Section 5. That chapter 36-28 be amended by adding thereto a NEW SECTION to read as follows:

The board, its members, and its agents are immune from personal liability for actions taken in good faith in the discharge of the board's responsibilities, and the state shall hold the board, its members, and its agents harmless from all costs, damages, and attorney fees arising from claims and suits against them with respect to matters to which the immunity applies.

Section 6. That § 36-28-7 be amended to read as follows:

36-28-7. The board may commence an action for an injunction for a violation of this chapter or regulation promulgated pursuant to this chapter.

Section 7. That § 36-28-11 be amended to read as follows:

36-28-11. The board may develop and apply appropriate techniques, including examination and investigation, for determining whether an individual meets the requirements of § 36-28-10. Examination and re-examination fees are nonrefundable and shall be fixed in rules promulgated by the board pursuant to chapter 1-26 and may not exceed two hundred dollars.

Section 8. That § 36-28-12 be amended to read as follows:

36-28-12. The board may issue a license to a qualified person and may establish qualification criteria pursuant to chapter 1-26. No license may be issued to a person as a nursing facility administrator unless the applicant:

- (1) Is at least eighteen years of age, of good moral character, and of sound physical and mental health;
- (2) Has satisfactorily completed training prescribed by the board, which shall, by virtue of its content and administration, present sufficient knowledge of the needs properly to be served by nursing facilities, laws governing the operation of nursing facilities and the protection of the interests of the residents therein, and the elements of good nursing facility administration; and
- (3) Has passed an examination approved by the board designed to test the applicant's knowledge and competence regarding the subject matter referred to in subdivision (2) of this section.

Section 9. That § 36-28-13 be amended to read as follows:

36-28-13. The board may issue an emergency permit to practice as a nursing facility

administrator for a period not to exceed one year to a qualified person filing a written application with the board. The board may adopt rules pursuant to chapter 1-26 regarding application procedures, renewal procedures, supervision, and the nonrefundable fee for an emergency permit which may not exceed four hundred dollars.

Section 10. That § 36-28-14 be amended to read as follows:

36-28-14. The board may issue a nursing facility administrator license to any person who holds a current license as a nursing facility administrator or equivalent license from another jurisdiction, if the board finds that the standards for licensure in such other jurisdiction are at least substantially equivalent to those prevailing in this state and that the applicant is otherwise qualified. The board may adopt, by rules promulgated pursuant to chapter 1-26, minimum requirements for qualification and a nonrefundable fee for reciprocal licensure which may not exceed five hundred dollars.

Section 11. That § 36-28-15 be amended to read as follows:

36-28-15. Any person applying to be licensed as a nursing facility administrator shall pay a nonrefundable initial license fee in an amount set by rule promulgated by the board pursuant to chapter 1-26, which may not exceed five hundred dollars. The initial license fee shall be prorated to the next biennial renewal date according to rule promulgated by the board pursuant to chapter 1-26.

Section 12. That § 36-28-16 be amended to read as follows:

36-28-16. The board may license nursing facility administrators in accordance with this chapter and rules promulgated by the board pursuant to chapter 1-26. A nursing facility administrator license is not transferable and is valid until surrendered for cancellation or suspended or revoked for violation of this chapter or any rule promulgated pursuant to this chapter. A nursing facility administrator license that is not renewed by December thirty-first of even-numbered years expires and is no longer valid.

Section 13. That § 36-28-17 be repealed.

Section 14. That § 36-28-18 be amended to read as follows:

36-28-18. Each nursing facility administrator license expires on December thirty-first of even-numbered years and is renewable biennially thereafter upon application to the board and payment of a renewal fee set in rule promulgated by the board pursuant to chapter 1-26. The renewal fee may not exceed five hundred dollars.

Section 15. That § 36-28-18.1 be amended to read as follows:

36-28-18.1. The board may issue a duplicate license and may promulgate rules pursuant to chapter 1-26 and set a fee, which may not exceed one hundred dollars.

Section 16. That § 36-28-18.2 be amended to read as follows:

36-28-18.2. A licensed nursing facility administrator may file for inactive status and pay a fee of not more than three hundred dollars. The administrator may reactivate the license within five years of the date of inactivation by completing an application, paying the required fee, completing the continuing education requirement, passing the state examination, and fulfilling other requirements as determined by the length of inactive status, as prescribed by the board in rules promulgated pursuant to chapter 1-26.

Section 17. That § 36-28-19 be repealed.

Section 18. That § 36-28-20 be repealed.

Section 19. That § 36-28-21 be repealed.

Section 20. That § 36-28-21.1 be amended to read as follows:

36-28-21.1. The board may promulgate rules pursuant to chapter 1-26 to establish continuing education requirements for renewal of a license.

Section 21. That § 36-28-22 be repealed.

Section 22. That § 36-28-23 be amended to read as follows:

36-28-23. The board may investigate and take appropriate action if it comes to the attention of

the board that a licensee may have violated a provision of this chapter or a rule promulgated pursuant to this chapter. The board may revoke or suspend a license of any licensee violating any provision of this chapter and any rule promulgated pursuant to this chapter.

Section 23. That § 36-28-24 be repealed.

Section 24. That § 36-28-25 be amended to read as follows:

36-28-25. Any fee collected under the provisions of this chapter shall be paid to the board, who shall keep the fee in a fund, which may be used and expended by the board to pay the compensation and travel expenses, pursuant to § 3-9-2, of members and employees of the board and other expenses necessary for the board to administer and carry out the provisions of this chapter.

Section 25. That § 36-28-26 be repealed.

Section 26. That § 36-28-27 be repealed.

Section 27. That ARSD 20:49:01:01 be amended to read as follows:

20:49:01:01. Definitions. Terms used in this article mean:

(1) "Preceptor," a licensee who has been licensed for at least four years in South Dakota, has had no revocation or suspension of a license or other action taken as deemed necessary to protect the public, and has been approved by the board to train administrators-in-training;

(2) "Administrator-in-training," a person who is employed by or contracting with a licensed nursing facility and working under the supervision of a preceptor while completing the administrator-in-training program; and

(3) "Administrator-in-training program," an internship completed under the supervision of a preceptor that includes a minimum of 240 hours completed within six consecutive months utilizing an internship manual and reporting forms approved by the board.

Section 28. That ARSD 20:49:02:02 be repealed.

Section 29. That ARSD 20:49:02:03 be amended to read as follows:

20:49:02:03. President. The president shall preside at all meetings of the board. In the absence of the president, the vice president shall preside at meetings and perform all duties usually performed by the president.

Section 30. That ARSD 20:49:03:01 be amended to read as follows:

20:49:03:01. Examinations. An applicant for licensure must pass the following examinations:

(1) The computer-based Nursing Home Administrators Licensing Examination administered by the National Association of Long Term Care Administrator Boards. A passing score on the examination is a scaled score with a passing point of 113; and

(2) A state examination provided by the board covering the rules of the South Dakota Department of Health that govern nursing facilities. A nonrefundable fee of \$100 shall be submitted to the board prior to the examination date. A passing score on the examination is 75 percent.

Section 31. That ARSD 20:49:03:02 be repealed.

Section 32. That ARSD 20:49:03:03 be amended to read as follows:

20:49:03:03. Conditional admission to examination. The board may conditionally admit to examination an applicant who has not fully established qualifications if, in the judgment of the board, it appears that the applicant is otherwise qualified.

Section 33. That ARSD 20:49:03:05 be repealed.

Section 34. That ARSD 20:49:03:07 be amended to read as follows:

20:49:03:07. Reexamination. An applicant who has failed the national or state examination may retake the failed examination if the applicant pays the applicable nonrefundable examination fee. An applicant who has failed either examination is entitled to reexamination a maximum of three times for each examination upon payment of the applicable fees. If unsuccessful after four attempts, the applicant may petition the board for reconsideration.

Section 35. That ARSD 20:49:04:01 be amended to read as follows:

20:49:04:01. Requirements for initial licensure. An applicant for licensure as a nursing facility administrator shall meet the education and training requirements and shall submit the following:

- (1) A completed application form and a nonrefundable fee of \$300;
- (2) Certified transcripts verifying completion of at least an associate degree;
- (3) Verification of:
 - (a) Completion of an administrator-in-training program within four years preceding the date of application; or
 - (b) Completion of a practicum in long term healthcare administration from a higher education institution accredited by an organization recognized by the Council for Higher Education Accreditation within four years preceding the date of application;
- (4) A copy of the applicant's driver license or equivalent birth verification;
- (5) Three letters of recommendation from professional references not related to the applicant by kinship or marriage;
- (6) Verification of passage of the Nursing Home Administrators Licensing Examination administered by the National Association of Long Term Care Administrators Board within four years preceding the date of application; and
- (7) Verification of passage of the state examination approved by the board covering the rules of the South Dakota Department of Health that govern nursing facilities within four years preceding the date of application.

Section 36. That ARSD 20:49:04:02 be repealed.

Section 37. That ARSD 20:49:04:03 be amended to read as follows:

20:49:04:03. Conviction of felony. The board may refuse to issue a license if the applicant has been convicted, pled no contest, nolo contendere, pled guilty to, or been granted a deferred judgment or suspended imposition of sentence, or had prosecution deferred with respect to a felony.

Section 38. That ARSD 20:49:04:08 be repealed.

Section 39. That ARSD 20:49:05:01 be amended to read as follows:

20:49:05:01. Emergency permit. To meet the needs of a nursing facility that has a vacancy in the administrator's position, an emergency permit to practice as a nursing facility administrator may be issued to a person for not more than 180 days, subject to the following:

(1) A person of authority from the facility with the vacancy submits an application, accompanied by a nonrefundable emergency permit fee of \$200;

(2) The emergency administrator provides services under the supervision of a preceptor;

(3) The preceptor provides appropriate supervision and is reasonably available to the emergency administrator to provide assistance; and

(4) The preceptor observes the emergency administrator at least two days a month in the facility in which the emergency administrator is serving and keeps a written memorandum of what was accomplished or discussed at each visit. A copy of the dated memorandum shall be maintained by the emergency administrator and the preceptor for one year following the date of expiration of the emergency permit.

A preceptor may be held responsible for the acts of the emergency administrator operating under the preceptor's supervision only if the preceptor does not fulfill the requirements as stated above.

Section 40. that ARSD 20:49:06:01 be amended to read as follows:

20:49:06:01. Reciprocal licensure. An applicant for reciprocal licensure as a nursing facility administrator shall meet the education and training requirements and shall submit the following:

(1) A completed application form and a nonrefundable fee of \$300;

(2) Certified transcripts verifying completion of at least an associate degree;

(3) Verification of completion of:

(a) An administrator-in-training program within four years preceding the date of

application;

- (b) A practicum in long term care healthcare administration from a higher education institution accredited by an organization recognized by the Council for Higher Education Accreditation within four years preceding the date of application; or
- (c) Six consecutive months of service as an administrator of a licensed nursing facility within four years preceding the date of application;

(4) A copy of the applicant's driver license or equivalent birth verification;

(5) Three letters of recommendation from professional references not related to the applicant by kinship or marriage;

(6) Verification of passage of the Nursing Home Administrators Licensing Examination administered by the National Association of Long Term Care Administrator Boards;

(7) Verification of passage of the state examination provided by the board covering the rules of the South Dakota Department of Health that govern nursing facilities within four years preceding the date of application; and

(8) A certified letter verifying the nursing facility administrator license, or equivalent license, and status of such license from the board in each state or other political subdivision of the United States in which the applicant is or has been licensed. If an applicant for reciprocal licensure has had action taken against a license as a nursing facility administrator, or equivalent license, the applicant may be denied a license.

Section 41. That ARSD 20:49:07:02 be amended to read as follows:

20:49:07:02. Duplicate licenses. The board may issue a duplicate license upon request and payment of a \$50 fee.

Section 42. That ARSD 20:49:08:01 be amended to read as follows:

20:49:08:01. Application for renewal. Every person who holds a license shall apply to the board

biennially by December 31 of each even-numbered year and report any information requested by the board on forms provided by the board. A licensee need not be actively practicing as a nursing facility administrator to be eligible to renew the license.

Section 43. That ARSD 20:49:08:01.01 be amended to read as follows:

20:49:08:01.01. Fee for renewal. The nonrefundable fee for renewal of a license is \$300.

Section 44. That ARSD 20:49:08:02 be amended to read as follows:

20:49:08:02. Inactive status -- Reactivation. A licensee may place the license as inactive upon completion of a form provided by the board and payment of the nonrefundable fee of \$150. A licensee may reactivate the license within five years following the date of inactivation. The required fee to reactivate a license is the initial licensure fee. To satisfy the continuing education requirement to reactivate a license, the licensee shall provide evidence of 20 hours of board approved continuing education earned within the past 12 months.

Section 45. That ARSD 20:49:08:03 be amended to read as follows:

20:49:08:03. Continuing education requirements. A minimum of 40 hours of board approved continuing education pertaining to health care, healthcare administration, or business administration is required biennially for renewal of a license. The board may accept academic courses pertaining to health care, healthcare administration, or business administration offered through a higher education institution accredited by an organization recognized by the Council for Higher Education Accreditation. The board may approve continuing education providers and programs.

Section 46. That ARSD 20:49:08:04 be amended to read as follows:

20:49:08:04. Criteria for continuing education course approval. A provider or program that desires approval as a continuing education provider or program may apply on a form approved by the board. The board shall notify the applicant of its decision.

Section 47. That ARSD 20:49:08:05 be repealed.

Section 48. That ARSD 20:49:10:08 be repealed.

Section 49. That ARSD 20:49:10:09 be repealed.

Section 50. That ARSD 20:49:14:01 be amended to read as follows:

20:49:14:01. Petition for declaratory ruling. Any person may petition the board to issue a declaratory ruling by filing a written request.

Section 51. That ARSD 20:49:14:02 be repealed.

Section 52. That ARSD 20:49:15:01 be amended to read as follows:

20:49:15:01. Grounds for revocation, suspension, or other action. The board may revoke or suspend a license or take other action deemed necessary to protect the public upon any of the following grounds:

- (1) The licensee failed to complete continuing education requirements;
- (2) The licensee or permittee is guilty of fraud, bribery, or deceit in procuring a license or permit, in carrying out the duties as a nursing home administrator, or in obtaining renewal of a license or permit;
- (3) The licensee or permittee has been convicted of, pled no contest, nolo contendere, pled guilty to, or been granted a deferred judgment or suspended imposition of sentence, or had prosecution deferred with respect to a felony. A felony is any offense which would be a felony under the laws of South Dakota if it was committed in the state;
- (4) The licensee or permittee is addicted to the use of intoxicating beverages, narcotics, or any drugs or controlled substances to such an extent that the licensee or permittee cannot perform the duties;
- (5) The physical or mental condition of the licensee or permittee is determined by a competent examiner to jeopardize those who seek the professional services of the licensee or permittee. A majority of the board may demand an examination of the licensee or permittee. If the licensee or

permittee fails to submit to the examination, it is immediate grounds for suspension of the license or permit;

(6) The licensee or permittee is guilty of unprofessional conduct;

(7) The licensee or permittee has violated any provision of SDCL chapter 36-28 or any rule promulgated pursuant to that chapter; or

(8) The licensee had an action taken against a nursing facility administrator or equivalent license in another jurisdiction.

Section 53. That ARSD 20:49:15:02 be amended to read as follows:

20:49:15:02. Unprofessional conduct. Unprofessional conduct includes but is not limited to the following:

(1) Failure to exercise technical competence in carrying out nursing facility administration;

(2) Failure to follow or enforce policies or procedures necessary to assure patient or resident welfare and safety;

(3) Failure to safeguard the patient's or resident's dignity and right to privacy;

(4) Violating the confidentiality of information or knowledge concerning the patient or resident;

(5) Mental, verbal, or physical abuse of a patient or resident;

(6) Using alcohol or other drugs to the extent that there is significant interference with job performance;

(7) Misuse of drug supplies, narcotics, or a patient's or resident's records;

(8) Falsifying a patient's or resident's records or intentionally charting incorrectly;

(9) Appropriating medications, supplies, or personal items of the patient or resident or agency;

(10) Forging a prescription or making a drug available to self, friends, or family members;

(11) Falsifying records submitted to the board, to the state department of health, or to any other government agency;

(12) Delegating nursing facility administrator care, functions, tasks, or responsibilities to others contrary to SDCL chapter 36-28 or to the detriment of patient or resident safety;

(13) Failure to exercise appropriate supervision over persons who are authorized to practice only under the supervision of a licensed professional;

(14) Leaving a nursing facility administrator assignment or post without notifying a substitute;

(15) Assisting any other person to violate or circumvent any provision of SDCL chapter 36-28 or this article;

(16) Permitting an unlicensed person to use a nursing facility administrator license or permit for any purpose; and

(17) Having a license or certificate in a related health care discipline in the state of South Dakota or in another state denied, refused renewal, revoked, or suspended due to unprofessional conduct as defined in items 1 to 16, inclusive, of this rule.

An Act to revise certain statutes and administrative rules regarding licensure of nursing facility administrators and to increase certain fees.

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I certify that the attached Act originated in the

HOUSE as Bill No. 1025

Chief Clerk

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Speaker of the House

Attest:

Chief Clerk

President of the Senate

Attest:

Secretary of the Senate

House Bill No. 1025
File No. _____
Chapter No. _____

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Received at this Executive Office this ____ day of _____ ,

20____ at _____ M.

By _____
for the Governor

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The attached Act is hereby approved this _____ day of _____ , A.D., 20____

Governor

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STATE OF SOUTH DAKOTA,
ss.

Office of the Secretary of State

Filed _____ , 20____
at _____ o'clock __ M.

Secretary of State

By _____
Asst. Secretary of State