

**The State-Licensed Care Facilities
Oversight Committee
Final Report
December 15, 2018**

Submitted Pursuant to LR 296 (2018)

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EXECUTIVE SUMMARY

In 2004 the Legislature passed the Nebraska Behavioral Health Services Act, (LB 1083), to reform how the state provides behavioral health services. The bill completely overhauled the state's behavioral health system. It created a new Division of Behavioral Health in the Department of Health and Human Services; made the existing behavioral health regions responsible for developing and providing community-based behavioral health services; and laid the groundwork for the eventual closure of the regional centers once community-based services were in place.

The broad array of community-based services envisioned by LB 1083 did not fully materialize leaving gaps in the services, supports, and residential options available for individuals with behavioral health needs. As a result, a segment of the population with serious mental illness has turned to assisted living facilities to fill their housing needs.

In 2018 a seven-member State-Licensed Care Facilities Oversight Committee was created by LR 296 (Walz) in response to the death of a resident at one of these facilities and DHHS's handling of the incident.

The Committee met six times, visited 12 assisted living facilities, and requested and reviewed a substantial amount of information and documentation from DHHS. Based on its work, the LR 296 Committee made twenty recommendations in five areas:

- Actions to be taken by DHHS:
 - Maintain more adequate staffing levels; increase the number of inspections; improve cooperation and communication with the Legislature; improve data capability; establish better coordination with first responders; and develop a plan for dealing with unexpected facility closures
- Reimbursement and funding:
 - Raise reimbursement rates for facilities with a large number of residents with serious mental illness; find new funding streams; and research innovative programs being used by other states
- Additional residential options:
 - Create additional residential options including short-term crisis facilities; long-term semi-permanent residential options; transitional housing; and permanent supportive housing. Increase collaboration with the Department of Correctional Services
- Greater involvement of the behavioral health regions
- Actions to be taken by the Legislature:
 - Establish a permanent legislative behavioral health task force and continue the State-Licensed Care Facilities Oversight Committee

BACKGROUND

In 2004 the Nebraska Legislature passed LB 1083, (the Nebraska Behavioral Health Services Act), to reform how the state provides behavioral health services. Key provisions of the act include: creation of a new division within DHHS to oversee the public behavioral health system; tasking the six behavioral health regions with developing and providing community-based behavioral health services; and ultimately, closure of the regional centers.

In part LB 1083 was a response to the U.S. Supreme Court's 1999 ruling in *Olmstead v. L.C.*¹ In that case the court found that unjustified segregation of persons with disabilities constituted unlawful discrimination under the Americans with Disabilities Act. *Olmstead* requires states to eliminate unnecessary institutionalization of persons with disabilities, and further, to ensure that persons with disabilities receive services in the most integrated community-based setting appropriate to their needs.²

LB 1083 completely overhauled the state's behavioral health system. The newly created Division of Behavioral Health Services was to serve as the chief behavioral health authority for the state and take the lead in organizing and administering the public behavioral health system. The existing behavioral health regional authorities were placed under its direction to eliminate the fragmentation of having separate state and local behavioral health systems.

The new division was charged with "encouraging and facilitating" the statewide development and provision of an appropriate array of community-based behavioral health services and continuum of care in order to: (a) provide greater access to services and improved outcomes for consumers; and (b) reduce the necessity and demand for regional health center behavioral health services.³ With community-based services in place it would be possible to gradually transition persons from the regional centers to the community resulting in a reduction in the necessity and demand for regional center services and the eventual closure of the Norfolk and Hastings Regional Centers. All funds saved from reducing or discontinuing the provision of regional center services would be reallocated to develop and provide statewide community-based behavioral health services.⁴

¹ *Olmstead v. L.C.*, 527 U.S. 581; 119 S.Ct. 2176

² *Neb. Rev. Stat.* Sec. 81-6121

³ *Neb. Rev. Stat.* Sec. 71-810

⁴ Health and Human Services Committee, Nebraska Legislature. Committee Statement: LB 1083. (2004). Retrieved from <https://nebraskalegislature.gov/FloorDocs/98/PDF/CS/LB1083.pdf>

As envisioned, people have transitioned from the regional centers, but the array of community-based services that were to replace the institutional services never fully materialized. This has left many individuals who experience serious mental illness⁵ on their own without the services and supports they need including appropriate residential options.

Consequently, a segment of the population with serious mental illness has turned to assisted living facilities to fill their housing needs. Courts, guardians, and family members have placed individuals in their charge into these facilities as well. Assisted living facilities are not well-suited to serving individuals suffering from serious mental illness. While many facilities do a good job, others fall far short, even to the point of posing a health and safety risk to the individuals living in them. The LR 296 Committee was formed after the death of a resident at one of the substandard facilities.

COMMITTEE HISTORY AND ACTIVITIES

Legislative History

The State-Licensed Care Facilities Oversight Committee was created in 2018 by LR 296 (Walz). LR 296 was introduced in response to a failure by DHHS to take timely and adequate action in response to the death of a resident at the Life Quest facility in Palmer, Nebraska. The facility had a known history of allegations of resident abuse and neglect and had recently been cited by DHHS for numerous code violations.

The LR 296 Committee was established to study the following:

- the closure of the Life Quest mental health centers in Palmer and Blue Hill, Nebraska;
- the living conditions in state-licensed assisted living facilities housing large populations of residents diagnosed with serious mental illness;
- the quality of treatment provided for residents in assisted living facilities with a diagnosed serious mental illness;
- how effectively DHHS performs its oversight function in the licensing and regulation of assisted living facilities;

⁵ Serious mental illness is defined as having, at any time during the previous year, a diagnosable mental, behavioral, or emotional disorder that causes serious functioning impairment that substantially interferes with or limits one or more major life activities. Serious mental illnesses include conditions such as major depression, schizophrenia, and bipolar disorder. (Federal Register Vol. 64, No. 121)

- how DHHS implements and administers behavioral health services through the behavioral health regions;
- DHHS's progress in implementing the recommendations of its consultant, the Technical Assistance Collaborative, (TAC), on developing better housing alternatives for individuals diagnosed with serious mental illness; and
- the adequacy of the steps DHHS is taking to ensure behavioral health services are being administered pursuant to regulations in the Americans with Disabilities Act requiring that public agencies provide services in the most community-integrated setting appropriate.

Committee Activities

The committee conducted the following activities:

Meetings

- The committee met six times in 2018: June 12, June 28, August 6, September 6, October 25, and November 26.
- Representatives of DHHS, a disability rights advocate, members of the Lincoln Police Department, a representative of the Ombudsman's Office, and an expert from the Nebraska assisted living facility industry presented information to the committee.

Information Requests

- The committee submitted two information/document requests to DHHS. Copies of these requests are contained in Appendix A.
- In addition to providing written responses, representatives from DHHS appeared before the committee to provide supplemental information and respond to questions.

Assisted Living Facility Site Visits

- The committee conducted site visits to 12 assisted living facilities in multiple Nebraska communities including: Omaha; Lincoln; Ashland; Central City; Hastings; and Inavale. A list of the facilities, visit dates, and senators participating in each visit is contained in Appendix B.

DHHS Facility Inspections

- Committee members shadowed a DHHS inspector during two facility inspections. Participating in the inspections gave committee members a better understanding of the inspection process and allowed them to speak directly with an inspector whose insight and experience were invaluable.

ASSISTED LIVING FACILITIES IN NEBRASKA

An assisted living facility may be a home, an apartment, or something much larger. It is a residential setting providing assisted living services, for payment, to four or more persons for a period of 24 or more consecutive hours.^{6,7} Assisted living services promote an individual's health and safety. These include housing, meals, 24-hour access to staff, noncomplex nursing interventions,⁸ and support with the activities of daily living. Age, illness, or physical disability are the primary reasons people choose to live in, or are placed in, assisted living settings.

In addition to their residents' physical well-being, assisted living facilities are to promote residents' mental and psychosocial well-being. Residents must be evaluated before admission and periodically during the continuation of their stay.⁹ The assisted living facility must have a written service agreement negotiated with each resident or his or her authorized representative, to delineate the services to be provided to meet the needs identified in the evaluation. The resident service agreement must be reviewed and updated as the resident's needs change.¹⁰

All assisted living facilities must be licensed. Department of Health and Human Services Regulations and Licensure licenses and oversees assisted living facilities pursuant to Title 175 Chapter 4 of the Nebraska Administrative Code as authorized by the Assisted Living Facility Act¹¹ and the Health Care Facility Licensure Act.¹²

⁶ Neb. Rev. Stat. Sec. 71-5903(3)(a)

⁷ 175 NAC 4-002

⁸ Non-complex nursing interventions are those which can safely be performed according to exact directions, do not require alteration of the standard procedure, and for which the results and client/patient responses are predictable (172 NAC 99-002)

⁹ Neb. Rev. Stat. Sec. 71-5903(4)

¹⁰ 175 NAC 4-006.06

¹¹ Neb. Rev. Stat. Secs. 71-5901 to 71-5908

¹² Neb. Rev. Stat. Secs. 71-401 to 71-459

COMMITTEE RECOMMENDATIONS

The public behavioral health system in Nebraska is not functioning as LB 1083 intended. There are multiple shortcomings in services, funding, organization, and administration. Through its work the LR 296 Committee has become acutely aware of many of these shortcomings. It is also acutely aware that the reach of one committee is limited. The committee hopes its work will be the beginning of meaningful change in a system that struggles to do its best but still leaves many of the most vulnerable lacking the services and supports they need.

Following are the committee's recommendations.¹³ Many of them are small, straight forward action steps that can be accomplished quickly but have the potential to bring about significant improvements. Others will take time to implement but ultimately will move the state's public behavioral health system closer to the vision of LB 1083.

The recommendations are organized around five themes: Actions by DHHS; Reimbursement and Funding; Residential Alternatives; Greater Involvement by the Behavioral Health Regions; and Legislative Actions.

I. ACTIONS BY THE DEPARTMENT OF HEALTH AND HUMAN SERVICES

Incident Investigation and Inspection

In Nebraska, at the present time, there are 285 state-licensed assisted living facilities with 12,768 licensed beds.¹⁴ They range in size from a facility with three occupied beds in Clarkson, Nebraska to a facility in Omaha with 276 beds. The average size for an assisted living facility in the state is 45 beds. State licensure data does not indicate the number of beds occupied by individuals with serious mental illness.

DHHS has two full-time staff members responsible for investigating complaints and conducting routine inspections for all 285 facilities. The committee believes this number is far too low. DHHS has a tiered system for triaging the severity of the complaints it receives but there are simply too few surveyors to quickly and thoroughly investigate incidents and complaints,

¹³ The recommendations included in the body of the report were unanimously approved by the committee. Appendix C lists additional recommendations for future consideration.

¹⁴ Neb. Dept. of Health and Human Services. (2018, November 15). State of Nebraska roster assisted living facilities. Retrieved from <http://dhhs.ne.gov/publichealth/Documents/ALF%20Roster.pdf>

which in some instances may be life threatening, while at the same time performing an adequate number of routine inspections.

DHHS regulations require that up to 25 percent of all assisted living facilities be randomly selected for inspection each year. Random inspection rates have declined precipitously in the last five years: 25 percent in 2013; 13 percent in 2014 and 2015; and 12 percent in 2016. There were no random inspections conducted in 2017.

DHHS regulations also require that every assisted living facility be inspected at least once every five years. These inspections are comprehensive and can take up to two days to complete. During an inspection the surveyor looks at a wide range of items, among them the physical premises including kitchen facilities and food handling techniques. They review personnel records, staffing levels, and training records. They also review grievance procedures, review the grievances filed in the past year, and note the disposition of the grievances. The surveyor also conducts interviews with residents and reviews resident services agreements.

Nebraska's five-year inspection schedule is considerably longer than the 1.5 year average for many other states.¹⁵ Over a period of five years, conditions in a facility can easily go from acceptable to dangerous.

RECOMMENDATIONS:

- **Increase the number of facility inspectors to a level that will allow for an adequate number of inspections to keep facilities mindful that they may be randomly inspected at any time.**
- **Designate separate staff to investigate complaints/incidents and staff to conduct routine inspections.**
- **Continue the comprehensive five-year inspections but conduct more frequent drop-in inspections for all facilities. Facilities with a history of repeated violations or a large number of complaints should be a high priority for drop-in inspections.**

¹⁵ In research conducted by the Legislative Research Office, the average length of time between inspections for 26 other states with facilities similar to Nebraska's assisted living facilities was found to be 1.5 years. A list of these states and their inspection frequency is contained in Appendix D.

- **Require assisted living facilities to self-report incidents or rule violations such as resident on resident violence; resident on staff violence; or the discovery of bed bugs, and institute policies to ensure compliance.**

Improved Cooperation and Communication with the Legislature and Improved Data Capability

Throughout its work the committee encountered reluctance from DHHS to provide requested information as well as a self-reported inability to respond to data requests. Based on information provided by DHHS, it currently does not have a data system capable of monitoring complaints, compliance, and performance for individual facilities, or at least one that is capable of providing the data in a timely and useable format. The committee finds this troubling. If there is no way to identify problems or detect discernable patterns of abuse or neglect in a timely manner, there is great potential for serious problems to go undetected. If real time data is available, monitored, and acted upon, it may prevent a problem from becoming a life threatening crisis.

RECOMMENDATIONS:

- **DHHS should modify its current data reporting capability or put in place a data system capable of monitoring facility complaints and performance history that can produce data for individual facilities in a timely and useable format.**
- **DHHS should respond to legislative requests for data and information in a more timely and forthcoming manner. Consideration may need to be given to establishing a protocol requiring DHHS to regularly report to the Legislature on key behavioral health indicators.**

Better Coordination with First Responders

Based on information provided to the committee by police officers and in discussions with facility administrators, it is not unusual for assisted living facilities with large populations of residents with serious mental illness to have regular interactions with law enforcement and other emergency personnel. Currently there is no mechanism for sharing that information with DHHS.

RECOMMENDATION:

- **Establish a protocol to facilitate communication between DHHS Regulations and Licensure and first responders so that incident reports or other matters of concern can be shared with appropriate DHHS personnel in a timely manner.**

Planning for Facility Closures

In March 2018, 21 Nebraska nursing homes went into receivership, causing chaos and jeopardizing the peace of mind and residential security of the individuals living in them.¹⁶ Moving disrupts residents' lives, unsettles their routines, and threatens their well-being.¹⁷ The unexpected closure of an assisted living facility serving a population of residents with serious mental illness could be especially devastating for such a vulnerable group.

RECOMMENDATION:

- **DHHS should develop a contingency plan of action in the event a facility closes to prevent residents from becoming homeless.**

II. REIMBURSEMENT AND FUNDING

Reimbursement Rates

In conversations with administrators at all the facilities visited by the committee, one issue that came up repeatedly was the low level of reimbursement for assisted living facilities serving individuals with serious mental illness. The maximum amount an assisted living facility can receive for an individual who does not qualify for Medicaid under the Adult and Disabled Waiver (the majority of this population) is \$1,128 per month.¹⁸ For an

¹⁶ Stoddard, M. (2018, March 26). Chain of 21 Nebraska nursing homes placed in receivership after missing payroll. *The Grand Island Independent*. Retrieved from https://www.theindependent.com/news/local/chain-of-nebraska-nursing-homes-placed-in-receivership-after-missing/article_3c573064-310d-11e8-93c4-eb2d69aa94a7.html

¹⁷ Housing for people with mental health and substance use problems. heretohelp. Retrieved from <http://www.heretohelp.bc.ca/factsheet/housing-for-people-with-mental-health-and-substance-use-problems>

¹⁸ Neb. Rev. Stat. Sec. 68-1005 establishes a, non-Medicaid state AABD supplemental program. An individual who is aged, blind or disabled and meets state eligibility criteria can receive a monthly payment from the state which can be used for housing expenses. DHHS identifies an annual Standard of Need -- currently \$1,192 for an individual residing in an assisted living facility who is not eligible for the Medicaid A&D Waiver

individual qualified under the Medicaid Waiver, the reimbursement rate is \$2,692 per month in urban counties, and \$2,388 per month in rural counties.¹⁹ The most successful facilities were able to supplement this amount by providing transportation services or on-site day services that are reimbursable by Medicaid. Not all facilities have the capacity to provide additional services and may struggle to get by. This is especially true for smaller facilities with fewer residents.

RECOMMENDATION:

- **Establish a special provider rate for assisted living facilities serving large populations of residents diagnosed with serious mental illness. DHHS may have to develop a plan for finding known behavioral health service consumers living in assisted living facilities since this is not information currently tracked by DHHS.**

New Funding Streams and Innovative Programs

Many states are using Section 1115 Medicaid demonstration waivers^{20,21} to fund new behavioral health initiatives. Nebraska is one of 28 states who have received or applied for an 1115 waiver for treatment of substance use disorder. In addition, 21 states have pending or approved waivers to expand community-based services.²² For example, Massachusetts is offering community-based

Program -- from which the individual's Social Security payment is deducted; the remainder is the amount of supplemental money the individual can receive from the state. The supplement is paid to the individual or guardian not the facility. The individual can keep \$64 per month for a personal needs allowance. The remainder, \$1,128, is the maximum payment the assisted living facility can receive.

¹⁹ To qualify under the Medicaid waiver an individual must require a nursing home level of care as defined by the state

²⁰ Section 1115 of the Social Security Act allows the Secretary of Health and Human Services to waive provisions of major health and welfare programs authorized under the Act, including certain Medicaid requirements, allowing states to use federal Medicaid funds in ways that are not otherwise allowed under federal rules

²¹ Kaiser Commission on Key Facts. (2011, June). Medicaid and the uninsured. *The Henry J. Kaiser Family Foundation*. Retrieved from <https://kaiserfamilyfoundation.files.wordpress.com/2013/01/8196.pdf>

²² The Henry J. Kaiser Family Foundation. (2018, December 7). Medicaid waiver tracker: Approved and pending section 1115 waivers by state. Retrieved from <https://www.kff.org/medicaid/issue-brief/medicaid-waiver-tracker-approved-and-pending-section-1115-waivers-by-state/#Table5>

services intended to divert individuals with behavioral health disorders from institutional stays. Delaware and New York are providing supportive services to targeted individuals who meet certain risk criteria and who need these services to live in the community. Four states are proposing waivers to provide or expand supportive housing services for people with a behavioral health diagnosis who are homeless or at risk of homelessness.²³ DHHS should take advantage of additional opportunities to increase funding for behavioral health services. Nebraska should also explore successful behavioral health system innovations developed by other states.

RECOMMENDATIONS:

- **Undertake a study of how effectively and equitably current funds for behavioral health services are being used and pursue new funding streams such as additional Medicaid Section 1115 behavioral health waivers.**
- **Research innovative best practices used by other states to provide housing and supportive services for individuals with serious mental illness.**

III. RESIDENTIAL ALTERNATIVES

Lack of safe and affordable housing can be a major barrier to recovery for someone with serious mental illness. Without a stable place to live, people cycle in and out of shelters, jails, hospitals and homelessness.²⁴

More Residential Alternatives

The committee visited 12 assisted living facilities. Ten of the facilities served large populations of residents suffering from serious mental illness, most of whom were not covered under the Medicaid waiver. For comparison, two “model facilities” serving a sizeable number of individuals who were covered under the waiver, but not necessarily suffering from serious mental illness, were visited. The facilities ranged in size from eight beds to 244 beds and were located in urban and rural areas. The differences in conditions between the two types of facilities was dramatic. Conditions at the two model facilities were

²³ Musumeci, J. (2017, November). Key themes in Medicaid section 1115 behavioral health waivers. *The Henry J. Kaiser Family Foundation*. Retrieved from <https://www.kff.org/medicaid/issue-brief/key-themes-in-medicaid-section-1115-behavioral-health-waivers/>

²⁴ Securing stable housing. National Alliance on Mental Illness. Retrieved from <https://www.nami.org/Find-Support/Living-with-a-Mental-Health-Condition/Securing-Stable-Housing>

pleasant and comfortable. Conditions at the other ten facilities ranged from adequate to alarming.

Many of the facilities visited by the committee effectively functioned as dead ends. Those facilities provided minimal services and supports and no pathway to transition into the community. Rather than services, one facility simply required the residents to be outside of the facility for a period of several hours, even if it was just standing on the front steps.

The committee finds there is great need for additional housing options. A full-range of short-term, long-term, transitional, and permanent housing options should be available to meet the varied housing needs of the diverse group of individuals with serious mental illness.²⁵

Secure Crisis Residential. There is tremendous need for secure crisis residential facilities across the state. Law enforcement officers expend a great deal of time trying to find a safe and secure place to take someone experiencing a psychiatric crisis. In most instances the choice is between jail and the emergency room.^{26,27} In both instances the services provided may stabilize the individual's condition, but once the crisis passes and he or she is released back into the community, with no continuing help or support system to prevent the same thing from happening again, the cycle repeats itself. A crisis residential facility is not a place where people live indefinitely but only until the immediate crisis passes. At that time, services should be available to help the individual return home or, if that is not possible, then to a setting offering a level of care suitable to his or her needs until such time as he or she can return home.

Long-term Residential. Long-term, semi-permanent group homes are needed to serve individuals with very high needs who cannot live independently in the community. Ongoing services should be provided to help these individuals build and improve their skills. There should be frequent opportunities to

²⁵ TriWest. (2015, January). Omaha area adult behavioral health system assessment: Final summary of findings and recommendations. Retrieved from http://otoc.org/wp-content/uploads/2015/09/Omaha-Region-6-System-Assessment-Report-FINAL-TriWest-Group-2015_01_16.pdf

²⁶ The Lincoln Regional Center is the only facility in the state providing secure residential services. Each behavioral health region is allocated a specific number of beds based on population but court-ordered placements have priority so no bed may be available.

²⁷ Performance Audit Committee Nebraska Legislature. (2015, November) The DHHS behavioral health division's role in reducing service gaps.

integrate into the community and function as independently as possible including receiving day services or medical care away from the facility.

Group Transitional Residential. Transitional housing is an umbrella term to describe housing that is not permanent, but is designed to provide services such as case management or skills building that can assist individuals as they integrate into the community and improve their potential for maintaining residential stability. Transitional housing can be short-term or long term. The length of stay for short-term transitional housing is on average one to three months. Long-term transitional housing programs generally have a time limit spanning from three months to two years.²⁸

Permanent Supportive Housing. In keeping with the *Olmstead* mandate and the intent of LB 1083 the housing goal for most individuals with mental illness should be residence in permanent supportive housing or independent housing. Permanent supportive housing is a model that integrates permanent, affordable rental housing with community-based supportive services that help people access and maintain stable housing in the community.²⁹ It is a comprehensive approach to ensuring that people with behavioral health conditions obtain and maintain the most independent level of secure housing appropriate for them. Studies have shown that supportive housing increases housing stability, improves health, and can lower public costs by reducing the use of publicly-funded crisis services such as shelters, hospitals, psychiatric centers, jails and prisons.³⁰

Since 2013, DHHS has been working with a consultant, the Technical Assistance Collaborative (TAC), to develop a Supportive Housing Plan for Nebraska that will expand and promote supportive housing and community integration across the state.³¹ LB 1033 (Campbell 2016) mandated DHHS to develop a comprehensive strategic plan for providing services to qualified persons with disabilities in the most integrated community-based settings pursuant to the *Olmstead* decision. DHHS is to provide the completed strategic plan to the Legislature and the Governor by December 15, 2018.

²⁸ TriWest, *Op. cit.*

²⁹ Permanent supportive housing. Technical Assistance Collaborative. Retrieved from <http://www.tacinc.org/knowledge-resources/topics/permanent-supportive-housing/>

³⁰ Supportive housing. United States Interagency Council on Homelessness. Retrieved from <https://www.usich.gov/solutions/housing/supportive-housing/>

³¹ TAC. (2016, August 4). Nebraska supportive housing plan. Retrieved from http://dhhs.ne.gov/behavioral_health/Documents/TACFinal2016.pdf

RECOMMENDATIONS:

- **Develop secure crisis residential facilities across the state for short-term placement of people in psychiatric crisis.**
- **Develop long-term, semi-permanent group homes for those individuals with serious mental illness who need a level of care between that provided in a secure residential setting and independent community living. These homes should promote as much community integration as is appropriate for each individual according to his or her needs and capabilities.**
- **Develop an array of short-term and long-term transitional housing alternatives to facilitate the transition to more permanent housing.**
- **Increase the availability of permanent supportive housing in the state following the recommendations of the Technical Assistance Collaborative.**
- **DHHS should provide regular updates to the committee on its progress implementing the TAC recommendations.**

Greater Collaboration with the Department of Correctional Services

It is well documented that a significant portion of the prison population suffers from mental illness. Regardless of mental health status, securing housing upon release from prison or jail is a challenge for many. For persons with mental illness the challenges are compounded. Without stable housing and social supports there is a high probability that individuals will continue to cycle back into the criminal justice system. Persons with mental illness who have had justice system contact may have differing needs than those individuals with mental illness who have not had contact with the justice system.³²

RECOMMENDATION:

- **Create policies and procedures to increase coordination between DHHS and the Department of Correctional Services to ensure that individuals released from incarceration find appropriate housing and supportive services.**

³² Roman, C.G., McBride, E.C., and Osborne, J.W.L. (2006, April 3). Principles and practice in housing for persons with mental illness who have had contact with the justice system. *Urban Institute Justice Policy Center*. Retrieved from <https://www.urban.org/sites/default/files/publication/50816/411314-Principles-and-Practice-in-Housing-for-Persons-with-Mental-Illness-Who-Have-Had-Contact-with-the-Justice-System.PDF>

IV. GREATER INVOLVEMENT OF THE BEHAVIORAL HEALTH REGIONS

LB 1083 gives responsibility for the local development and administration of behavioral health services to six behavioral health regions.³³ The Division of Behavioral Health contracts with the behavioral health regions to deliver behavioral health services in the community using both state and federal funds.³⁴ Each region competitively bids for the delivery of mental health services within their region.^{35,36}

During the site visits it quickly became apparent that the residents in these facilities were not receiving services through the behavioral health regions. This was verified with the Legislative Fiscal Office. Several facility administrators did not even know about the existence of the regions or the services they are mandated to provide. In one instance, emergency dental care for a resident had not been received because the facility was having trouble locating a dentist in the area who would accept Medicaid. This is something that should easily have been handled through the behavioral health region.

The behavioral health regions should be much more active in providing services and supports for individuals with serious mental illness who reside in assisted living facilities. In addition to benefiting from help accessing needed medical care, receiving services such as case management might facilitate transition to more independent housing. Without supportive services that could stabilize or improve his or her condition, many residents simply languish in dead-end facilities like the ones the committee visited, with a slim chance for moving towards greater independence.

RECOMMENDATION:

- **The behavioral health regions should take a greater role in serving individuals with serious mental illness residing in assisted living facilities.**

³³ Performance Audit Committee Nebraska Legislature. *Op. cit.*

³⁴ University of Nebraska Medical Center College of Public Health. (2016, September). Nebraska behavioral health needs assessment. Retrieved from http://dhhs.ne.gov/behavioral_health/Documents/BHNeedsAssessment.pdf

³⁵ TAC, *op cit.*

³⁶ Neb. Rev. Stat. Sec. 71-803

V. LEGISLATIVE ACTIONS

Establish a Permanent Legislative Behavioral Health Task Force

Currently, there does not appear to be a mechanism for public, private, and non-profit stakeholders in the behavioral health arena to work together in an efficient and productive way. As a result there are gaps in services, duplication of efforts, and general confusion as to who has the responsibility for what. The committee proposes the creation of a permanent legislative behavioral health task force composed of a broad-based coalition of service providers, behavioral health experts, executive branch representatives, members of the Legislature, and other select partners. Among its responsibilities, the task force should: identify service needs and monitor the provision and effectiveness of behavioral health services throughout the state.

RECOMMENDATION:

- **Establish a broad-based permanent legislative behavioral health task force to identify service needs and monitor the provision and effectiveness of behavioral health services in the state**

Continue the State-Licensed Care Facilities Oversight Committee

The LR 296 Committee made significant progress during 2018 but believes much still remains to be done. In particular, the committee would like additional time to:

- study how the behavioral health regions are serving residents in assisted living facilities suffering from severe mental illness;
- continue its review of the incidents leading to the closure of the Life Quest facility in Palmer, Nebraska and the sufficiency of DHHS's response;
- examine whether a more formal process is needed to assure better communication between DHHS and the Legislature concerning behavioral health issues;
- research new and innovative residential models being developed in other states;
- monitor DHHS's progress in implementing the recommendations in the TAC report; and
- monitor DHHS's progress in strengthening its facility inspection process.

RECOMMENDATION:

- **The LR 296 committee should be reestablished in 2019 with a final report due to the Legislature in December 2019.**

CONCLUSION

Through its work, the LR296 committee has become convinced that assisted living facilities as currently operated and funded are not well-suited to serving persons suffering from serious mental illness. The reality is that until additional residential options become available they will continue to house these vulnerable individuals. The committee is adamant in its position that everything possible must be done to ensure that assisted living facilities are clean, safe, and healthy places where individuals are treated with respect and provided with the necessary care, services, and supports that will allow them to live dignified and fulfilling lives while helping them move toward their greatest level of independence.

Appendix A
Questions to DHHS

Nebraska State Legislature

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Chairperson - Transportation and
Telecommunications
Vice Chairperson - Revenue
Committee on Committees

July 20, 2018

Courtney Phillips, CEO Nebraska Department of Health and Human Services
Sheri Dawson, Director Division of Behavioral Health
Tom Williams, M.D., Chief Medical Officer and Director Division of Public Health

Re: Information Request from the Nebraska Legislature's State-Licensed Care Facilities
Special Oversight Committee

Dear CEO Phillips, Director Dawson, and Director Williams:

I am contacting you as Chairperson of the Nebraska Legislature's LR296 State-Licensed Care
Facilities Special Oversight Committee.

As you know, the committee has been charged with several tasks, among them:

- Examining the recent closures of the Life Quest mental health centers located in Palmer and Blue Hill, Nebraska;
- Studying the conditions at state-licensed care facilities that serve large populations of individuals with severe and persistent mental illness and the quality of treatment the individuals residing in them are receiving;
- Studying the effectiveness of regulation and licensure by the Division of Public Health in providing oversight of these facilities;
- Studying how the Department of Health and Human Services implements and administers behavioral health services through the behavioral health regions; and
- Studying whether other residential options are needed to serve individuals with severe and persistent mental illness.

Enclosed with this letter are two sets of questions we would like the Department of Health and Human Services to respond to, or be prepared to respond to. The first set of questions focuses specifically on state-licensed assisted living facilities serving large populations of individuals with severe and persistent mental illness. We request that the department

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provide the committee with written answers to these questions. Please return your answers, along with any requested documentation, to my office by August 17, 2018.

The second set of questions focuses on the services and supports available for individuals who have been diagnosed with behavioral health disorders. We request that DHHS be prepared to respond to these questions, in person, at the committee's next meeting on August 6, 2018.

Please let me know if you need clarification on any of these items.

Regards,

A handwritten signature in blue ink that reads "Curt Friesen". The signature is written in a cursive style.

Senator Curt Friesen
Legislative District 34
Chairperson of the Legislature's State-Licensed Care Facilities Special Oversight Committee

cc: Bryson Bartels

Question Set (1)

Assisted-Living Facilities

- 1a. Who reviews and approves the annual license renewal applications submitted by assisted-living facilities?
- 1b. What factors are considered in determining whether an assisted-living facility's license is renewed?
- 1c. If a complaint has been received about an assisted-living facility, is there any consideration of this in the license renewal process?

- 2a. What entity has the principal responsibility for routine inspections of assisted-living facilities?
- 2b. How many staff are assigned to inspect assisted-living facilities?
- 2c. Do these staff have other duties in addition to inspecting assisted-living facilities?
- 2d. Approximately what percentage of staff time is devoted to routine inspection of assisted-living facilities?

Regulations governing the licensure of assisted-living facilities are authorized by and implement the Assisted-Living Facility Act. Neb. Rev. Stat. §§ 71-5901 to 71-5908 and the Health Care Licensure Act. Neb. Rev. Stat. §§ 71-401 to 71-459. According to DHHS regulation 4-005.04 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.

3. DHHS regulation 4-005.04 Random Selection states:
Each year the Department may inspect up to 25% of the assisted-living facilities based on a random selection of licensed assisted-living facilities.
- 3a. For each of the five years 2013, 2014, 2015, 2016, and 2017, what percentage of all assisted-living facilities were randomly inspected?
- 3b. Please provide a list of the facilities that were inspected due to random selection for each year 2013-2017.

- 4a. What entity has the principal responsibility for investigating complaints against assisted-living facilities?
- 4b. How many staff are assigned to investigate complaints against assisted-living facilities?
- 4c. Do these staff have other duties in addition to conducting assisted-living facility investigations?
- 4d. Approximately what percentage of staff time is devoted to investigating complaints against assisted-living facilities?

Attached to these questions is a list of 21 assisted-living facilities. The following questions apply to these facilities.

DHHS regulation 4-005.04B Focused Selection sets out ten conditions which may prompt an onsite inspection and states:

The Department may inspect an assisted-living facility when the Department is informed of one or more of the following:

An occurrence resulting in resident death or serious physical harm;

- 5. Over the last five years have any of the named assisted-living facilities been inspected due to an occurrence resulting in resident death or serious physical harm? If so, for each inspected facility, please provide the following:
 - 5a. The name of the facility;
 - 5b. The date(s) of inspection;
 - 5c. The findings of the inspection(s). Please attach copies of any inspection reports.
 - 5d. Did the inspection(s) result in sanctions being imposed against the facility? If so what where they?
 - 5e. How much time was the facility given to comply with the sanctions?
 - 5f. Has the facility fully complied with all sanctions?
 - 5g. Has the facility been re-inspected to verify compliance and if so when was the inspection completed?

An occurrence resulting in imminent danger to or the possibility of death or serious physical harm to residents;

- 6. Over the last five years have any of the named assisted-living facilities been inspected due to an occurrence resulting in imminent danger to or the possibility

of death or serious physical harm to residents? If so, for each inspected facility please provide the following:

- 6a. The name of the facility;
- 6b. The date(s) of inspection;
- 6c. The findings of the inspection(s). Please attach copies of any inspection reports.
- 6d. Did the inspection(s) result in sanctions being imposed against the facility? If so what where they?
- 6e. How much time was the facility given to comply with the sanctions?
- 6f. Has the facility fully complied with all sanctions?
- 6g. Has the facility been re-inspected to verify compliance and if so when was the inspection completed?

The passage of five years without an inspection;

- 7a. Have all of the 21-named assisted-living facilities been inspected at least once in the past five years?
- 7b. If not, please identify those facilities that have not been inspected at least once in the past five years.

Complaints that, because of their number, frequency, or type, raise concerns about the maintenance, operation, or management of the facility;

- 8. Over the last five years have any of the named assisted-living facilities been inspected due to complaints that, because of their number, frequency, or type, raise concerns about the maintenance, operation, or management of the facility? If so, for each inspected facility please provide the following:
 - 8a. The name of the facility;
 - 8b. The date(s) of inspection;
 - 8c. The findings of the inspection(s). Please attach copies of any inspection reports.
 - 8d. Did the inspection(s) result in sanctions being imposed against the facility? If so what where they?
 - 8e. How much time was the facility given to comply with the sanctions?
 - 8f. Has the facility fully complied with all sanctions?
 - 8g. Has the facility been re-inspected to verify compliance and if so when was the inspection completed?

Financial instability of the licensee or of the licensee's parent company;

9. Over the last five years have any of the named assisted-living facilities been inspected due to financial instability of the licensee or of the licensee's parent company? If so, for each facility please provide the following:
 - 9a. The name of the facility;
 - 9b. The date(s) of inspection;
 - 9c. The findings of the inspection(s). Please attach copies of any inspection reports.
 - 9d. Did the inspection(s) result in sanctions being imposed against the facility? If so what where they?
 - 9e. How much time was the facility given to comply with the sanctions?
 - 9f. Has the facility fully complied with all sanctions?
 - 9g. Has the facility been re-inspected to verify compliance and if so when was the inspection completed?

Outbreaks of recurrent incidents of physical health problems at an assisted-living facility such as dehydration, pressure sores, or other illnesses;

10. Over the last five years have any of the named assisted-living facilities been inspected due to outbreaks of recurrent incidents of physical health problems at the assisted-living facility such as dehydration, pressure sores, or other illnesses? If so, for each facility inspected please provide the following:
 - 10a. The name of the facility;
 - 10b. The date(s) of inspection;
 - 10c. The findings of the inspection(s). Please attach copies of any inspection reports.
 - 10d. Did the inspection(s) result in sanctions being imposed against the facility? If so what where they?
 - 10e. How much time was the facility given to comply with the sanctions?
 - 10f. Has the facility fully complied with all sanctions?
 - 10g. Has the facility been re-inspected to verify compliance and if so when was the inspection completed?
- 11a. What is the current status of the investigation into the events surrounding the September 3, 2017 death at the facility known as Life Quest at the Coolidge Center located in Palmer, Nebraska, that led to the revocation of the facility's license on October 9, 2017?

- 11b. Have any new policies, procedures, guidelines, or initiatives been put in place as a result of the information obtained during the investigation? If so briefly outline them.
- 11c. Has a final report been issued in this matter? If so, please return a copy with your responses to these questions. If not, when will the final report be completed?

Question Set (2)
Services and Supports for Individuals with Diagnosed Behavioral Health Disorders

1. In the last five years, how many individuals discharged from the Lincoln Regional Center (excluding sex offenders) have been discharged to an assisted-living facility where a majority of the residents have a severe and persistent mental illness?
2. Please describe how the department uses capacity and wait list data reported by the Regions to verify service needs and target resources for service development or service enhancement for individuals with a diagnosed behavioral health disorder.
3. Please describe how the department identifies individuals with a diagnosed behavioral health disorder and monitors need for supportive housing.
4. Please describe any current activities being undertaken by the department to increase the availability of rehabilitative services and supports for individuals with a behavioral health disorder diagnosis.
5. Please describe any steps the department has taken to align prioritization of housing services and supports for individuals who have a diagnosed behavioral health disorder.
6. Has the department investigated the availability of additional resources such as Medicaid to expand housing-related services and supports for individuals with a diagnosed behavioral health disorder?
7. Please update the committee on the department's progress in implementing the recommendations made by the Technical Assistance Collaborative in its 2016 Nebraska Supportive Housing Plan.

Appendix B

Assisted Living Facility Site Visit List

DATE	FACILITIES	SENATORS
09/14/2018	Immanuel Courtyard – Omaha, NE	Senator Friesen
09/24/2018	Central City Assisted Living – Central City, NE Life Essentials Assisted Living – Central City, NE	Senator Halloran Senator Quick Senator Wishart
09/25/2018	O.U.R. Homes – Lincoln, NE	Senator Halloran Senator Walz Senator Wishart
09/25/2018	Bel-Air Home – Lincoln, NE Community Supports of Lincoln – Lincoln, NE	Senator Friesen Senator Thibodeau Senator Walz Senator Wishart
09/27/2018	Oxbow Living Center – Ashland, NE	Senator Halloran Senator Quick Senator Wishart
09/28/2018	Golden Manor Assisted Living – Omaha, NE Princess Anne – Omaha, NE	Senator Friesen Senator Linehan Senator Thibodeau
10/01/2018	Prescott Place – Lincoln, NE	Senator Linehan Senator Quick Senator Walz
10/02/2018	Champion Homes of Hastings – Hastings, NE Spring Creek Home – Inavale, NE	Senator Halloran Senator Quick Senator Thibodeau

Appendix C

Recommendations for Future Consideration

- Require that assisted living facilities be accredited by a professional accrediting body
- Establish a separate reporting body outside of DHHS for referral of unaddressed grievances
- Undertake a study comparing funding for developmental disability services with services for the seriously mentally ill and identify strategies for dealing with inequities
- Provide incentives such as grants to aid facilities in improving living conditions
- Examine the negative impact the current insurance practice of substituting generic drugs for certain in network drugs is having on the mental health of previously stable individuals

Appendix D

Frequency of Facility Inspections by State

STATE	FREQUENCY OF INSPECTIONS
Arkansas	Annually
Colorado	3 Years
Florida	2 Years
Hawaii	Annually
Idaho	3 Years
Illinois	Annually
Iowa	2 Years
Kansas	Annually
Kentucky	2 Years
Louisiana	Annually
Maryland	15 Months
Massachusetts	2 Years
Missouri	Annually
Montana	2 Years
New Jersey	2 Years
Ohio	15 Months
Oklahoma	15 Months
Pennsylvania	Annually
Rhode Island	2 Years
South Dakota	Annually
Texas	2 Years
Utah	2 Years
Virginia	Annually
Washington	18 Months
Wisconsin	2 Years
Wyoming	Annually