

IN THE SENATE

SENATE BILL NO. 1096

BY HEALTH AND WELFARE COMMITTEE

AN ACT

1
2 RELATING TO RESIDENTIAL CARE AND ASSISTED LIVING FACILITIES; AMENDING SEC-
3 TION 39-3302, IDAHO CODE, TO DEFINE TERMS AND TO MAKE TECHNICAL CORREC-
4 TIONS; AMENDING SECTION 39-3355, IDAHO CODE, TO PROVIDE FOR AN ALTER-
5 NATIVE TO REGULAR COMPLIANCE INSPECTIONS; AND AMENDING SECTION 63-701,
6 IDAHO CODE, TO PROVIDE A CORRECT CODE REFERENCE AND TO MAKE A TECHNICAL
7 CORRECTION.

8 Be It Enacted by the Legislature of the State of Idaho:

9 SECTION 1. That Section 39-3302, Idaho Code, be, and the same is hereby
10 amended to read as follows:

11 39-3302. DEFINITIONS. As used in this chapter:

12 (1) "Abuse" means a nonaccidental act of sexual, physical or mental
13 mistreatment or injury of a resident through the action or inaction of an-
14 other individual.

15 (2) "Accreditation" means a process of review that allows health care
16 organizations to meet regulatory requirements and standards established by
17 a recognized accreditation organization.

18 (3) "Accreditation commission" means the commission on accreditation
19 of rehabilitation facilities (CARF), the joint commission, or another na-
20 tionally recognized accreditation organization approved by the director.

21 (4) "Activities of daily living" means the performance of basic self-
22 care activities in meeting an individual's needs to sustain him in a daily
23 living environment.

24 (5) "Administrator" means an individual, properly licensed by the bu-
25 reau of occupational licensing, who is responsible for day-to-day operation
26 of a residential care or assisted living facility.

27 (6) "Adult" means a person who has attained the age of eighteen (18)
28 years.

29 (7) "Advocate" means an authorized or designated representative of
30 a program or organization operating under federal or state mandate to rep-
31 resent the interests of mentally ill, developmentally disabled, or elderly
32 residents.

33 (8) "Assessment" means the conclusion reached using uniform crite-
34 ria, which identifies resident strengths, weaknesses, risks and needs, to
35 include functional, medical and behavioral needs. The assessment criteria
36 shall be developed by the department and residential care or assisted living
37 council.

38 (9) "Authorized provider" in this chapter means an individual who is a
39 nurse practitioner or clinical nurse specialist or a physician assistant.

40 (10) "Board" means the board of health and welfare.

1 (911) "Chemical restraint" means a medication used to control behavior
 2 or to restrict freedom of movement and is not a standard treatment for the
 3 resident's condition.

4 (102) "Core issues" means abuse, neglect, exploitation, inadequate
 5 care, a situation in which the facility has operated for more than thirty
 6 (30) days without a licensed administrator designated the responsibility
 7 for the day-to-day operations of the facility, inoperable fire detection or
 8 extinguishing systems with no fire watch in place pending the correction of
 9 the system, and surveyors denied access to records, residents or facilities.

10 (113) "Department" means the Idaho department of health and welfare.

11 (124) "Director" means the director of the Idaho department of health
 12 and welfare.

13 (135) "Exploitation" means the misuse of a resident's funds, property,
 14 resources, identity or person for profit or advantage.

15 (146) "Facility" means a residential care or assisted living facility.

16 (157) "Governmental unit" means the state, any county, any city, other
 17 political subdivision, or any department, division, board, or other agency
 18 thereof.

19 (168) "Inadequate care" occurs when a facility fails to provide the ser-
 20 vices required to meet the terms of the negotiated service agreement or pro-
 21 vide for room, board, activities of daily living, supervision, first aid,
 22 assistance and monitoring of medications, emergency intervention, coordi-
 23 nation of outside services, a safe living environment; or engages in viola-
 24 tions of ~~resident's~~ residents' rights, or takes residents who have been ad-
 25 mitted in violation of the provisions of section 39-3307, Idaho Code.

26 (179) "License" means a basic permit to operate a residential care or
 27 assisted living facility.

28 (1820) "Licensee" means the owner of a license to operate a residential
 29 care or assisted living facility under this chapter.

30 (1921) "Licensing agency" means the unit of the department of health and
 31 welfare that conducts inspections and surveys and issues licenses based on
 32 compliance with this chapter.

33 (202) "Neglect" means failure to provide food, clothing, shelter, or
 34 medical care necessary to sustain the life and health of a resident.

35 (213) "Negotiated service agreement" means the agreement reached by the
 36 resident and/or ~~their~~ the resident's representative and the facility, based
 37 on the assessment, physician's orders, admission records, and desires of the
 38 resident, and which outlines services to be provided and the obligations of
 39 the facility and the resident.

40 (224) "Personal assistance" means the provision by the staff of the fa-
 41 cility of one (1) or more of the following services:

42 (a) Assisting the resident with activities of daily living-;

43 (b) Arranging for supportive services-;

44 (c) Being aware of the resident's general whereabouts-; and

45 (d) Monitoring the activities of the resident while on the premises of
 46 the facility to ensure the resident's health, safety and well-being.

47 (235) "Political subdivision" means a city or county.

48 (246) "Resident" means an adult who lives in a residential care or as-
 49 sisted living facility.

1 (257) "Residential care or assisted living facility" means a facility
 2 or residence, however named, operated on either a profit or nonprofit basis
 3 for the purpose of providing necessary supervision, personal assistance,
 4 meals and lodging to three (3) or more adults not related to the owner.

5 (268) "Room and board" means lodging and meals.

6 (279) "Substantial compliance" means a facility has no core issue defi-
 7 ciencies.

8 (2830) "Supervision" means administrative activity which provides
 9 the following: protection, guidance, knowledge of the resident's general
 10 whereabouts, and assistance with activities of daily living. The adminis-
 11 trator is responsible for providing appropriate supervision based on each
 12 resident's negotiated service agreement or other legal requirements.

13 (2931) "Supportive services" means the specific services that are pro-
 14 vided to the resident in the community.

15 SECTION 2. That Section 39-3355, Idaho Code, be, and the same is hereby
 16 amended to read as follows:

17 39-3355. INSPECTIONS. (1) The licensing agency shall cause to be made
 18 such inspections and investigations to determine compliance with this chap-
 19 ter and applicable rules.

20 (2) Inspections for such purposes will be made unannounced and without
 21 prior notice at the discretion of the department and at intervals determined
 22 by the licensing agency.

23 (3) An inspector shall have full access and authority to examine, among
 24 other things, quality of care and service delivery, a facility's records,
 25 resident accounts, physical premises, including buildings, grounds and
 26 equipment, and any other areas necessary to determine compliance with this
 27 chapter and applicable rules.

28 (4) An inspector shall have authority to interview the licensee, admin-
 29 istrator, staff and residents. Interviews with residents shall be confiden-
 30 tial and conducted privately unless otherwise specified by the resident.

31 (5) The licensing agency shall notify the facility, in writing, of all
 32 deficiencies and shall approve a reasonable length of time for compliance by
 33 the facility.

34 (6) Current lists of deficiencies, including plans of correction,
 35 shall be available to the public upon request in the individual facilities or
 36 by written request to the department.

37 (7) The department shall accept an accreditation survey from an ac-
 38 creditation commission for a residential care or assisted living facility
 39 instead of regular compliance inspections conducted under the authority of
 40 this section if all of the following conditions are met:

41 (a) The accreditation commission's standards meet or exceed the state
 42 requirements for licensure for residential care or assisted living fa-
 43 cilities;

44 (b) The facility submits to the department a copy of its required ac-
 45 creditation reports to the accreditation commission in addition to the
 46 application and any other information required for renewal of a li-
 47 cence;

1 (c) The inspection results are available for public inspection to the
 2 same extent that the results of an investigation or inspection con-
 3 ducted under this section are available for public inspection;

4 (d) The accreditation commission complies with the health insurance
 5 portability and accountability act and takes reasonable precautions
 6 to protect the confidentiality of personally identifiable information
 7 concerning the residents of the facility; and

8 (e) If the facility's accreditation report is not valid for the entire
 9 licensure period, the department may conduct a compliance inspection of
 10 the facility during the time period for which the department does not
 11 have a valid accreditation report.

12 (8) The department shall not conduct an onsite compliance inspection of
 13 the residential care or assisted living facility during the time the accred-
 14 itation report is valid except for complaint surveys, reportable incidents,
 15 or in cases of emergencies. Accreditation does not limit the department in
 16 performing any power or duty under this chapter or inspection authorized un-
 17 der this section, including taking appropriate action relating to a residen-
 18 tial care or assisted living facility, such as suspending or revoking a li-
 19 cence, investigating an allegation of abuse, exploitation, or neglect or an-
 20 other complaint, or assessing an administrative penalty.

21 SECTION 3. That Section 63-701, Idaho Code, be, and the same is hereby
 22 amended to read as follows:

23 63-701. DEFINITIONS. As used in this chapter:

24 (1) "Claimant" means a person who has filed an application under sec-
 25 tion 63-602G, Idaho Code, and has filed a claim under the provisions of
 26 sections 63-701 through 63-710, Idaho Code. Except as provided in section
 27 63-702(2), Idaho Code, on January 1 or before April 15 of the year in which
 28 the claimant first filed a claim on the homestead in question, a claimant
 29 must be an owner of the homestead and on January 1 of said year a claimant must
 30 be:

31 (a) Not less than sixty-five (65) years old; or

32 (b) A child under the age of eighteen (18) years who is fatherless or
 33 motherless or who has been abandoned by any surviving parent or parents;
 34 or

35 (c) A widow or widower; or

36 (d) A disabled person who is recognized as disabled by the social se-
 37 curity administration pursuant to title 42 of the United States Code,
 38 or by the railroad retirement board pursuant to title 45 of the United
 39 States Code, or by the office of management and budget pursuant to title
 40 5 of the United States Code, or, if a person is not within the purview of,
 41 and is therefore not recognized as disabled by, any other entity listed
 42 in this paragraph, then by the public employee retirement system or pub-
 43 lic employee disability plan in which the person participates that may
 44 be of any state, local unit of government or other jurisdiction in the
 45 United States of America; or

46 (e) A disabled veteran of any war engaged in by the United States, whose
 47 disability is recognized as a service-connected disability of a degree
 48 of ten percent (10%) or more, or who has a pension for nonservice-con-

1 nected disabilities, in accordance with laws and regulations adminis-
2 tered by the United States department of veterans affairs; or

3 (f) A person, as specified in 42 U.S.C. 1701, who was or is entitled
4 to receive benefits because he is known to have been taken by a hostile
5 force as a prisoner, hostage or otherwise; or

6 (g) Blind.

7 (2) "Homestead" means the dwelling, owner-occupied by the claimant
8 as described in this chapter and used as the primary dwelling place of the
9 claimant and may be occupied by any members of the household as their home,
10 and so much of the land surrounding it, not exceeding one (1) acre, as is
11 reasonably necessary for the use of the dwelling as a home. It may consist
12 of a part of a multidwelling or multipurpose building and part of the land
13 upon which it is built. "Homestead" does not include personal property such
14 as furniture, furnishings or appliances, but a manufactured home may be a
15 homestead.

16 (3) "Household" means the claimant and the claimant's spouse. The term
17 does not include bona fide lessees, tenants, or roomers and boarders on con-
18 tract. "Household" includes persons described in subsection (8) (b) of this
19 section.

20 (4) "Household income" means all income received by the claimant and,
21 if married, all income received by the claimant's spouse, in a calendar year.

22 (5) "Income" means the sum of federal adjusted gross income as defined
23 in the Internal Revenue Code, as defined in section 63-3004, Idaho Code, and
24 to the extent not already included in federal adjusted gross income:

25 (a) Alimony;

26 (b) Support money;

27 (c) Nontaxable strike benefits;

28 (d) The nontaxable amount of any individual retirement account, pen-
29 sion or annuity, including railroad retirement benefits, all payments
30 received under the federal social security act except the social secu-
31 rity death benefit as specified in this subsection, state unemployment
32 insurance laws, and veterans disability pensions and compensation, ex-
33 cluding any return of principal paid by the recipient of an annuity and
34 excluding rollovers as provided in 26 U.S.C. 402 or 403, and excluding
35 the nontaxable portion of a Roth individual retirement account distri-
36 bution, as provided in 26 U.S.C. 408A;

37 (e) Nontaxable interest received from the federal government or any of
38 its instrumentalities or a state government or any of its instrumenta-
39 lities;

40 (f) Worker's compensation; and

41 (g) The gross amount of loss of earnings insurance.

42 It does not include gifts from nongovernmental sources or inheritances. To
43 the extent not reimbursed, the cost of medical care as defined in section
44 213(d) of the Internal Revenue Code, incurred or paid by the claimant and,
45 if married, the claimant's spouse, may be deducted from income. To the ex-
46 tent not reimbursed, personal funeral expenses, including prepaid funeral
47 expenses and premiums on funeral insurance, of the claimant and claimant's
48 spouse only, may be deducted from income up to an annual maximum of five thou-
49 sand dollars (\$5,000) per claim. "Income" does not include veterans dis-
50 ability pensions received by a person described in subsection (1) (e) of this

1 section who is a claimant or a claimant's spouse if the disability pension
 2 is received pursuant to a service-connected disability of a degree of forty
 3 percent (40%) or more. "Income" does not include dependency and indemnity
 4 compensation or death benefits paid to a person described in subsection (1)
 5 of this section by the United States department of veterans affairs and aris-
 6 ing from a service-connected death or disability. "Income" does not include
 7 lump sum death benefits made by the social security administration pursuant
 8 to 42 U.S.C. 402(i). Documentation of medical expenses may be required by
 9 the county assessor and state tax commission in such form as the county as-
 10 sessor or state tax commission shall determine. "Income" shall be that re-
 11 ceived in the calendar year immediately preceding the year in which a claim
 12 is filed. Where a claimant and/or the claimant's spouse does not file a fed-
 13 eral tax return, the claimant's and/or the claimant's spouse's federal ad-
 14 justed gross income, for purposes of this section, shall be an income equiva-
 15 lent to federal adjusted gross income had the claimant and/or the claimant's
 16 spouse filed a federal tax return, as determined by the county assessor. The
 17 county assessor or state tax commission may require documentation of income
 18 in such form as each shall determine, including, but not limited to: copies
 19 of federal or state tax returns and any attachments thereto; and income re-
 20 porting forms such as the W-2 and 1099.

21 For determining income for certain married individuals living apart,
 22 the provisions of sections 2(c) and 7703(b) of the Internal Revenue Code
 23 shall apply.

24 (6) "Occupied" means actual use and possession.

25 (7) "Owner" means a person holding title in fee simple or holding a cer-
 26 tificate of motor vehicle title (either of which may be subject to mortgage,
 27 deed of trust or other lien) or who has retained or been granted a life estate
 28 or who is a person entitled to file a claim under section 63-702, Idaho Code.
 29 "Owner" shall also include any person who:

30 (a) Is the beneficiary of a revocable or irrevocable trust which is the
 31 owner of such homestead and under which the claimant or the claimant's
 32 spouse has the primary right of occupancy of the homestead; or

33 (b) Is a partner of a limited partnership, member of a limited liabil-
 34 ity company or shareholder of a corporation if such entity holds title
 35 in fee simple or holds a certificate of motor vehicle title and if the
 36 person holds at least a five percent (5%) ownership in such entity, as
 37 determined by the county assessor; or

38 (c) Has retained or been granted a life estate.

39 "Owner" includes a vendee in possession under a land sale contract. Any
 40 partial ownership shall be considered as ownership for determining initial
 41 qualification for property tax reduction benefits; however, the amount of
 42 property tax reduction under section 63-704, Idaho Code, and rules promul-
 43 gated pursuant to section 63-705, Idaho Code, shall be computed on the value
 44 of the claimant's partial ownership. "Partial ownership," for the purposes
 45 of this section, means any one (1) person's ownership when property is owned
 46 by more than one (1) person or where the homestead is held by an entity, as
 47 set forth in this subsection, but more than one (1) person has the right of
 48 occupancy of such homestead. A person holding either partial title in fee
 49 simple or holding a certificate of motor vehicle title together with another
 50 person, but who does not occupy the dwelling as his primary dwelling place,

1 shall not be considered an owner for purposes of this section, if such person
2 is a cosignatory of a note secured by the dwelling in question and at least
3 one (1) of the other cosignatories of the note occupies the dwelling as his
4 primary dwelling place. The combined community property interests of both
5 spouses shall not be considered partial ownership ~~so~~ as long as the combined
6 community property interests constitute the entire ownership of the home-
7 stead, including where the spouses are occupying a homestead owned by an en-
8 tity, as set forth in this subsection, and the spouses have the primary right
9 of occupancy of the homestead. The proportional reduction required under
10 this subsection shall not apply to community property interests. Where
11 title to property was held by a person who has died without timely filing a
12 claim for property tax reduction, the estate of the deceased person shall be
13 the "owner," provided that the time periods during which the deceased person
14 held such title shall be attributed to the estate for the computation of any
15 time periods under subsection (8) (a) or (b) of this section.

16 (8) (a) "Primary dwelling place" means the claimant's dwelling place
17 on January 1 or before April 15 of the year for which the claim is made.
18 The primary dwelling place is the single place where a claimant has
19 his true, fixed and permanent home and principal establishment, and to
20 which whenever the individual is absent he has the intention of return-
21 ing. A claimant must establish the dwelling to which the claim relates
22 to be his primary dwelling place by clear and convincing evidence or by
23 establishing that the dwelling is where the claimant resided on January
24 1 or before April 15 and:

25 (i) At least six (6) months during the prior year; or

26 (ii) The majority of the time the claimant owned the dwelling if
27 owned by the claimant less than one (1) year; or

28 (iii) The majority of the time after the claimant first occupied
29 the dwelling if occupied by the claimant for less than one (1)
30 year. The county assessor may require written or other proof of
31 the foregoing in such form as the county assessor may determine.

32 (b) Notwithstanding the provisions of paragraph (a) of this subsec-
33 tion, the property upon which the claimant makes application shall be
34 deemed to be the claimant's primary dwelling place if the claimant is
35 otherwise qualified and resides in a care facility and does not allow
36 the property upon which the claimant has made application to be occu-
37 pied by persons paying a consideration to occupy the dwelling. Payment
38 of utilities shall not be payment of a consideration to occupy the
39 dwelling. A claimant's spouse who resides in a care facility shall be
40 deemed to reside at the claimant's primary dwelling place and to be a
41 part of the claimant's household. A care facility is a hospital, nurs-
42 ing facility or intermediate care facility for people with intellectual
43 disabilities as defined in section 39-1301, Idaho Code, or a facility as
44 defined in section 39-3302(146), Idaho Code, or a dwelling other than
45 the one upon which the applicant makes application where a claimant who
46 is unable to reside in the dwelling upon which the application is made
47 lives and receives help in daily living, protection and security.