

## LEGISLATIVE BILL 1155

Approved by the Governor April 15, 1996

Introduced by Health and Human Services Committee: Wesely, 26, Chairperson; Dierks, 40; Jensen, 20; Klein, 19; Matzke, 47; Pirsch, 10; Schmek, 27

AN ACT relating to public health and welfare; to amend sections 43-905, 43-1723, 43-1726, 43-1727, 44-772, 44-776, 44-777, 68-716, 68-1026, 71-1002, 71-5002, 71-5103, 71-5122, 71-5123, 71-5805.01, 71-5813, 71-5828, 71-5846, 81-604.03, 81-651, 81-1021, 83-1,147, 83-1,148, 83-227.01, 83-305, 83-308, 83-308.02, 83-324, 83-336, 83-339, 83-340, 83-391, 83-1001, 83-1014, 83-1020, 83-1021, 83-1022, 83-1027, 83-1028, 83-1029, 83-1036, 83-1037, 83-1039, 83-1040, 83-1044, 83-1045, 83-1045.02, 83-1046, 83-1064, 83-1067, 83-1068, and 83-1078, Reissue Revised Statutes of Nebraska, sections 42-358, 43-258, 43-1718.02, 43-1720, 43-1722, 71-507, 71-1637, 71-2017, 71-2017.01, 71-2017.07, 71-4604.01, 71-4606, 71-4608, 71-5001, 71-5211 to 71-5213, 71-5508, 71-5652 to 71-5654, 71-5662, 71-5664 to 71-5669, 71-5801, 71-5803, 71-5810, and 71-6615, Revised Statutes Supplement, 1994, sections 43-105, 44-773, 48-647, 71-1,132.06, 71-1,132.17, 71-387, 71-5102, 71-5108, and 71-5661, Revised Statutes Supplement, 1995, and section 83-306, Reissue Revised Statutes of Nebraska, as amended by section 941, Legislative Bill 1044, Ninety-fourth Legislature, Second Session, 1996; to adopt the Hospice Licensure Act and the False Medicaid Claims Act; to provide, change, and eliminate powers and duties of the Department of Social Services relating to income withholding for child support and medical assistance benefits; to provide for listed Christian Science nurses; to change provisions relating to electrology; to change provisions relating to anatomical gifts; to change provisions regarding alcoholic and drug treatment centers; to change provisions relating to sales of recreational vehicles; to change and eliminate provisions relating to the Division of Medical Services of the Department of Public Institutions; to change provisions relating to ambulance services, the Primary Care Physician Act, the Nebraska Rural Health Systems and Professional Incentive Act, and the Nebraska Health Care Certificate of Need Act; to provide penalties for violations by nursing facilities of federal medicaid regulations; to create a fund; to change and eliminate provisions concerning treatment, placement, and extradition of mentally ill persons; to eliminate certification and inspection requirements for burial structures as prescribed; to eliminate references to the Nebraska Center for Children and Youth, a cash fund, and a task force; to eliminate duties of the Department of Social Services relating to waivers and reports; to harmonize provisions; to provide operative dates; to repeal the original sections; to outright repeal sections 12-608, 12-612.01, 68-721, 83-1,150 to 83-1,152, 83-308.01, and 83-344, Reissue Revised Statutes of Nebraska, section 68-1036.01, Revised Statutes Supplement, 1994, sections 12-610 to 12-612, 43-901, 43-902, 43-904, 43-909, 43-910, 43-913, 47-408, 68-214, and 83-1,149, Reissue Revised Statutes of Nebraska, as amended by sections 49 to 51, 181, 182, 184, 189, 190, 191, 273, 293, and 927, respectively, Legislative Bill 1044, Ninety-fourth Legislature, Second Session, 1996, sections 12-607, 12-609, 68-1019.06, and 68-1019.08, Revised Statutes Supplement, 1994, as amended by sections 47, 48, 321, and 322, respectively, Legislative Bill 1044, Ninety-fourth Legislature, Second Session, 1996, and section 68-157, Revised Statutes Supplement, 1995, as amended by section 292, Legislative Bill 1044, Ninety-fourth Legislature, Second Session, 1996; and to declare an emergency.

Be it enacted by the people of the State of Nebraska,

Section 1. Sections 1 to 6 of this act shall be known and may be cited as the Hospice Licensure Act.

Sec. 2. For purposes of the Hospice Licensure Act:

(1) Bereavement services means services provided under the supervision of a qualified professional including a plan of care for bereavement services that reflects family needs and a clear delineation of services to be provided for not less than one year following the death of the

hospice patient:

(2) Hospice means a coordinated program under the direction of an identifiable hospice administration which (a) provides home care and inpatient care, (b) provides palliative care, supportive medical care, and any other care to meet the needs of terminally ill patients and their families, (c) uses a medically directed hospice interdisciplinary team including services provided by trained volunteers, (d) provides care to meet physical, psychosocial, spiritual, and other special needs which are experienced during the final stages of illness and during dying and bereavement, (e) makes hospice care available twenty-four hours per day, seven days per week, and (f) has met the guidelines of subparts A, C, D, and E (excluding paragraph (d) of section 418.56 of subpart C) of 42 C.F.R. part 418, as part 418 existed on October 1, 1992;

(3) Hospice inpatient facility means a facility in which the hospice provides inpatient care directly for respite and general inpatient care in compliance with 42 C.F.R. 418.100;

(4) Hospice interdisciplinary team means the attending physician, hospice medical director, licensed professional registered nurse, certified social worker, pastoral or other counselor, and, as determined by the interdisciplinary plan of care, providers of special services, such as mental health services, pharmacy services, home health aides, trained volunteers, dietary services, and any other appropriate health services, to meet the physical, psychosocial, spiritual, and economic needs which are experienced during the final stages of illness, dying, and bereavement;

(5) Hospice patient means a patient who is diagnosed as terminally ill with a medical prognosis that his or her life expectancy is six months or less if the illness runs its normal course and who with informed consent is admitted into a hospice program;

(6) Hospice volunteer means an individual specifically trained and supervised to provide support and supportive services to the hospice patient and hospice patient's family and under the supervision of a designated hospice volunteer coordinator; and

(7) Palliative care means treatment directed at controlling pain, relieving other physical and emotional symptoms, and focusing on the special needs of the hospice patient and hospice patient's family as they experience the dying process rather than treatment aimed at cure or prolongation of life.

Sec. 3. No agency, organization, or individual shall hold himself, herself, or itself out as a hospice or as providing hospice services unless licensed in accordance with the Hospice Licensure Act.

Sec. 4. Any organization or agency may file a written application with the Department of Health for licensure as a hospice. The application shall be filed on a form prescribed by the department and shall be accompanied by a license fee fixed by rules and regulations of the department.

Sec. 5. A license issued under the Hospice Licensure Act is not assignable or transferable, must be separate from any existing license, and is subject to suspension or revocation at any time for failure to comply with the act.

Sec. 6. (1) The Department of Health may adopt and promulgate rules and regulations to carry out the Hospice Licensure Act. The rules and regulations shall be initially adopted within one year after the operative date of this section. The rules and regulations shall apply to all organizations and agencies providing hospice care.

(2) The department shall fix, charge, and collect license fees and license renewal fees. The fees shall not be less than one hundred dollars or more than two hundred fifty dollars.

Sec. 7. Section 42-358, Revised Statutes Supplement, 1994, is amended to read:

42-358. (1) The court may appoint an attorney to protect the interests of any minor children of the parties. Such attorney shall be empowered to make independent investigations and to cause witnesses to appear and testify on matters pertinent to the welfare of the children. The court shall by order fix the fee, including disbursements, for such attorney, which amount shall be taxed as costs and paid by the parties as ordered. If the court finds that the party responsible is indigent, the court may order the county to pay the costs.

(2) Following entry of any decree, the court having jurisdiction over the minor children of the parties may at any time appoint an attorney, as friend of the court, to initiate contempt proceedings for failure of any party to comply with an order of the court directing such party to pay temporary or permanent child support. The county attorney or authorized attorney may be appointed by the court for the purposes provided in this section, in which case the county attorney or authorized attorney shall represent the state.

(3) The clerk of each district court shall maintain child support orders and delinquency records by the sums due to the court-ordered payee, except as provided in section 43-512.07, in each case docketed in which child support is fixed by order of the court. For support orders in all cases issued before September 6, 1991, and for support orders issued or modified on or after September 6, 1991, in cases in which no party has applied for services under Title IV-D of the federal Social Security Act, as amended, each month the clerk shall certify all cases in which the court-ordered child support or spousal support is delinquent in an amount equal to the support due and payable for a one-month period of time to the judge presiding over domestic relations cases and to the county attorney or authorized attorney. A rebuttable presumption of contempt shall be established if a prima facie showing is made that the court-ordered child or spousal support is delinquent. In cases in which one of the parties receives services under Title IV-D of the federal Social Security Act, as amended, the clerk shall certify all support orders issued or modified on or after September 6, 1991, to the county attorney, ~~the~~ or authorized attorney, ~~or until January 1, 1997, the Department of Social Services and on and after January 1, 1997, the Department of Health and Human Services.~~

In each case certified, income withholding shall be implemented pursuant to the Income Withholding for Child Support Act. If income withholding is not feasible and no other action is pending for the collection of support payments, the court shall appoint an attorney to commence contempt of court proceedings. If the county attorney or authorized attorney consents, he or she may be appointed for such purpose. The contempt proceeding shall be instituted within ten days following appointment, and the case shall be diligently prosecuted to completion. The court shall by order fix the fee, including disbursements, for such attorney, which amount shall be taxed as costs and paid by the parties as ordered. Any fees allowed for the services of any county attorney or authorized attorney shall be paid to the Department of Social Services when there is an assignment of support to the department pursuant to section 43-512.07 or when an application for child support services is on file with a county attorney or authorized attorney. If the court finds the party responsible is indigent, the court may order the county to pay the costs.

(4) If, at the hearing, the person owing child or spousal support is called for examination as an adverse party and such person refuses to answer upon the ground that his or her testimony may be incriminating, the court may, upon the motion of the county attorney or authorized attorney, require the person to answer and produce the evidence. In such a case the evidence produced shall not be admissible in any criminal case against such person nor shall any evidence obtained because of the knowledge gained by such evidence be so admissible.

(5) The court may order access to all revenue information maintained by the Department of Revenue or other agencies concerning the income of persons liable or who pursuant to this section and sections 42-358.08 and 42-821 may be found liable to pay child or spousal support payments.

(6) Any person aggrieved by a determination of the court may appeal such decision to the Court of Appeals.

Sec. 8. Section 43-105, Revised Statutes Supplement, 1995, is amended to read:

43-105. If consent is not required of both parents if living, the surviving parent of a child born in lawful wedlock, or the mother or mother and father of a child born out of wedlock, because of the provisions of subdivision (3) of section 43-104, substitute consents shall be filed as follows: (1) Consent to the adoption of a minor child who has been committed to the Nebraska Center for Children and Youth or the Department of Social Services may be given by the department or its duly authorized agent in accordance with section 43-906; (2) when a parent has relinquished a minor child for adoption to any child placement agency licensed or approved by the department or its duly authorized agent, consent to the adoption of such child may be given by such agency; and (3) in all other cases when consent cannot be given as provided in subdivision (3) of section 43-104, consent shall be given by the guardian or guardian ad litem of such minor child appointed by a court, which consent shall be authorized by the court having jurisdiction of such guardian or guardian ad litem.

Sec. 9. Section 43-258, Revised Statutes Supplement, 1994, is amended to read:

43-258. (1) Pending the adjudication of any case under the Nebraska Juvenile Code, the court may order the juvenile examined by a physician, surgeon, psychiatrist, duly authorized community mental health service program, or psychologist to aid the court in determining (a) a material

allegation in the petition relating to the juvenile's physical or mental condition, (b) the juvenile's competence to participate in the proceedings, (c) the juvenile's responsibility for his or her acts, or (d) whether or not to provide emergency medical treatment.

(2) Pending the adjudication of any case under the Nebraska Juvenile Code and after a showing of probable cause that the juvenile is within the court's jurisdiction, for the purposes of subsection (1) of this section, the court may order such juvenile to be placed in one of the facilities or institutions of the State of Nebraska. Such juvenile shall not be placed in an adult penal institution, or either of the youth rehabilitation and treatment centers, or the Nebraska Center for Children and Youth, except as provided in section 43-913. Any placement for evaluation may be made on an inpatient or outpatient basis for a period not to exceed thirty days. The head of any facility or institution shall make a complete evaluation of the juvenile, including any authorized area of inquiry requested by the court.

(3) Upon the expiration of the commitment period or such additional periods as the court may authorize, which shall not exceed thirty days each, the juvenile shall be returned to the court together with a written report of the results of the evaluation. Such evaluation shall include an assessment of the basic needs of the juvenile and recommendations for continuous and long-term care and shall be made to effectuate the purposes in subdivision (1) of section 43-246.

(4) In order to encourage the use of the procedure provided in this section, all costs incurred during the period the juvenile is being evaluated at a state facility or institution shall be the responsibility of the state unless otherwise ordered by the court pursuant to section 43-290. The county in which the case is pending shall be liable only for the cost of delivering the juvenile to the facility or institution and the cost of returning him or her to the court for disposition.

Sec. 10. Section 43-905, Reissue Revised Statutes of Nebraska, is amended to read:

43-905. (1) The Department of Social Services shall be the legal guardian of all children committed to it. The department shall afford temporary care and shall use special diligence to provide suitable homes for such children. The department is authorized to place such children in suitable families for adoption or, in the discretion of the department, on a written contract.

(2) The contract shall provide (a) for the children's education in the public schools or otherwise, (b) for teaching them some useful occupation, and (c) for kind and proper treatment as members of the family in which they are placed.

(3) Whenever any child who has been committed to the Nebraska Center for Children and Youth or the Department of Social Services becomes self-supporting, the director shall declare that fact and the guardianship of the department shall cease. Thereafter the child shall be entitled to his or her own earnings. Guardianship of and services by the Department of Social Services shall never extend beyond the age of majority, except that services by the department to a child shall continue until the child reaches the age of twenty-one if the child is a student regularly attending a school, college, or university or regularly attending a course of vocational or technical training designed to prepare such child for gainful employment.

(4) Whenever the parents of any ward, whose parental rights have not been terminated, have become able to support and educate their child, the department shall restore the child to his or her parents if the home of such parents would be a suitable home. The guardianship of the department shall then cease.

(5) Whenever permanent free homes for the children cannot be obtained, the department shall have the authority to provide and pay for the maintenance of the children in private families, boarding homes, or institutions for care of children.

(6) The department shall provide and pay for liability and property damage insurance for participants in a family foster parent program who have been licensed or approved by the department to provide care or who have been licensed or approved by a legally established Indian tribal council operating within the state to provide care.

Sec. 11. Section 43-1718.02, Revised Statutes Supplement, 1994, is amended to read:

43-1718.02. (1) In any case in which services are not provided under Title IV-D of the federal Social Security Act, as amended, and a support order has been issued or modified on or after July 1, 1994, the obligor's income shall be subject to income withholding regardless of whether or not payments pursuant to such order are in arrears, and the court shall require

such income withholding in its order unless:

(a) One of the parties demonstrates and the court finds that there is good cause not to require immediate income withholding; or

(b) A written agreement between the parties providing an alternative arrangement is incorporated into the support order.

(2) If the court pursuant to subsection (1) of this section orders income withholding regardless of whether or not payments are in arrears, the obligor shall prepare a notice to withhold income. The notice to withhold income shall be substantially similar to a prototype prepared by the Department of Social Services and made available by the department to the State Court Administrator and the clerks of the district courts. The notice to withhold shall direct:

(a) That the employer or other payor shall withhold from the obligor's disposable income the amount stated in the notice to withhold for the purpose of satisfying the obligor's ongoing obligation for support payments as they become due and if there are arrearages, reducing such arrearages in child, spousal, or medical support payments arising from the obligor's failure to fully comply with a support order;

(b) That the employer or other payor shall pay to the obligor, on his or her regularly scheduled payday, such income then due which is not required to be withheld as stated on the notice or pursuant to any court order;

(c) That the employer or other payor shall not withhold more than the maximum amount permitted to be withheld under section 303(b) of the federal Consumer Credit Protection Act, 15 U.S.C. 1673(b)(2)(A) and (B), and the amount withheld to satisfy an arrearage of child, spousal, or medical support when added to the amount withheld to pay current support and the fee provided for in subdivision (2)(d) of this section shall not exceed such maximum amount;

(d) That the employer or other payor may assess an additional administrative fee from the obligor's disposable income not to exceed two dollars and fifty cents in any calendar month as compensation for the employer's or other payor's reasonable cost incurred in complying with the notice;

(e) That the employer or other payor shall remit, within ten days after the date the obligor is paid and in the manner specified in the notice, the income withheld, less the deduction allowed as an administrative fee by subdivision (2)(d) of this section, to the clerk of the district court designated in the notice and shall notify such clerk of the date such income was withheld;

(f) That the notice to withhold income shall terminate with respect to the employer or other payor without any court action or action by the obligor thirty days after the obligor ceases employment with or is no longer entitled to income from such employer or other payor;

(g) That the employer or other payor may combine amounts required to be withheld from the income of two or more obligors in a single payment to each clerk designated in a notice to withhold income if the portion of the single payment which is attributable to each individual obligor is separately identified;

(h) That an employer or other payor who fails to withhold and remit income of an obligor after receiving proper notice or who discriminates, demotes, disciplines, or terminates an employee or payee after receiving a notice to withhold income shall be subject to the penalties prescribed in subsections (4) and (5) of this section; and

(i) That if the employer or other payor receives more than one notice to withhold income of a single obligor and the amount of income available to be withheld pursuant to the limits specified in subdivision (c) of this subsection is insufficient to satisfy the total support amount certified in the notices, the income available shall first be applied to current support. If the total amount of income available to be withheld is insufficient to satisfy the total amount of current support certified by the notices, the employer or other payor shall withhold for each notice the proportion that the amount of the current support certified in such notice bears to the total amount of current support certified in all notices received for the obligor. Any remaining income available to be withheld after current support is satisfied for all notices shall be applied to arrearages. If arrearages are certified in more than one notice, the employer or other payor shall withhold for each notice the proportion that the amount of the arrearage certified in such notice bears to the total amount of arrearage certified in all notices received for the obligor.

Compliance with the order by the employer or other payor shall operate as a discharge of the employer's or other payor's liability to the

obligor as to the portion of the obligor's income withheld.

(3) The obligor shall deliver the notice to withhold income to his or her current employer or other payor and provide a copy of such notice to the clerk of the district court.

(4) Any employer or other payor who fails to withhold and remit any income of an obligor receiving income from the employer or other payor, after proper notice as provided in subsection (2) of this section, shall be required to pay to the clerk of the district court the amount specified in the notice.

(5) An employer or other payor shall not use an order or notice to withhold income or order or the possibility of income withholding as a basis for (a) discrimination in hiring, (b) demotion of an employee or payee, (c) disciplinary action against an employee or payee, or (d) termination of an employee or payee.

Upon application by the obligor and after a hearing on the matter, the court may impose a civil fine of up to five hundred dollars for each violation of this subsection.

An employer or other payor who violates this subsection shall be required to make full restitution to the aggrieved employee or payee, including reinstatement and backpay.

(6) When an obligor ceases employment with or is no longer entitled to income from an employer or other payor, the notice to withhold income shall not cease to operate against the obligor and income withholding shall continue to apply to any subsequent employment or income of the obligor. The notice to withhold income shall terminate with respect to the employer or other payor without any court action or action by the obligor thirty days after the obligor ceases employment with or is no longer entitled to income from such employer or other payor. A notice to withhold income shall also terminate when the child, spousal, or medical support obligation terminates and all past-due support has been paid, in which case the obligor shall notify the employer or other payor to cease withholding income.

(7) A notice to withhold income may be modified or revoked by a court of competent jurisdiction as a result of modification of the support order. A notice to withhold income may also be modified or revoked by a court of competent jurisdiction, for other good cause shown, after notice and a hearing on the issue.

(8) The obligee or obligor may file an action in district court to enforce this section.

(9) If after an order is issued in any case under this section the case becomes one in which services are provided under Title IV-D of the federal Social Security Act, as amended, the county attorney or authorized attorney or the Director of Social Services shall implement income withholding as otherwise provided in the Income Withholding for Child Support Act.

Sec. 12. Section 43-1720, Revised Statutes Supplement, 1994, is amended to read:

43-1720. If the Director of Social Services has previously sent a notice of assignment and opportunity for hearing on the same support order under section 48-647, the county attorney, ~~or~~ authorized attorney, or the department shall certify the amount to be withheld from an obligor's disposable income pursuant to section 43-1722 and shall notify the obligor's employer or other payor pursuant to section 43-1723. If the director has not previously sent such notice, and except in cases in which the court has ordered income withholding pursuant to subsection (1) of section 43-1718.01 or 43-1718.02, upon receiving certification pursuant to section 42-358 or notice of delinquent payments of medical support, the county attorney, ~~the~~ or authorized attorney, or the department shall send a notice by certified mail to the last-known address of the obligor stating:

(1) That an assignment of his or her income by means of income withholding will go into effect within fifteen days ~~from~~ after the date the notice is sent;

(2) That the income withholding will continue to apply to any subsequent employer or other payor of the obligor;

(3) The amount of support the obligor owes;

(4) The amount of income that will be withheld; and

(5) That within the fifteen-day period, the obligor may request a hearing in the manner specified in the notice to contest a mistake of fact. For purposes of this subdivision, mistake of fact shall mean (a) an error in the amount of current or overdue support, (b) an error in the identity of the obligor, or (c) an error in the amount to be withheld as provided in section 43-1722.

Sec. 13. Section 43-1722, Revised Statutes Supplement, 1994, is amended to read:

43-1722. (1) If no hearing is requested by the obligor, (2) if

after a hearing the department determines that the assignment should go into effect, (3) in cases in which the court has ordered income withholding pursuant to subsection (1) of section 43-1718.01, or (4) in cases in which the court has ordered income withholding pursuant to section 43-1718.02, which case subsequently becomes one in which services are being provided under Title IV-D of the federal Social Security Act, as amended, the county attorney, ~~the~~ or authorized attorney, or the department shall certify the amount to be withheld from the obligor's disposable income. Such amount shall not in any case exceed the maximum amount permitted to be withheld under section 303(b) of the federal Consumer Credit Protection Act, 15 U.S.C. 1673(b)(2)(A) and (B), and the amount withheld to satisfy an arrearage of child, spousal, or medical support when added to the amount withheld to pay current support and the fee provided for in section 43-1723 shall not exceed such maximum amount.

Sec. 14. Section 43-1723, Reissue Revised Statutes of Nebraska, is amended to read:

43-1723. Except as otherwise provided in this section, the county attorney, ~~the~~ or authorized attorney, or the department shall notify the obligor's employer or other payor, in the manner provided for service of a summons in a civil action, within the time determined by the department which shall comply with the requirements of Title IV-D of the federal Social Security Act, as amended. The notice shall specify the basis for the assignment of income and shall direct:

(1) That the employer or other payor shall withhold from the obligor's disposable income the amount certified by the county attorney, ~~the~~ or authorized attorney, or the department for the purpose of reducing and satisfying the obligor's (a) previous arrearage in child, spousal, or medical support payments arising from the obligor's failure to fully comply with a support order previously entered and (b) ongoing obligation for support payments as they become due;

(2) That the employer or other payor shall implement income withholding no later than the first pay period that occurs after fourteen days following the date the notice is served;

(3) That the employer or other payor shall pay to the obligor, on his or her regularly scheduled payday, such income then due which is not certified to be withheld pursuant to section 43-1722 or any court order;

(4) That the employer or other payor may assess an additional administrative fee from the obligor's disposable income not to exceed two dollars and fifty cents in any calendar month as compensation for the employer's or other payor's reasonable cost incurred in complying with the notice;

(5) That the employer or other payor shall remit, within ten days ~~of~~ after the date the obligor is paid and in the manner specified in the notice, the income withheld, less the deduction allowed as an administrative expense by subdivision (4) of this section, to the clerk of the district court designated in the notice and shall notify such clerk of the date such income was withheld;

(6) That the employer or other payor shall notify the county attorney, ~~the~~ or authorized attorney, or the department in writing of the termination of the employment or income of the obligor, the last-known address of the obligor, and the name and address of the obligor's new employer or other payor, if known, and shall provide such written notification within thirty days after the termination of employment or income;

(7) That income withholding is binding on the employer or other payor until further notice by the county attorney, ~~the~~ or authorized attorney, or the department;

(8) That the employer or other payor may combine amounts required to be withheld from the income of two or more obligors in a single payment to each clerk designated in an income withholding notice if the portion of the single payment which is attributable to each individual obligor is separately identified;

(9) That an employer or other payor who fails to withhold and remit income of an obligor after receiving proper notice or who discriminates, demotes, disciplines, or terminates an employee or payee after receiving an income withholding notice shall be subject to the penalties prescribed in sections 43-1724 and 43-1725; and

(10) That if the employer or other payor receives more than one notice to withhold income of a single obligor and the amount of income available to be withheld pursuant to the limits specified in section 43-1722 is insufficient to satisfy the total support amount certified in the notices, the income available shall first be applied to current support. If the total amount of income available to be withheld is insufficient to satisfy the total amount of current support certified by the notices, the employer or other

payor shall withhold for each notice the proportion that the amount of the current support certified in such notice bears to the total amount of current support certified in all notices received for the obligor. Any remaining income available to be withheld after current support is satisfied for all notices shall be applied to arrearages. If arrearages are certified in more than one notice, the employer or other payor shall withhold for each notice the proportion that the amount of the arrearage certified in such notice bears to the total amount of arrearage certified in all notices received for the obligor.

Compliance with the order by the employer or other payor shall operate as a discharge of the employer's or other payor's liability to the obligor as to the portion of the obligor's income withheld. The county attorney, ~~the~~ or authorized attorney, or the department need not notify the Commissioner of Labor as a payor if the commissioner is withholding for child support from the obligor under section 48-647 for the same support order.

Sec. 15. Section 43-1726, Reissue Revised Statutes of Nebraska, is amended to read:

43-1726. When an obligor ceases employment with or is no longer entitled to income from an employer or other payor, the notice to withhold income shall not cease to operate against the obligor and income withholding shall continue to apply to any subsequent employment or income of the obligor. The notice to withhold income shall terminate with respect to the employer or other payor without any court action or action by the county attorney, ~~the~~ or authorized attorney, or the department thirty days after the obligor ceases employment with or is no longer entitled to income from such employer or other payor, except that a notice to withhold income shall not terminate with respect to unemployment compensation benefits being withheld by the Commissioner of Labor pursuant to section 48-647. The employer or other payor shall return a copy of the notice to withhold income to the county attorney, ~~the~~ or authorized attorney, or the department, indicate that the employment or obligation to pay income has ceased, and cooperate in providing any known forwarding information. The county attorney, ~~the~~ or authorized attorney, or the department shall notify the clerk of the appropriate district court that such employment or obligation to pay income has ceased. A notice to withhold income shall also terminate when the child, spousal, or medical support obligation terminates and all past-due support has been paid, in which case the county attorney, ~~the~~ or authorized attorney, or the department shall notify the employer or other payor to cease withholding income.

Sec. 16. Section 43-1727, Reissue Revised Statutes of Nebraska, is amended to read:

43-1727. (1) An income withholding notice may be modified or revoked by a court of competent jurisdiction or by the county attorney, ~~the~~ or authorized attorney, or the department as a result of a review conducted pursuant to sections 43-512.12 to 43-512.18. An income withholding notice may also be modified or revoked by a court of competent jurisdiction, for other good cause shown, after notice and a hearing on the issue. An income withholding notice may also be modified or revoked by the county attorney, ~~the~~ or authorized attorney, or the department as provided in subsection (2) of this section or for other good cause. Payment by the obligor of overdue support, other than through income withholding, after receipt of notice of income withholding shall not by itself constitute good cause for modifying or revoking an income withholding notice.

(2) When income withholding has been implemented and, as a result, a support delinquency has been eliminated, the clerk of the district court shall notify the county attorney, ~~the~~ or authorized attorney, or the department. Upon receipt of such notification, the county attorney, ~~the~~ or authorized attorney, or the department shall modify the income withholding notice to require income withholding for current support only and shall notify the employer or other payor of the change in the same manner as provided in section 43-1723.

Sec. 17. Section 44-772, Reissue Revised Statutes of Nebraska, is amended to read:

44-772. Alcoholic Substance abuse treatment center shall mean an institution licensed as an alcoholic substance abuse treatment center by the Department of Health and described in section 71-2017.01, which provides a program for the inpatient or outpatient treatment of alcoholism pursuant to a written treatment plan approved and monitored by a physician and which is affiliated with a hospital under a contractual agreement with an established system for patient referral.

Sec. 18. Section 44-773, Revised Statutes Supplement, 1995, is amended to read:

44-773. Outpatient program shall refer to a program which is not



required to be licensed by the Department of Health as an ~~alcoholic~~ a substance abuse treatment center but which is certified pursuant to section 83-163 to provide specified services to persons suffering from the disease of alcoholism.

Sec. 19. Section 44-776, Reissue Revised Statutes of Nebraska, is amended to read:

44-776. Primary treatment shall mean inpatient treatment rendered in a structured and scheduled setting to prevent further ingestion of alcoholic beverages, to relieve the pain of the withdrawal syndrome, and to provide intensive therapy or rehabilitation, when such treatment is rendered in a hospital or an ~~alcoholic~~ a substance abuse treatment center which is certified or accredited to render such care.

Sec. 20. Section 44-777, Reissue Revised Statutes of Nebraska, is amended to read:

44-777. Outpatient treatment shall mean counseling and therapy provided on a nonresidential basis when such treatment is rendered in or through a hospital, an ~~alcoholic~~ a substance abuse treatment center, or an outpatient program which is certified or accredited to render such care.

Sec. 21. Section 48-647, Revised Statutes Supplement, 1995, is amended to read:

48-647. (1) Any assignment, pledge, or encumbrance of any right to benefits which are or may become due or payable under sections 48-623 to 48-626 shall be void except as set forth in this section. Such rights to benefits shall be exempt from levy, execution, attachment, or any other remedy whatsoever provided for the collection of debt. Benefits received by any individual, so long as they are not mingled with other funds of the recipient, shall be exempt from any remedy whatsoever for the collection of all debts except debts incurred for necessities furnished to such individual or his or her spouse or dependents during the time when such individual was unemployed. Any waiver of any exemption provided for in this section shall be void. Any assignment, pledge, or encumbrance of any right or claim to contributions or to any money credited to any employer's reserve account in the Unemployment Compensation Fund shall be void, and the same shall be exempt from levy, execution, attachment, or any other remedy whatsoever provided for the collection of debt, and any waiver of any exemption provided for in this section shall be void.

(2)(a) An individual filing a new claim for unemployment compensation shall, at the time of filing such claim, disclose whether or not he or she owes child support obligations as defined under subdivision (h) of this subsection. If such individual discloses that he or she owes child support obligations and is determined to be eligible for unemployment compensation, the commissioner shall notify the Director of Social Services that the individual has been determined to be eligible for unemployment compensation.

(b) The commissioner shall deduct and withhold from any unemployment compensation otherwise payable to an individual disclosing child support obligations:

(i) The amount specified by the individual to the commissioner to be deducted under this subsection, if neither subdivision (ii) nor (iii) of this subdivision is applicable;

(ii) The amount, if any, determined pursuant to an agreement between the Director of Social Services and such individual owing the child support obligations to have a specified amount withheld and such agreement being submitted to the commissioner, unless subdivision (iii) of this subdivision is applicable; or

(iii) The amount otherwise required to be so deducted and withheld from such unemployment compensation pursuant to legal process, as that term is defined in subdivision (2)(i) of this section, properly served upon the commissioner.

(c) Any amount deducted and withheld under subdivision (b) of this subsection shall be paid by the commissioner to the Director of Social Services.

(d) Any amount deducted and withheld under subdivision (b) or (g) of this subsection shall for all purposes be treated as if it were paid to the individual as unemployment compensation and paid by such individual to the Director of Social Services in satisfaction of his or her child support obligations.

(e) For purposes of subdivisions (a) through (d) and (g) of this subsection, the term unemployment compensation shall mean any compensation payable under the Employment Security Law and including amounts payable by the commissioner pursuant to an agreement by any federal law providing for compensation, assistance, or allowances with respect to unemployment.

(f) This subsection shall apply only if appropriate arrangements have been made for reimbursement by the Department of Social Services for the administrative costs incurred by the commissioner under this section which are attributable to child support obligations being enforced by the Department of Social Services.

(g) The Director of Social Services and the commissioner shall develop and implement a collection system to carry out the intent of this subdivision. The system shall, at a minimum, provide that:

(1) The commissioner shall periodically notify the director of the information listed in section 43-1719 with respect to individuals determined to be eligible for unemployment compensation during such period;

(ii) ~~Unless the county attorney, the or authorized attorney, or until January 1, 1997, the Department of Social Services and on and after January 1, 1997, the Department of Health and Human Services~~ has sent a notice on the same support order under section 43-1720, upon the notification required by subdivision (2)(g)(i) of this section, the director shall send notice to any such individual who owes child support obligations and who is subject to income withholding pursuant to subdivision (2)(a), (2)(b)(ii), or (2)(b)(iii) of section 43-1718.01. The notice shall be sent by certified mail to the last-known address of the individual and shall state the same information as required under section 43-1720;

(iii)(A) If the support obligation is not based on a foreign support order entered pursuant to section 43-1729 and the individual requests a hearing, the Department of Social Services shall hold a hearing within fifteen days of the date of receipt of the request. The hearing shall be in accordance with the Administrative Procedure Act. The assignment shall be held in abeyance pending the outcome of the hearing. The department shall notify the individual and the commissioner of its decision within fifteen days of the date the hearing is held; and

(B) If the support obligation is based on a foreign support order entered pursuant to section 43-1729 and the individual requests a hearing, the county attorney or authorized attorney shall apply the procedures described in sections 43-1732 to 43-1742;

(iv)(A) If no hearing is requested by the individual under this subsection or pursuant to a notice sent under section 43-1720, (B) if after a hearing under this subsection or section 43-1721 the department determines that the assignment should go into effect, (C) in cases in which the court has ordered income withholding for child support pursuant to subsection (1) of section 43-1718.01, or (D) in cases in which the court has ordered income withholding for child support pursuant to section 43-1718.02 and the case subsequently becomes one in which child support collection services are being provided under Title IV-D of the federal Social Security Act, as amended, the director shall certify to the commissioner the amount to be withheld for child support obligations from the individual's unemployment compensation. Such amount shall not in any case exceed the maximum amount permitted to be withheld under section 303(b) of the federal Consumer Credit Protection Act, 15 U.S.C. 1673(b)(2)(A) and (B), and the amount withheld to satisfy an arrearage of child support when added to the amount withheld to pay current support shall not exceed such maximum amount;

(v) The collection system shall comply with the requirements of Title III and Title IV-D of the federal Social Security Act, as amended;

(vi) The collection system shall be in addition to and not in substitution for or derogation of any other available remedy; and

(vii) The director and the commissioner shall adopt and promulgate rules and regulations to carry out subdivision (2)(g) of this section.

(h) For purposes of this subsection, the term child support obligations shall include only obligations which are being enforced pursuant to a plan described in section 454 of the federal Social Security Act which has been approved by the Secretary of Health and Human Services under Part D of Title IV of the federal Social Security Act.

(i) For purposes of this subsection, the term legal process shall mean any writ, order, summons, or other similar process in the nature of garnishment, which:

(1) Is issued by a court of competent jurisdiction of any state, territory, or possession of the United States or an authorized official pursuant to order of such a court of competent jurisdiction or pursuant to state law. For purposes of this subdivision, the Director of Social Services shall be deemed an authorized official pursuant to order of a court of competent jurisdiction or pursuant to state law; and

(ii) Is directed to, and the purpose of which is to compel, the commissioner to make a payment for unemployment compensation otherwise payable to an individual in order to satisfy a legal obligation of such individual to

provide child support.

(j) Nothing in this subsection shall be construed to authorize withholding from unemployment compensation of any support obligation other than child support obligations.

Sec. 22. Section 68-716, Reissue Revised Statutes of Nebraska, is amended to read:

68-716. An application for medical assistance benefits shall give a right of subrogation to the Department of Social Services or its assigns. Subject to sections 68-1038 to 68-1043, subrogation shall include every claim or right which the applicant may have against a third party when such right or claim involves money for medical care. The third party shall be liable to make payments directly to the Department of Social Services department or its assigns as soon as he or she is notified in writing of the valid claim for subrogation under this section.

Sec. 23. Section 68-1026, Reissue Revised Statutes of Nebraska, is amended to read:

68-1026. The application for medical assistance benefits under sections 68-1018 to 68-1025 shall constitute an automatic assignment of the rights specified in this section to the Department of Social Services or its assigns effective from the date of eligibility for such benefits. The assignment shall include the rights of the applicant or recipient and also the rights of any other member of the assistance group for whom the applicant or recipient can legally make an assignment.

Pursuant to this section and subject to sections 68-1038 to 68-1043, the applicant or recipient shall assign to the department or its assigns any rights to medical care support available to him or her or to other members of the assistance group under an order of a court or administrative agency and any rights to pursue or receive payments from any third party liable to pay for the cost of medical care and services arising out of injury, disease, or disability of the applicant or recipient or other members of the assistance group which otherwise would be covered by medical assistance benefits. Medicare benefits shall not be assigned pursuant to this section. Benefits assigned to the department or its assigns by operation of this section may be directly reimbursable to the department or its assigns by liable third parties, as provided by rule or regulation of the department, when prior notification of the assignment has been made to the liable third party.

Sec. 24. Section 71-1,132.06, Revised Statutes Supplement, 1995, is amended to read:

71-1,132.06. The Nurse Practice Act confers no authority to practice medicine or surgery. The act does not prohibit:

(1) Home care provided by parents, foster parents, family, or friends so long as any such person does not represent or hold himself or herself out to be a nurse or use any designation in connection with his or her name which tends to imply that he or she is licensed to practice under the act;

(2) Christian Science nursing consistent with the theology of Christian Science provided by a Christian Science nurse who does not hold himself or herself out as a registered nurse or a licensed practical nurse.

(3) Auxiliary patient care services provided by persons carrying out duties under the direction of a licensed practitioner;

(4) ~~(3)~~ Auxiliary patient care services provided by persons carrying out interventions for the support of nursing service as delegated by a registered nurse or as assigned and directed by a licensed practical nurse licensed under the act;

(5) ~~(4)~~ The gratuitous rendering of assistance by anyone in the case of an emergency;

(6) ~~(5)~~ Nursing by any legally licensed nurse of any other state whose engagement requires him or her to (a) accompany and care for a patient temporarily residing in this state during the period of one such engagement not to exceed six months in length, (b) transport patients into, out of, or through this state provided each transport does not exceed twenty-four hours, (c) provide patient care during periods of transition following transport, (d) provide educational programs or consultative services within this state for a period not to exceed fourteen consecutive days if neither the education nor the consultation includes the provision or the direction of patient care, and (e) provide nursing care in the case of a disaster. These exceptions do not permit a person to represent or hold himself or herself out as a nurse licensed to practice in this state;

(7) ~~(6)~~ Nursing services rendered by a student enrolled in an approved program of nursing when the services are a part of the student's course of study; or

(8) ~~(7)~~ The practice of professional or practical nursing by any

legally licensed nurse of another state who is employed by the United States Government or any bureau, division, or agency of the United States Government while in the discharge of his or her official duties or, if permitted by federal law, as a citizen of a foreign country temporarily residing in Nebraska for a period not to exceed one year for the purpose of postgraduate study, certified to be such by an appropriate agency satisfactory to the board.

Sec. 25. Section 71-1,132.17, Revised Statutes Supplement, 1995, is amended to read:

71-1,132.17. In the interest of public safety and consumer awareness, it is unlawful for any person to use the title nurse in reference to himself or herself in any capacity, except individuals who are or have been licensed as a registered nurse or a licensed practical nurse. A Christian Science nurse may refer to himself or herself only as a Christian Science nurse.

Sec. 26. Section 71-387, Revised Statutes Supplement, 1995, is amended to read:

71-387. In order to be licensed by the department by examination, an individual shall meet, and present to the department evidence of meeting, the following requirements:

(1) Has attained the age of seventeen years on or before the beginning date of the examination for which application is being made, as evidenced by a birth certificate, baptismal certificate, or other equivalent document as determined by the department;

(2) Has completed formal education equivalent to a United States high school education, as evidenced by a high school diploma, general educational development certificate, or equivalent document as determined by the department;

(3) Possesses the ability to identify and respond to emergency situations that could occur in the practice of cosmetology or electrology, as evidenced by successful completion of a basic first-aid course;

(4) Makes complete and proper application to the department, accompanied by the appropriate fee;

(5) Possesses a minimum competency in the knowledge and skills necessary to perform the practices for which licensure is sought, as evidenced by successful completion of an examination in the appropriate practices approved by the board and administered by the department;

(6) Possesses sufficient ability to read the English language to permit the applicant to practice in a safe manner, as evidenced by successful completion of the written examination; and

(7) Has graduated from a school of cosmetology, a school of electrology, or an apprentice salon in Nebraska or a school of electrology in or outside of Nebraska upon completion of a program of studies appropriate to the practices for which licensure is being sought, as evidenced by a diploma or certificate from the school or apprentice salon to the effect that the applicant has complied with the following:

(a) For licensure as a cosmetologist, the program of studies shall consist of a minimum of two thousand one hundred hours and two thousand credits;

(b) For licensure as an esthetician, the program of studies shall consist of a minimum of six hundred hours and six hundred credits;

(c) For licensure as a cosmetology instructor, the program of studies shall consist of a minimum of nine hundred twenty-five hours beyond the program of studies required for licensure as a cosmetologist earned in a period of not less than six months;

(d) For licensure as a cosmetology instructor, be currently licensed as a cosmetologist in Nebraska, as evidenced by possession of a valid Nebraska cosmetology license;

(e) For licensure as an electrologist, the program of studies shall consist of a minimum of six hundred hours and six hundred credits; and

(f) For licensure as an electrology instructor, be currently licensed as an electrologist in Nebraska and have practiced electrology actively for at least five years immediately before the application.

If any lapse in training of two years or longer occurs, all hours and credits earned shall be forfeited. Hours and credits shall be earned exclusively in either a school of cosmetology, school of electrolysis, or apprentice salon. No hours or credits earned in one type of establishment may be transferred to an establishment of another type. The department shall grant a license in the appropriate category to any person meeting the requirements specified in this section.

Sec. 27. Section 71-507, Revised Statutes Supplement, 1994, is amended to read:

71-507. For purposes of sections 71-507 to 71-513:

- (1) Department shall mean the Department of Health;
- (2) Designated physician shall mean the physician representing the emergency medical services provider as identified by name, address, and telephone number on the significant exposure report form;
- (3) Emergency medical services provider shall mean a person certified to provide emergency medical services pursuant to sections 71-5101 to 71-5164, a person certified to provide emergency medical care pursuant to the Emergency Medical Technician-Paramedic Act, a first responder certified to provide prehospital care pursuant to the First Responders Emergency Rescue Act, a sheriff, a deputy sheriff, a police officer, a state highway patrol officer, and a firefighter;
- (4) Health care facility shall have the meaning found in subdivisions (2), (10), (11), and ~~(22)~~ (21) of section 71-2017.01;
- (5) Infectious disease or condition shall mean hepatitis B, meningococcal meningitis, active pulmonary tuberculosis, human immunodeficiency virus, and such other diseases as the department may from time to time specify;
- (6) Patient shall mean an individual who is sick, injured, wounded, or otherwise helpless or incapacitated;
- (7) Patient's attending physician shall mean the physician having the primary responsibility for the patient as indicated on the records of the health care facility;
- (8) Provider agency shall mean any law enforcement agency, fire department, ambulance service, or other entity which is in the business of providing emergency response services;
- (9) Significant exposure shall mean a situation in which the body fluids, such as blood, saliva, urine, or feces, of a patient have entered the body of an emergency medical services provider through a body opening such as the mouth or nose, a mucous membrane, or a break in skin from cuts or abrasions, from a contaminated needlestick or scalpel, from intimate respiratory contact, or through any other situation when the patient's body fluids may have entered the emergency medical services provider's body; and
- (10) Significant exposure report form shall mean the form used by the emergency medical services provider to document information necessary for notification of significant exposure to an infectious disease or condition.

Sec. 28. Section 71-1002, Reissue Revised Statutes of Nebraska, is amended to read:

71-1002. (1) All public officers, agents, and servants of this state, and of every county, city, township, district, and other municipal subdivision thereof, and of every almshouse, prison, morgue, hospital, or other institution, having charge, control, or possession of any dead human body, which is not claimed within the time and in the manner provided by this section, are required to immediately notify the chairman of the State Anatomical Board, or such agent, school, college, or person as may, from time to time, be designated by the board, of the dead human body. Such institution shall, without fee or reward, surrender and deliver such dead human body or bodies to the board, or to such agent, schools, colleges, physicians, and surgeons, as may, from time to time, be designated by it the board for anatomical use and study. No such notice need be given, and no such body shall be delivered to the board, if

(2) The notice required by subsection (1) of this section is not required and the body does not have to be delivered to the board if (a) any person shall claim the body for burial within ten days after death, (b) nor shall any such body be delivered to the board if the deceased was honorably discharged from the military or naval service of the United States, or (c) an autopsy has been performed on the body.

(3) Any person may claim and receive such dead human body from the State Anatomical Board if ~~(1)~~ (a) application in writing is made to the board for such body for the purpose of burial or cremation within thirty days after delivery to the board, ~~(2)~~ (b) such claimant agrees in writing to assume the expense of burial or cremation, and ~~(3)~~ (c) the State Anatomical Board board determines that such claim has been made in good faith and not for the purpose of claiming social security or other burial benefits payable for burial of the deceased or of obtaining payment for the expense of embalming and burying the deceased.

(4) If the duly authorized officer or agent of the board deems any such body unfit for anatomical purposes, he or she shall notify the county commissioners of the county in which the death occurred, and the county commissioners shall then direct some person to take charge of such body and cause it to be buried. The expense of such burial to shall be fixed and paid by order of the county commissioners from any funds available for such

purpose.

Sec. 29. Section 71-1637, Revised Statutes Supplement, 1994, is amended to read:

71-1637. (1) Any city by its mayor and council or by its commission, any village by its village board, any county by its board of supervisors or commissioners, or any township by its electors shall have power to employ a visiting community nurse, a home health nurse, or a home health agency defined in subdivision (19) (18) of section 71-2017.01 and the rules and regulations adopted and promulgated pursuant to such section. Such nurses or home health agency shall do and perform such duties as the city, village, county, or township, by their officials and electors, shall prescribe and direct. The city, village, county, or township shall have the power to levy a tax, not exceeding three and five-tenths cents on each one hundred dollars on the taxable valuation of the taxable property of such city, village, county, or township, for the purpose of paying the salary and expenses of such nurses or home health agency. Each shall have the power to constitute and empower such nurses or home health agency with police power to carry out the order of such city, village, county, or township organization.

(2) The governing body of any city, village, county, or township may contract with any visiting nurses association, licensed hospital home health agency, or other licensed home health agency, including those operated by the Department of Health, to perform the duties contemplated in subsection (1) of this section, subject to the supervision of the governing body, and may pay the expense of such contract out of the general funds of the city, village, county, or township.

(3) Nothing in this section shall be construed to allow any city, village, county, township, nurse, or home health agency to (a) avoid the requirements of individual licensure, (b) perform any service beyond the scope of practice of licensure or beyond the limits of licensure prescribed by subdivision (19) (18) of section 71-2017.01, or (c) violate any rule or regulation adopted and promulgated by the department.

Sec. 30. Section 71-2017, Revised Statutes Supplement, 1994, is amended to read:

71-2017. The purposes of sections 71-2017 to 71-2029 and 81-604.01 and the Nebraska Nursing Home Act are: (1) To provide for the development, establishment, and enforcement of basic standards (a) for the care of persons in hospitals, health clinics, skilled nursing facilities, intermediate care facilities, intermediate care facilities for the mentally retarded, nursing facilities, domiciliary facilities, mental health centers, centers for the developmentally disabled, ~~alcoholic~~ substance abuse treatment centers, and residential care facilities, ~~and drug treatment centers~~ or persons using the services of a home health agency or hospice as defined in the Hospice Licensure Act and (b) for the construction, maintenance, and operation of such health care facilities which, in light of existing knowledge, will insure safe and adequate care of such persons in such health care facilities; (2) to recognize the coordinated development of health care facilities and services; (3) to promote the development of multi-institutional systems that will coordinate and consolidate the delivery of health care services and multi-institutional arrangements for the sharing of support services; and (4) to promote the development of capacity to provide various levels of care on a geographically integrated basis to meet the special needs of residents of the State of Nebraska for health services.

Any hospital or other health care facility owned or operated by a fraternal organization mentioned in section 21-608 exclusively for its own members shall be exempt unless any such fraternal organization owning or operating such a hospital or other health care facility is issued a license for such hospital or other health care facility upon its written application and upon its agreeing to comply with sections 71-2017 to 71-2029 and the Nebraska Nursing Home Act.

The Department of Health may waive any rule, regulation, or standard adopted and promulgated by the department relating to construction or physical plant requirements of licensed health facilities upon proof by the licensee satisfactory to the department that the waiver of such rule, regulation, or standard will not unduly jeopardize the health or welfare of the patients or residents, that such rule, regulation, or standard would create an unreasonable hardship upon the facility, and that a waiver will not cause the State of Nebraska to fail to comply with any of the applicable requirements of medicare or medicaid so as to make the state ineligible for the receipt of all funds to which it might otherwise be entitled. The licensee shall submit and the department shall consider the following in evaluating the issue of unreasonable hardship: (i) The estimated cost of the modification or installation; (ii) the extent and duration of the disruption of the normal use

of patient or resident areas resulting from construction work; (iii) the estimated period over which cost would be recovered through reduced insurance premiums and increased reimbursement related to cost; (iv) the availability of financing; and (v) the remaining useful life of the building. Any such waiver may be under such terms and conditions and for such period of time, not to exceed one year at a time, as the department may prescribe. The department may each year waive such rule, regulation, or standard for an additional year if the department determines that the continued waiver of such rule, regulation, or standard for an additional year will not constitute a hazard to the health or welfare of the patients or residents and will not cause the State of Nebraska to fail to comply with any of the applicable requirements of medicare or medicaid so as to make the state ineligible for the receipt of all funds to which it might otherwise be entitled.

Nothing in sections 71-2017 to 71-2029, 71-6043 to 71-6052, and 81-604.01, the Nebraska Nursing Home Act, or any rule or regulation adopted and promulgated pursuant thereto shall be construed to authorize or require any facility which is operated by and for members of a church which includes healing by prayer and spiritual means as a part of its religious practices to be licensed or inspected by the Department of Health except as such licensure and inspection pertain solely to sanitation, fire prevention, and safety standards and building and construction codes applicable to the facilities mentioned in subdivision (1) of this section, nor shall any patients, residents, or personnel thereof be subjected to any medical supervision, regulation, or control in connection with the operation of any such facility.

Sec. 31. Section 71-2017.01, Revised Statutes Supplement, 1994, is amended to read:

71-2017.01. For purposes of sections 71-2017 to 71-2029, unless the context otherwise requires:

(1) Care shall mean the exercise of concern or responsibility for the comfort and welfare of the residents of a facility by the owner, occupant, administrator, or operator of the facility in addition to the provision of food and shelter to the residents and shall include, but not be limited to, the maintenance of a minimum amount of supervision of the activities of the residents of the facility as well as the provision of a minimum amount of assistance to the residents and shall also include personal care, hereby defined as the provision of health-related services for individuals who are in need of a protective environment but who are otherwise able to manage the normal activities of daily living;

(2) Hospital shall mean (a) any institution, facility, place, or building which is devoted primarily to the maintenance and operation of facilities for the diagnosis, treatment, or medical care over a period exceeding twenty-four consecutive hours of two or more nonrelated individuals suffering from illness, condition, injury, or deformity, (b) any institution, facility, place, or building which is devoted primarily to the rendering over a period exceeding twenty-four consecutive hours of obstetrical or other medical care for two or more nonrelated individuals, or (c) any institution, facility, place, or building in which any accommodation is primarily maintained, furnished, or offered for the medical and nursing care over a period exceeding twenty-four consecutive hours of two or more nonrelated aged or infirm persons requiring or receiving convalescent care. Hospital shall include, but not be limited to, facilities or parts of facilities which provide space for general acute hospitals, short-term hospitals, rehabilitation hospitals, long-term care hospitals, psychiatric or mental hospitals, and emergency hospitals or treatment centers. Hospital shall not be construed to include the residence, office, or clinic of a private physician or of an association of physicians, any other health practitioner, or any practitioner or association of practitioners licensed pursuant to Chapter 71, in which residence, office, or clinic patients are not treated or given care for a period in excess of twenty-four consecutive hours;

(3) General acute hospital shall mean a hospital having a duly constituted governing body which exercises administrative and professional responsibility and an organized medical staff which provides inpatient care, including medical, nursing, surgical, anesthesia, laboratory, diagnostic radiology, pharmacy, and dietary services. Such services may be provided through a contract or agreement;

(4) Short-term hospital shall mean a hospital that (a) is primarily devoted to the diagnosis and treatment of individuals requiring short-term treatment or treatment of diagnosis consistent with the medical support available and (b) has written coordination agreements with a general acute hospital for transfers and quality assurance programs. Short-term hospital shall not mean a facility for the treatment of mental diseases, a rehabilitation hospital, an alcoholic treatment center, or a drug or a

substance abuse treatment center;

(5) Rehabilitation hospital shall mean a hospital which is operated for the primary purpose of assisting in the rehabilitation of disabled persons through an integrated program of medical and other services provided under professional supervision;

(6) Long-term care hospital shall mean any hospital, any distinct part of any hospital, or any portion of a hospital which is primarily devoted to providing the care and services as set forth in subdivisions (10), (11), and ~~(22)~~ (21) of this section;

(7) Psychiatric or mental hospital shall mean a hospital which is primarily engaged in providing to inpatients, by or under the supervision of a physician, psychiatric services for the diagnosis and treatment of mentally ill persons;

(8) Emergency hospital or treatment center shall mean a hospital primarily devoted to the diagnosis and treatment of individuals requiring emergency outpatient services and emergency care and with written coordination agreements with a general acute hospital for transfers and quality assurance programs;

(9) Health clinic shall mean ~~any~~ an institution, a facility, a place, a building, or agency ~~any distinct part of an institution, a facility, a place, or a building, not licensed as a hospital, in which is operated under the name or title of health clinic, health center, ambulatory surgical center, or any other word or phrase of like or similar import, either independently or in connection with any other purpose, for the purpose of providing or making available at such institution, facility, place, building, or agency on an outpatient basis and for a period not exceeding twenty-four consecutive hours~~ advice, counseling, diagnosis, treatment, surgery, care, or services relating to the preservation or maintenance of health are provided on an outpatient basis and for a period not exceeding twenty-four consecutive hours primarily or exclusively to persons not residing or confined in such institution, facility, place, building, or agency distinct part of such institution, facility, place, or building. Health clinic shall include, but not be limited to, an ambulatory surgical center. Satellite clinics operated on an intermittent basis at a specific location or site and providing services within a portion of the total geographic area served by a licensed health clinic need not be separately licensed but may operate be operated as a part of the a parent clinic and share administration and services. Specific types or categories of health clinics may be further defined by appropriate rule and regulation of the department not inconsistent with this definition and in no case shall be construed to Health clinic shall not include the residence, office, or clinic, or any distinct part of the residence, office, or clinic of a private physician or an association of physicians, any other health practitioner or association of practitioners, or any practitioner licensed pursuant to Chapter 71 unless such residence, office, clinic, or distinct part of the residence, office, or clinic is an ambulatory surgical center or unless ten or more abortions, as defined in subdivision (1) of section 28-326, are performed during any one calendar week in such residence, office, or clinic, or distinct part of the residence, office, or clinic. Health clinic shall not include an institution, a facility, a place, a building, or any distinct part of an institution, a facility, a place, or a building which provides only routine health screenings, health education, or immunizations. For purposes of this subdivision, routine health screenings shall mean the collection of health data through the administration of a screening tool designed for a specific health problem, evaluation and comparison of results to referral criteria, and referral to appropriate sources for care, if indicated, and screening tool shall mean a simple interview or testing procedure to collect basic information on health status;

(10) Skilled nursing facility shall mean any institution, facility, place, or building or a distinct part of any institution, facility, place, or building which is primarily devoted to providing to inpatients skilled nursing care and related services for patients who require medical or nursing care or rehabilitation of injured, disabled, or sick persons. Unless a waiver is granted pursuant to section 71-2017.06, a skilled nursing facility shall use the services of (a) a licensed registered nurse for at least eight consecutive hours per day, seven days per week and (b) a licensed registered nurse or licensed practical nurse on a twenty-four-hour basis seven days per week. Except when waived under section 71-2017.06, a skilled nursing facility shall designate a licensed registered nurse or licensed practical nurse to serve as a charge nurse on each tour of duty. The Director of Nursing Services shall be a licensed registered nurse, and this requirement shall not be waived. The Director of Nursing Services may serve as a charge nurse only when the skilled nursing facility has an average daily occupancy of sixty or fewer residents;



(11) Intermediate care facility shall mean any institution, facility, place, or building in which accommodation and board for a period exceeding twenty-four consecutive hours and also nursing care and related medical services are provided for two or more nonrelated individuals who are ill, injured, or disabled but not in need of hospital or skilled nursing facility care, but who by reason of illness, disease, injury, deformity, disability, convalescence, or physical or mental infirmity require such nursing care and related medical services. An intermediate care facility shall provide at least one licensed registered nurse or licensed practical nurse on duty on the day shift seven days per week and at least one licensed registered nurse, licensed practical nurse, or care staff member on duty on the other two shifts seven days per week. An intermediate care facility shall provide a Director of Nursing Services, who shall be a licensed registered nurse, to administer, supervise, delegate, and evaluate nursing and nursing support services of the facility. The Director of Nursing Services shall serve on the day shift five days per week, eight hours per day, except when it is necessary to vary working hours to provide supervision on other shifts, and may satisfy the day-shift nurse requirement for five of seven days per week if he or she can meet both the nursing care needs of the patients or residents for that shift and his or her administrative and supervisory responsibilities as Director of Nursing Services;

(12) Intermediate care facility for the mentally retarded shall mean any institution, facility, place, or building, not licensed as a hospital, that provides accommodation, board, training or habilitation services, advice, counseling, diagnosis, treatment, and care, including nursing care and related medical services, for a period exceeding twenty-four consecutive hours for fifteen or more nonrelated individuals who have mental retardation or related conditions, including epilepsy, cerebral palsy, or other developmental disabilities. The requirement of fifteen or more nonrelated individuals shall not apply to any intermediate care facility for the mentally retarded which has a valid license as of January 1, 1988;

(13) Residential care facility shall mean any institution, facility, place, or building in which there are provided for a period exceeding twenty-four consecutive hours accommodation, board, and care, such as personal assistance in feeding, dressing, and other essential daily living activities, to four or more nonrelated individuals who by reason of illness, disease, injury, deformity, disability, or physical or mental infirmity are unable to sufficiently or properly care for themselves or manage their own affairs but do not require the daily services of a licensed registered nurse or licensed practical nurse;

(14) Domiciliary facility shall mean any institution, facility, place, or building in which there are provided for a period exceeding twenty-four consecutive hours accommodation and supervision to four or more individuals, not related to the owner, occupant, manager, or administrator thereof, who are essentially capable of managing their own affairs but who are in need of supervision, including supervision of nutrition, by the institution, facility, place, or building on a regular, continuing basis but not necessarily on a consecutive twenty-four-hour basis. This definition shall not include those homes or facilities providing casual care at irregular intervals;

(15) Mental health center shall mean any institution, facility, place, or building, not licensed as a hospital, which is used to provide for a period exceeding twenty-four consecutive hours accommodation, board, and advice, counseling, diagnosis, treatment, care, or services primarily or exclusively to persons residing or confined in the institution, facility, place, or building who are afflicted with a mental disease, disorder, or disability;

(16) Center for the developmentally disabled shall mean any residential institution, facility, place, or building, not licensed as a hospital, which is used to provide accommodation, board, and training, advice, counseling, diagnosis, treatment, care, including medical care when appropriate, or services primarily or exclusively to four or more persons residing in the institution, facility, place, or building who have developmental disabilities;

(17) Alcoholic Substance Abuse treatment center shall mean any institution, facility, place, or building, not licensed as a hospital, including any private dwelling, which is used to provide residential care, treatment, services, maintenance, accommodation, or board in a group setting primarily or exclusively for individuals having any type of habituation, dependency, or addiction to the use of alcohol, in which are provided guidance, supervision, and personal services relating to those areas of adjustment which enable the alcohol dependent or alcoholic to move into

independent living in normal surroundings who are substance abusers. Substance abuse treatment center shall include those settings which provide programs and services on an outpatient basis primarily or exclusively to individuals who are substance abusers but not services that can be rendered only by a physician or within the confines of a hospital, and which is not a permanent residence but only a temporary one. Alcoholic treatment center shall include institutions, facilities, places, or buildings in which there are provided nonresidential programs and services primarily or exclusively to nonresidents of the institution, facility, place, or building having any type of habituation, dependency, or addiction to the use of alcohol. Specific types or categories of alcoholic substance abuse treatment centers may be further defined by appropriate rule and regulation of the department not inconsistent with this definition. For purposes of this subdivision, substance abuse shall mean the abuse of substances which have significant mood-changing or perception-changing capacities, which are likely to be physiologically or psychologically addictive, and the continued use of which may result in negative social consequences, and abuse shall mean the use of substances in ways that have or are likely to have significant adverse social consequences;

(18) Drug treatment center shall mean any institution, facility, place, or building, not licensed as a hospital, including any private dwelling, which is used to provide residential care, treatment, services, maintenance, accommodation, or board in a group setting primarily or exclusively for individuals who have any type of habituation, dependency, or addiction to the use of any kind of controlled substance, narcotic drug, or other type of drug, in which are provided guidance, supervision, and personal services relating to those areas of adjustment which enable the drug user, dependent, or addict to move into independent living in normal surroundings but not services that can be rendered only by a physician or within the confines of a hospital, and which is not a permanent residence but only a temporary one. Drug treatment center shall include institutions, facilities, places, or buildings in which there are provided nonresidential programs and services primarily or exclusively to nonresidents of the institution, facility, place, or building having any type of habituation, dependency, or addiction to the use of any kind of controlled substance, narcotic drug, or other type of drug. Specific types or categories of drug treatment centers may be further defined by appropriate rule and regulation of the department not inconsistent with this definition.

(19) Home health agency shall mean a public agency, private organization, or subdivision of such an agency or organization which is primarily engaged in providing skilled nursing care or a minimum of one other therapeutic service as defined by the department on a full-time, part-time, or intermittent basis to patients in a place of temporary or permanent residence used as the patient's home under a plan of care as prescribed by the attending physician and which meets the rules, regulations, and standards as established by the department. Nothing in this subdivision shall be construed to require (a) a physician's plan of care, (b) a summary report to the physician, (c) a progress report, or (d) a discharge summary when only personal care or assistance with the activities of daily living, as such terms are defined in section 71-6602, are provided. Parent home health agency shall mean the primary home health agency which establishes, maintains, and assures administrative and supervisory control of branch offices and subunits. Branch office shall mean a home health agency which is at a location or site providing services within a portion of the total geographic area served by the parent agency and is in sufficient proximity to share administration, supervision, and services with its parent agency in a manner that renders it unnecessary for the branch independently to meet licensure requirements. A branch office shall be part of its parent home health agency and share administration and services. Subunit shall mean a home health agency which serves patients in a geographic area different from that of the parent agency and which, by virtue of the distance between it and the parent agency, is judged incapable of sharing administration, supervision, and services on a daily basis and shall independently meet the licensing requirements for home health agencies. Home health agency shall not include private duty nursing registries as long as the private duty nursing registrant is the direct payee from the patient. Home health agency shall not apply to the practice of home health care by other licensed medical persons as authorized by the practice of their particular specialty nor to the individuals providing homemaker or chore services within the home;

(20) (19) Developmental disability shall mean a severe, chronic disability of a person which (a) is attributable to a mental or physical impairment or combination of mental and physical impairment, (b) is manifested

before the person attains the age of twenty-two, (c) is likely to continue indefinitely, (d) results in substantial functional limitations in three or more of the following areas of major life activity: Self-care; receptive and expressive language; learning; mobility; self-direction; capacity for independent living; and economic self-sufficiency, and (e) reflects the person's need for a combination and sequence of special interdisciplinary or generic care, treatment, or other services which are lifelong or extended duration and are individually planned and coordinated;

~~(21)~~ (20) Qualified mental retardation professional shall mean any person who meets the requirements of 42 C.F.R. 483.430(a);

~~(22)~~ (21) Nursing facility shall mean any institution, facility, place, or building or a distinct part of any institution, facility, place, or building which is primarily devoted to providing to inpatients nursing care and related services for patients who require medical or nursing care or rehabilitation of injured, disabled, or sick persons. Unless a waiver is granted pursuant to section 71-2017.07, a nursing facility shall use the services of (a) a licensed registered nurse for at least eight consecutive hours per day, seven days per week and (b) a licensed registered nurse or licensed practical nurse on a twenty-four-hour basis seven days per week. Except when waived under section 71-2017.07, a nursing facility shall designate a licensed registered nurse or licensed practical nurse to serve as a charge nurse on each tour of duty. The Director of Nursing Services shall be a licensed registered nurse, and this requirement shall not be waived. The Director of Nursing Services may serve as a charge nurse only when the nursing facility has an average daily occupancy of sixty or fewer residents;

~~(23)~~ (22) Department shall mean the Department of Health; and

~~(24)~~ (23) Ambulatory surgical center shall mean any facility, not licensed as a hospital, (a) the primary purpose of which is to provide surgical services to patients not requiring hospitalization, in which the patient is admitted to and discharged from such facility within the same working day and is not permitted to stay overnight, (b) which meets all state licensure requirements of a health clinic pursuant to ~~subsection~~ subdivision (9) of this section, and (c) which has qualified for a written agreement with the Health Care Finance Administration of the United States Department of Health and Human Services or its successor to participate in medicare as an ambulatory surgical center as defined in 42 C.F.R. 416 et seq. or which receives other third-party reimbursement for facility services. Ambulatory surgical center shall not include an office or clinic used solely by a practitioner or group of practitioners in the practice of medicine, dentistry, or podiatry.

Sec. 32. Section 71-2017.07, Revised Statutes Supplement, 1994, is amended to read:

71-2017.07. The Department of Health may waive either the requirement of subdivision ~~(22)~~ (21) of section 71-2017.01 that a nursing facility or long-term care hospital certified under Title XIX of the federal Social Security Act, as amended, use the services of a licensed registered nurse for at least eight consecutive hours per day, seven days per week, or the requirement of such subdivision that a nursing facility or long-term care hospital certified under Title XIX of the federal Social Security Act, as amended, use the services of a licensed registered nurse or licensed practical nurse on a twenty-four-hour basis seven days per week, including the requirement for a charge nurse on each tour of duty, if:

(1)(a) The facility or hospital demonstrates to the satisfaction of the department that it has been unable, despite diligent efforts, including offering wages at the community prevailing rate for the facilities or hospitals, to recruit appropriate personnel;

(b) The department determines that a waiver of the requirement will not endanger the health or safety of individuals staying in the facility or hospital; and

(c) The department finds that, for any periods in which licensed nursing services are not available, a licensed registered nurse or physician is obligated to respond immediately to telephone calls from the facility or hospital; or

(2) The Department of Social Services has been granted any waiver by the federal government of staffing standards for certification under Title XIX of the federal Social Security Act, as amended, and the requirements of subdivisions (1)(b) and (c) of this section have been met.

The Department of Social Services shall apply for such a waiver from the federal government to carry out the provisions of subdivision (2) of this section.

A waiver granted under this section shall be subject to annual review by the department. The department shall provide notice of the granting

of a waiver to the office of the state long-term care ombudsman and to the Nebraska Advocacy Services or any successor designated for the protection of and advocacy for persons with mental illness or mental retardation. A nursing facility granted a waiver shall provide written notification to each resident of the facility or, if appropriate, to the guardian, legal representative, or immediate family of the resident. As a condition of granting or renewing a waiver, a facility or hospital may be required to employ other qualified licensed personnel.

The department may grant a waiver under this section if it determines that the waiver will not cause the State of Nebraska to fail to comply with any of the applicable requirements of medicaid so as to make the state ineligible for the receipt of all funds to which it might otherwise be entitled.

Sec. 33. Section 71-4604.01, Revised Statutes Supplement, 1994, is amended to read:

71-4604.01. (1) Every manufactured home or recreational vehicle manufactured more than four months after May 27, 1975, which is sold, offered for sale, or leased in this state shall bear a seal issued by the department certifying that the body and frame design and construction and the plumbing, heating, and electrical systems of such manufactured home or recreational vehicle have been installed in compliance with the standards adopted by the department, applicable at the time of manufacture. Manufactured homes and recreational vehicles destined for sale outside the United States shall be exempt from displaying the seal issued by the department if sufficient proof of such delivery is submitted to the department for review. Recreational vehicles destined for sale or lease outside this state or the United States shall be exempt from displaying the seal issued by the department if sufficient proof of such delivery is submitted to the department for review. The department shall issue the recreational-vehicle seal upon an inspection of the plans and specifications for the recreational vehicle or upon an actual inspection of the recreational vehicle during or after construction if the recreational vehicle is in compliance with the departmental standards. The department shall issue the manufactured-home seal in accordance with the National Manufactured Housing Construction and Safety Standards Act of 1974, as amended, 42 U.S.C. 5401 et seq. Each seal issued by the department shall remain the property of the department and may be revoked by the department in the event of a violation of the conditions of issuance.

(2) A fee of not less than ten dollars nor more than fifty dollars, as determined by departmental regulation, shall be charged for each seal issued by the department. A seal shall be placed on each living unit within a multifamily manufactured home, and the seal fee assessed for each living unit shall be one-half of the seal fee for a single-family manufactured home. Inspection fees shall be paid for all departmental inspections of manufacturing plants located outside of the State of Nebraska. Such fees shall consist of a reimbursement by the manufacturer of actual departmental travel, personnel, and inspection expenses only and shall be paid prior to any issuance of seals.

(3) The department shall adopt and promulgate rules and regulations governing the submission of plans and specifications of manufactured homes and recreational vehicles. A person who submits recreational-vehicle plans and specifications to the department for review and approval shall be charged for departmental engineering services provided for performing the review of the plans and specifications and related functions at a rate of not less than fifteen dollars per hour nor more than fifty dollars per hour as determined by rule and regulation based on the number of hours of review time as follows:

- (a) New model, one hour;
- (b) Quality control manual, two hours;
- (c) Typical, one-half hour;
- (d) Revisions, three-fourths hour;
- (e) Engineering calculations, three-fourths hour;
- (f) Initial package, fifteen hours; and
- (g) Yearly renewal, two hours plus the three-fourths hour for revisions.

(4) The department shall charge each manufacturer a fee of seventy-five dollars for each inspection of any new recreational vehicle manufactured by such manufacturer and not bearing a seal issued by the State of Nebraska or some reciprocal state.

(5) All fees collected pursuant to the Uniform Standard Code for Manufactured Homes and Recreational Vehicles shall be remitted to the State Treasurer for credit to the Department of Health Cash Fund. Money credited to the fund pursuant to this section shall be used by the department for the purpose of administering the code.

Sec. 34. Section 71-4606, Revised Statutes Supplement, 1994, is amended to read:

71-4606. If any other state has plumbing, heating, electrical, or body and frame design and construction codes for recreational vehicles at least equal to those established under the Uniform Standard Code for Manufactured Homes and Recreational Vehicles, the department, upon determining that such standards are being enforced by such other state, shall place such other state on a reciprocity list, which list shall be available to any interested person. Any recreational vehicle which bears the seal of any state which has been placed on the reciprocity list shall not be required to bear the seal issued by this state. A manufactured home or recreational vehicle manufactured more than four months after May 27, 1975, which does not bear the federal manufactured-home label or the recreational-vehicle seal issued by the department or by a state which has been placed on the reciprocity list shall not be permitted to be manufactured, offered for sale, sold, or leased by a manufacturer, dealer, or any other person anywhere within this state nor delivered from this state into any other state or jurisdiction unless destined for sale outside the United States. A recreational vehicle manufactured in this state, which is offered for sale, sold, or leased by a manufacturer, dealer, or other person anywhere outside this state, shall not be required to bear the seal issued by this state. If a recreational vehicle has a certificate of title or other certification from a state on the reciprocity list, a dealer may sell it unless he or she has actual knowledge that the recreational vehicle does not meet the standards of the state which has issued a certificate of title or other certification for it, so long as it bears the seal issued by the department or a state on the reciprocity list. No dealer or distributor shall sell a manufactured home or recreational vehicle if it contains a defect, a serious defect, or an imminent safety hazard.

Sec. 35. Section 71-4608, Revised Statutes Supplement, 1994, is amended to read:

71-4608. (1) Any person who is in violation of any provision of the Uniform Standard Code for Manufactured Homes and Recreational Vehicles regarding a used manufactured home or new or used multifamily manufactured home or recreational vehicle or who manufactures unless destined for sale outside the United States, sells, offers for sale, or leases in this state any used manufactured home or new or used multifamily manufactured home or recreational vehicle manufactured more than four months after May 27, 1975, which does not bear the federal manufactured-home label or the recreational-vehicle seal issued by the department or by a state which has been placed on the reciprocity list as required by the code shall be guilty of a Class I misdemeanor. Nothing in the Uniform Standard Code for Manufactured Homes and Recreational Vehicles shall be construed to require a seal for any recreational vehicle manufactured in this state which is sold or leased outside this state.

(2) Any person who violates any of the provisions enumerated in this section or rules and regulations adopted and promulgated by the department relating to manufactured homes and recreational vehicles shall be liable for a civil penalty not to exceed one thousand dollars for each violation. Each such violation shall constitute a separate violation with respect to each manufactured home or recreational vehicle, except that the maximum penalty shall not exceed one million dollars for any related series of violations occurring within one year from the date of the first violation. No person shall:

(a) Manufacture for sale, lease, sell, offer for sale or lease, or introduce, deliver, or import into this state any manufactured home or recreational vehicle which is manufactured on or after the effective date of any applicable departmental standard which does not comply with such standard;

(b) Fail or refuse to permit access to or copying of records, fail to make reports or provide information, or fail or refuse to permit entry or inspection as provided in section 71-4610;

(c) Fail to furnish notification to the purchaser of any manufactured home of any defect as required by 42 U.S.C. 5414 or to the purchaser of any recreational vehicle as provided in section 71-4616;

(d) Fail to issue a certification required by 42 U.S.C. 5415 or issue a certification to the effect that a manufactured home conforms to all applicable Manufactured Home Construction and Safety Standards, 24 C.F.R. 3280, if such person in the exercise of due care has reason to know that such certification is false or misleading in a material respect;

(e) Fail to establish and maintain such records, make such reports, and provide such information as the department may reasonably require to enable it to determine whether there is compliance with the National Manufactured Housing Construction and Safety Standards Act of 1974, as

amended, 42 U.S.C. 5401 et seq., or the standards adopted by the department for recreational-vehicle construction or fail to permit, upon request of a person duly authorized by the department, inspection of appropriate books, papers, records, and documents relative to determining whether a manufacturer, distributor, or dealer has acted or is acting in compliance with the Uniform Standard Code for Manufactured Homes and Recreational Vehicles or with the National Manufactured Housing Construction and Safety Standards Act of 1974, as amended, 42 U.S.C. 5401 et seq.; or

(f) Issue a certification pursuant to 42 U.S.C. 5403(a) if such person in the exercise of due care has reason to know that such certification is false or misleading in a material respect.

(3) Subdivision (2)(a) of this section shall not apply to the sale or the offer for sale of any manufactured home or recreational vehicle after the first purchase of it in good faith for purposes other than resale.

(4) Subdivision (2)(a) of this section shall not apply to any person who establishes that he or she did not have reason to know in the exercise of due care that such manufactured home or recreational vehicle was not in conformity with applicable Manufactured Home Construction and Safety Standards, 24 C.F.R. 3280, or the standards adopted by the department for recreational-vehicle construction or any person who, prior to such first purchase, holds a certificate by the manufacturer or importer of such manufactured home or recreational vehicle to the effect that such manufactured home conforms to all applicable Manufactured Home Construction and Safety Standards, 24 C.F.R. 3280, or that such recreational vehicle conforms to the standards adopted by the department for recreational-vehicle construction unless such person knows that such manufactured home or recreational vehicle does not so conform.

(5) Any person or officer, director, or agent of a corporation who willfully or knowingly violates subsection (2) of this section in any manner which threatens the health or safety of any purchaser shall be guilty of a Class I misdemeanor.

Sec. 36. Section 71-5001, Revised Statutes Supplement, 1994, is amended to read:

71-5001. Sections 71-5001 to 71-5014 shall be known and may be cited as the Nebraska Comprehensive Community Mental Health Services Act. It is hereby declared to be the public policy of the State of Nebraska that all persons residing in Nebraska shall have access to mental health facilities, programs, and services. Such mental health facilities, programs, and services shall meet standards established by the ~~Medical Services Division~~ of the Department of Public Institutions subject to the requirements of section 71-5003. The act is intended to organize and provide methods of financing community mental health facilities, programs, and services, to provide for more effective utilization of existing mental health resources, to provide a means for participation of local communities in the determination of the need for and allocation of mental health facilities, programs, and services, to provide a means to grant state mental health funds as appropriated for community needs, to define administrative structure, and to coordinate and integrate such programs with other human service programs. It is the intent of the Legislature that, as state funds for new and expanded community mental health services become available, a portion of such funds be utilized to meet the mental health service needs of children and youth as identified by the regional governing boards.

Sec. 37. Section 71-5002, Reissue Revised Statutes of Nebraska, is amended to read:

71-5002. As used in the Nebraska Comprehensive Community Mental Health Services Act, unless the context otherwise requires:

(1) Director shall mean the ~~Director of Medical Services of the Department~~ of Public Institutions or such officer of the department as he or she may designate to carry out in whole or in part the administration of the act;

(2) Department shall mean the Department of Public Institutions;

(3) Services shall mean those mental health services, programs, and facilities which under the act provide (a) inpatient services, (b) outpatient services, (c) partial care services, (d) twenty-four-hour emergency services, (e) consultation and education services, (f) specialized services as federal legislation may require, (g) specialized mental health services for children and youth, or (h) other forms of preventive, treatment, or rehabilitation services which are designed to promote, restore, and maintain the mental health of the people of Nebraska;

(4) Program administrator shall mean the chief executive officer of each comprehensive community mental health services program;

(5) Income shall mean fees from workshops, board and room payments,

and receipts from patients, relatives of patients receiving services, or third-party payments;

(6) There shall be six mental health regions. The mental health regions shall consist of the following counties:

(a) Region I shall consist of Sioux, Dawes, Box Butte, Sheridan, Scotts Bluff, Morrill, Garden, Banner, Kimball, Cheyenne, and Deuel counties;

(b) Region II shall consist of Grant, Hooker, Thomas, Arthur, McPherson, Logan, Keith, Lincoln, Perkins, Chase, Hayes, Frontier, Dawson, Gosper, Dundy, Hitchcock, and Red Willow counties;

(c) Region III shall consist of Blaine, Loup, Garfield, Wheeler, Custer, Valley, Greeley, Sherman, Howard, Buffalo, Hall, Phelps, Kearney, Adams, Clay, Furnas, Harlan, Hamilton, Merrick, Franklin, Webster, and Nuckolls counties;

(d) Region IV shall consist of Cherry, Keya Paha, Boyd, Brown, Rock, Holt, Knox, Cedar, Dixon, Dakota, Thurston, Wayne, Pierce, Antelope, Boone, Nance, Madison, Stanton, Cuming, Burt, Colfax, and Platte counties;

(e) Region V shall consist of Polk, Butler, Saunders, Seward, Lancaster, Otoe, Fillmore, Saline, Thayer, Jefferson, Gage, Johnson, Nemaha, Pawnee, York, and Richardson counties; and

(f) Region VI shall consist of Dodge, Washington, Douglas, Sarpy, and Cass counties; and

(7) Service agency shall mean any public or private agency or organization which delivers any of the services defined in subdivision (3) of this section and which receives funds under the Nebraska Comprehensive Community Mental Health Services Act.

Sec. 38. Section 71-5102, Revised Statutes Supplement, 1995, is amended to read:

71-5102. For purposes of sections 60-337 and 71-5101 to 71-5164, unless the context otherwise requires:

(1) Airway shall mean a route for the passage of air into and out of the lungs;

(2) Ambulance or rescue service unit shall mean any privately or publicly owned motor vehicle or aircraft that is especially designed, constructed or modified, and equipped and is intended to be used for and is maintained or operated for the overland or air transportation of patients upon the streets, roads, highways, airspace, or public ways in this state, including funeral coaches or hearses, or any other motor vehicles or aircraft used for such purposes, but shall not include or mean any motor vehicle or aircraft owned or operated under the direct control of an agency of the United States Government;

(3) Ambulance attendant shall mean an individual trained or qualified to provide for, or any other individual who provides for, the care of patients while such patients are being transported in an ambulance;

(4) Artificial airway shall mean a device that is inserted through the nose or mouth to allow passage of air and oxygen to the lungs;

(5) Artificial ventilation shall mean opening the airway and restoring breathing by mouth-to-mouth or mouth-to-nose ventilation and by the use of mechanical devices;

(6) Automatic defibrillator shall mean a monitor or device capable of rhythm analysis which will charge and deliver a shock after electronically detecting the presence of ventricular fibrillation or rapid ventricular tachycardia;

(7) Basic life support shall mean those acts ordinarily performed after training by emergency medical technicians, including the use of oxygen, syrup of ipecac, pharyngeal airways, and pneumatic antishock garments, and not specifically preempted and separately licensed under the Emergency Medical Technician-Paramedic Act. When special training and certification requirements have been met, basic life support shall also include the use of automatic and semiautomatic defibrillators, the administration and maintenance of intravenous fluids, and the administration of nonvisualized advanced airway management devices;

(8) Board shall mean the Board of Ambulance Advisors;

(9) Certification shall mean formal notice of certain privileges and abilities after completion of certain training and testing;

(10) Certified ambulance attendant shall mean any individual fulfilling the requirements of section 71-5109 and shall include an emergency medical technician meeting such requirements regardless of whether such emergency medical technician is a member of a transporting ambulance service or rescue service;

(11) Contraindication shall mean a condition that renders a medical procedure, treatment, or medication undesirable;

(12) Defibrillation shall mean the automatic or semiautomatic

application of electrocountershock therapy to persons in ventricular fibrillation or rapid ventricular tachycardia;

(13) Department shall mean the Department of Health;

(14) Division shall mean the Division of Emergency Medical Services of the department;

(15) Electrolytes shall mean salts dissolved in body fluids and cells;

(16) Emergency medical technician shall mean a prehospital emergency care provider trained and certified to that level of basic life support prescribed in subsection (2) of section 71-5109 and for such other skills as determined by the department;

(17) Emergency medical technician-A/D or emergency medical technician-automatic/defibrillator shall mean an emergency medical technician who has been additionally trained, tested, and certified in the use and operation of automatic or semiautomatic defibrillators pursuant to rules and regulations adopted and promulgated by the department pursuant to sections 71-5101 to 71-5140;

(18) Emergency medical technician-A/D service shall mean any privately or publicly owned entity, or any combination thereof, utilizing certified emergency medical technicians-A/D and a physician medical director to provide prehospital emergency care and to provide defibrillation;

(19) Emergency medical technician-AM or emergency medical technician-airway management shall mean an emergency medical technician who has been additionally trained, tested, and certified in the use and operation of nonvisualized advanced airway management devices pursuant to rules and regulations adopted and promulgated by the department;

(20) Emergency medical technician-AM service shall mean any privately or publicly owned entity, or any combination thereof, utilizing certified emergency medical technicians-AM and a physician medical director to provide prehospital emergency care and to provide nonvisualized advanced airway management;

(21) Emergency medical technician-IV or emergency medical technician-intravenous shall mean an emergency medical technician who has been additionally trained, tested, and certified in the use and operation of peripheral intravenous line initiation and maintenance pursuant to rules and regulations adopted and promulgated by the department;

(22) Emergency medical technician-IV service shall mean any privately or publicly owned entity, or any combination thereof, utilizing certified emergency medical technicians-IV and a physician medical director to provide prehospital emergency care and to provide peripheral intravenous line initiation and maintenance;

(23) Endotracheal intubation shall mean a method of airway management in which a tube is placed through a patient's mouth or nose and directly through the larynx between the vocal cords while visualizing the vocal cords and into the trachea for the purpose of opening and maintaining an airway;

(24) First responder-A/D or first responder-automatic/defibrillator shall mean a first responder who has been additionally trained, tested, and certified in the use and operation of automatic or semiautomatic defibrillators pursuant to rules and regulations adopted and promulgated by the department pursuant to sections 71-5101 to 71-5140;

(25) First responder-A/D service shall mean a first responder service utilizing first responders-A/D and a physician medical director to provide prehospital emergency care and to provide defibrillation;

(26) Hypovolemic shock shall mean shock resulting from loss of body fluid or blood;

(27) Infusion shall mean the introduction of fluid other than blood or blood products into the vascular system;

(28) Intravenous shall mean within the vein;

(29) Intravenous line shall mean a polyethylene catheter through which fluids are given directly into a vein;

(30) Oropharyngeal airway shall mean an artificial airway positioned in the mouth to prevent blockage of the upper airway by the tongue;

(31) Oxygen shall mean a gas that is necessary for breathing and is found free in the air;

(32) Patient shall mean an individual who is sick, injured, wounded, or otherwise helpless or incapacitated;

(33) Peripheral intravenous therapy shall mean infusion of fluid other than blood or blood products into the vascular system to establish and maintain access to the circulation or to provide fluids in order to maintain an adequate circulatory blood volume;

(34) Person shall mean an individual, firm, partnership, limited



liability company, corporation, company, association, joint-stock company or association, political subdivision, governmental agency, or other legal entity and shall include any trustee, receiver, assignee, or other legal representative thereof but shall not include any agency of the United States Government;

(35) Physician medical director shall mean a physician licensed to practice medicine and surgery pursuant to the Uniform Licensing Law who is responsible for the medical supervision of certified emergency medical technicians-A/D, emergency medical technicians-IV, or emergency medical technicians-AM and is responsible for proctoring their proficiency maintenance and continuing education requirements;

(36) Primary response service area shall mean the primary geographic area which an ambulance service, first responder-A/D service, emergency medical technician-A/D service, emergency medical technician-AM service, or emergency medical technician-IV service serves and which such service has sufficient staff and equipment to reasonably serve;

(37) Protocols shall mean a set of written policies, procedures, and directions from a physician medical director to an emergency medical technician concerning the medical procedures to be performed in specific situations;

(38) Resuscitation shall mean restoring to life or consciousness by using assisted breathing to restore ventilation and cardiopulmonary resuscitation or defibrillation to restore circulation;

(39) Semiautomatic defibrillator shall mean a monitor or device which is capable of electronically detecting a ventricular fibrillation and rapid ventricular tachycardia but requires user interaction in order to deliver a shock;

(40) Standing orders shall mean a direct order from the physician medical director to perform certain tasks for a patient under a specific set of circumstances;

(41) Syrup of ipecac shall mean a preparation of the direct root of a shrub found in Brazil and other parts of South America that can cause vomiting; and

(42) Ventilation shall mean the exchange of air between the lungs and the air of the environment as in breathing.

Sec. 39. Section 71-5103, Reissue Revised Statutes of Nebraska, is amended to read:

71-5103. No ambulance may transport any patient upon any street, road, highway, airspace, or public way in the State of Nebraska unless it holds a valid license issued by the department to do so.

In addition to the duties provided in sections 71-5124 to 71-5140, the board may adopt and promulgate rules and regulations establishing various classes of ambulance service based on the mode of transportation, both ground and air, the condition of the patient to be transported, whether life-support equipment is necessary for transportation of such a patient, and similar factors.

Sec. 40. Section 71-5108, Revised Statutes Supplement, 1995, is amended to read:

71-5108. (1) No ambulance shall be licensed to transport any patient upon any street, road, highway, airspace, or public way in the State of Nebraska unless such ambulance, when so transporting patients, is occupied by at least one certified ambulance attendant. Such requirement shall be met if any of the individuals providing the service is a licensed physician, registered nurse, certified physician assistant, or licensed practical nurse as specified in section 71-5108.01 rather than a certified ambulance attendant. A certified physician assistant as defined in section 71-1,107.16 providing the service shall be entitled to provide all services authorized under sections 71-1,107.15 to 71-1,107.30.

(2) No emergency medical technician-A/D service shall be licensed to transport any patient upon any street, road, highway, airspace, or public way in this state unless at least one certified emergency medical technician is present on all runs to assist an emergency medical technician-A/D at the scene and during transportation.

(3) A first responder-A/D shall accompany the patient in an ambulance to operate the defibrillator and assist the certified ambulance attendants if the ambulance is not licensed to provide defibrillator services.

Sec. 41. Section 71-5122, Reissue Revised Statutes of Nebraska, is amended to read:

71-5122. Any person who operates an ambulance for the purpose of transporting any patient upon any street, road, highway, airspace, or public way in the State of Nebraska without first obtaining a license therefor from the department shall be guilty of a Class IV misdemeanor, and each day such

ambulance shall be so operated without a license after a first conviction shall be considered a separate offense. Such person shall also be guilty of maintaining a nuisance pursuant to the provisions of section 28-1321 and shall, upon conviction thereof, be both so fined and ordered to abate such nuisance.

Sec. 42. Section 71-5123, Reissue Revised Statutes of Nebraska, is amended to read:

71-5123. Any person who operates an ambulance for the purpose of transporting any patient upon any street, road, highway, airspace, or public way in the State of Nebraska without first obtaining a license therefor from the department may be restrained by temporary or permanent injunction upon the motion of the county attorney of the county in which such person resides or engages in such business or activity or upon the motion of the Attorney General.

Sec. 43. Section 71-5211, Revised Statutes Supplement, 1994, is amended to read:

71-5211. For purposes of the Primary Care Provider Act, primary care shall have the same meaning as in section 71-5653 means family practice, general practice, general internal medicine, general pediatrics, general surgery, obstetrics/gynecology, and psychiatry.

Sec. 44. Section 71-5212, Revised Statutes Supplement, 1994, is amended to read:

71-5212. The University of Nebraska Medical Center and the Creighton University Medical Center shall each develop a separate plan to increase the number of graduates from its medical center who enter a primary care postgraduate residency training program. or a psychiatry postgraduate residency training program. Each report shall include numerical goals and timeframes for such increases. Each medical center shall request input from the Nebraska Rural Health Advisory Commission in the formation of the plans.

Sec. 45. Section 71-5213, Revised Statutes Supplement, 1994, is amended to read:

71-5213. A report shall be submitted to the Governor and the Legislature as to the efforts of the Nebraska Rural Health Advisory Commission, University of Nebraska Medical Center, and Creighton University Medical Center to increase the number of graduates entering primary care postgraduate residency training programs. and psychiatry postgraduate residency training programs. The report shall include recommendations as to further steps that should be taken to increase the number of such graduates. The report shall be submitted to the Nebraska Rural Health Advisory Commission for comment by October 1 in 1994, 1995, and 1996. The report shall be submitted to the Governor and the Legislature by December 1 in 1994, 1995, and 1996.

Sec. 46. Section 71-5508, Revised Statutes Supplement, 1994, is amended to read:

71-5508. (1) Any fire department, rescue service, ambulance service, or nonprofit corporation organized to perform any of these services, any accredited educational institution which awards an academic degree to its graduates and has or maintains a current contract with a licensed service to provide transportation to patients, or any hospital or combination of hospitals or other medical facility licensed by the department may apply to the department for certification as an approved service program. Such application shall be submitted by an approved licensed physician who has been designated as the medical director of the proposed service program, but such physician shall not be liable nor responsible for the actions of the service program or personnel thereof except as set forth in rules and regulations governing such service programs. The application shall be in such form and shall contain such information as the department and the board shall require by rule and regulation. The department with the concurrence of the board shall approve any application which meets all standards set forth by rule and regulation and which presents satisfactory evidence that it will be operated consistent with the Emergency Medical Technician-Paramedic Act and the rules and regulations adopted and promulgated pursuant to such act and that the public will be adequately protected by the arrangement proposed in the application. Upon approval of the application, the department shall issue a certificate to operate an approved service program to the applicant.

(2) An applicant for certification as an approved service program shall specify the primary service area and the level of service at which the service will operate as follows:

(a) An Emergency Medical Technician-D Service Program shall be certified only to operate with emergency medical technicians-D and to offer only such services as may be performed by such technicians. An Emergency Medical Technician-D Service Program shall be certified to operate with all

levels of certified emergency medical care personnel and to offer such services as they may perform at their level of certification insofar that the services provided do not exceed the level of the service program certification. Any such service program shall utilize only defibrillators which are capable of recording monitor strips and which may be operated only when equipped with a device which records electrocardiogram signals. The competency of such technicians to operate a defibrillator shall be confirmed monthly. If a technician fails such confirmation, his or her certification shall be suspended until confirmation is successfully completed. This subdivision shall not apply to emergency medical technicians-A/D or the use of automatic or semiautomatic defibrillators as such terms are defined in section 71-5102;

(b) An Emergency Medical Technician-Intermediate Service Program shall be certified only to operate with emergency medical technicians-intermediate and to offer only such services as may be performed by such technicians. An Emergency Medical Technician-Intermediate Service Program shall be certified to operate with all levels of emergency medical care personnel and to offer such services as they may perform at their level of certification insofar that the services provided do not exceed the level of the service program certification; and

(c) A Paramedic Service Program shall be certified to operate with all levels of certified emergency medical care personnel and to offer only such services as they may perform.

(3) An applicant for certification as an approved service program shall provide assurance to the satisfaction of the board that all patients under its care shall be transported only in vehicles operated by a licensed ambulance service. Such vehicle may be owned or leased by the applicant or secured for use of the applicant by contract or other similar means.

(4) An emergency medical technician-D, emergency medical technician-intermediate, or emergency medical technician-paramedic who is employed by or serving as a volunteer member of an approved service program may deliver advanced emergency medical care within the limits of his or her respective certification at the scene of an emergency, during transportation to a hospital, during the transfer of a patient between hospitals, or while in the hospital emergency department and under the supervision of an approved licensed physician.

(5) No emergency medical technician-D, emergency medical technician-intermediate, or emergency medical technician-paramedic may assume the duties incident to such title or practice the skills thereof unless he or she is employed by or serving as a volunteer member of an approved service program certified by the department to offer services at the appropriate level.

(6) No fire department, rescue service, ambulance service, hospital, or other persons or entity shall operate a program to provide advanced emergency medical care using the services of emergency medical technicians-D, emergency medical technicians-intermediate, or emergency medical technician-paramedics without first obtaining a certificate to operate such a program from the department.

Sec. 47. Section 71-5652, Revised Statutes Supplement, 1994, is amended to read:

71-5652. The purposes of the Rural Health Systems and Professional Incentive Act shall be to (1) create the Nebraska Rural Health Advisory Commission and establish its powers and duties, (2) establish a student loan program that will provide financial incentives to medical students and physician assistant students who agree to practice their profession in a designated health profession shortage area within Nebraska, and (3) establish a loan repayment program that will require community matching funds and will provide financial incentives to eligible public health professionals who agree to practice their profession in a designated health profession shortage area within Nebraska. ~~(4) establish a community-match program for loan repayments that will combine state and local resources to provide financial incentives to rural practice; and (5) provide funding at the level originally appropriated by the Legislature for FY1993-94 and FY1994-95 for the family practice residency program assistance authorized under section 71-5206.01.~~

Sec. 48. Section 71-5653, Revised Statutes Supplement, 1994, is amended to read:

71-5653. For purposes of the Rural Health Systems and Professional Incentive Act:

(1) Approved specialty means family practice, general practice, general internal medicine, general pediatrics, general surgery, obstetrics/gynecology, and psychiatry;

(2) Commission shall mean the Nebraska Rural Health Advisory

Commission;

(3) ~~(2)~~ Department shall mean means the Department of Health;

(4) ~~(3)~~ Full-time practice shall mean means a minimum of forty hours per week;

(5) ~~(4)~~ Health care shall mean means both somatic and mental health care services;

(6) ~~(5)~~ Office shall mean means the Office of Rural Health;

(6) Primary care shall mean family practice, general practice, general internal medicine, general pediatrics, general surgery, and obstetrics and gynecology;

(7) Qualified educational debts shall mean means government and commercial loans obtained by students for postsecondary education tuition, other educational expenses, and reasonable living expenses, as determined by the department, but shall does not include loans received under the act or the Nebraska Medical Student Assistance Act; and

(8) Rural shall mean means located within any county in Nebraska having a population of less than fifteen thousand inhabitants and not included within a metropolitan statistical area as defined by the United States Department of Commerce, Bureau of the Census.

Sec. 49. Section 71-5654, Revised Statutes Supplement, 1994, is amended to read:

71-5654. The Nebraska Rural Health Advisory Commission is hereby created as the direct and only successor to the Commission on Rural Health Manpower. All members of the Commission on Rural Health Manpower serving on September 6, 1991, shall serve as members of the Nebraska Rural Health Advisory Commission for a period of time equal to the remainder of their terms on the Commission on Rural Health Manpower. Thereafter, the The Nebraska Rural Health Advisory Commission shall consist of twelve members as follows:

(1) The Director of Health or his or her designee and the Director of Medical Services of the Department of Public Institutions or his or her designee; and

(2) Ten members to be appointed by the Governor with the advice and consent of the Legislature as follows:

(a) One representative of each medical school located in the state involved in training family physicians and one physician in family practice residency training; and

(b) From rural areas one physician, one consumer representative, one hospital administrator, one nursing home administrator, one nurse, one physician assistant, and one mental health professional.

Members shall serve for terms of three years. When a vacancy occurs, appointment to fill the vacancy shall be made for the balance of the term. All appointed members shall be citizens and residents of Nebraska. The appointed membership of the commission shall, to the extent possible, represent the three congressional districts equally.

Sec. 50. Section 71-5661, Revised Statutes Supplement, 1995, is amended to read:

71-5661. The financial incentives provided by the Rural Health Systems and Professional Incentive Act shall consist of (1) student loans to eligible students for attendance at an eligible school as determined pursuant to section 71-5662 and (2) the repayment by the state of qualified educational debts owed by eligible health professionals as determined pursuant to such section. Funds for such incentives shall be appropriated from the General Fund to the department for such purposes.

There is hereby created in the department the Rural Health Professional Incentive Fund into which payments received pursuant to section 71-5666 and appropriations from the General Fund shall be credited. Any money in the fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act.

Sec. 51. Section 71-5662, Revised Statutes Supplement, 1994, is amended to read:

71-5662. (1) To be eligible for a student loan under the Rural Health Systems and Professional Incentive Act, an applicant or a recipient shall be enrolled or accepted for enrollment in an accredited medical education program or physician assistant education program in Nebraska.

(2) To be eligible for loan repayment under the act, an applicant or a recipient shall be a mental health practitioner, nurse practitioner, physician assistant, or physician in an approved specialty and shall be licensed or certified to practice in Nebraska, not be enrolled in a residency program, and enter practice in a designated health profession shortage area in Nebraska on or after April 16, 1994. ~~physician assistant student, a nurse practitioner student, a master's level mental health student, or a clinical~~

psychology student in the final year of education at an accredited education program or a graduate of an accredited medical education program enrolled in an accredited primary care or psychiatric residency program.

Sec. 52. Section 71-5664, Revised Statutes Supplement, 1994, is amended to read:

71-5664. In screening applicants for financial incentives, the commission shall consider the following factors:

(1) Motivation to practice in a health profession shortage area in Nebraska;

(2) Motivation and preference toward primary care or psychiatry an approved specialty; and

(3) Other factors that would influence a choice to practice in a health profession shortage area in Nebraska.

The commission shall select recipients who are most likely to practice in a health profession shortage area in Nebraska.

Sec. 53. Section 71-5665, Revised Statutes Supplement, 1994, is amended to read:

71-5665. The commission shall periodically designate health profession shortage areas within the state. ~~The commission shall determine two levels of shortage so that stronger incentives may be tied to practice in areas of most critical need.~~ In making such designations the commission shall consider, after consultation with other appropriate agencies concerned with health services and with appropriate professional organizations, among other factors:

(1) The latest reliable statistical data available regarding the number of health professionals practicing in an area and the population to be served by such practitioners;

(2) Inaccessibility of health care services to residents of an area;

(3) Particular local health problems;

(4) Age or incapacity of local practitioners rendering services; and

(5) Demographic trends in an area both past and future.

Sec. 54. Section 71-5666, Revised Statutes Supplement, 1994, is amended to read:

71-5666. Each student loan recipient shall execute an agreement with the state. Such agreement shall include the following terms, as appropriate:

(1) The borrower agrees to practice the equivalent of one year of full-time practice of primary care or psychiatry an approved specialty in a designated health profession shortage area in Nebraska for each year of education for which a loan is received and agrees to accept medicaid patients in his or her practice;

(2) If the borrower practices primary care or psychiatry an approved specialty in a designated health profession shortage area in Nebraska, determined by the commission to be among the areas of most critical need, the loan shall be forgiven as provided in this section. Practice in a designated area shall commence within three months of the completion of formal education, which may include a period not to exceed five years to complete specialty training in a primary care an approved specialty. The commission may approve exceptions to the three-month restriction upon showing good cause. Loan forgiveness shall occur on a quarterly basis, with completion of the equivalent of three months of full-time practice resulting in the cancellation of one-fourth of the annual loan amount, subject to the following:

(a) If the borrower practices primary care or psychiatry in a designated health profession shortage area which is not among the areas of most critical need, the borrower shall repay fifty percent of the outstanding loan principal. Such repayment shall commence within six months of the completion of formal education, which may include a period not to exceed five years to complete specialty training in a primary care specialty, and shall be completed within a period not to exceed twice the number of years for which loans were awarded;

(3) (b) If the borrower practices primary care or psychiatry an approved specialty in Nebraska but not in a designated health profession shortage area, practices a specialty other than primary care or psychiatry an approved specialty in Nebraska, or practices outside Nebraska, the borrower shall repay one hundred percent of the outstanding loan principal with interest at a rate of twenty-four percent simple interest per year from the date the loan was granted. Such repayment shall commence within six months of the completion of formal education, which may include a period not to exceed five years to complete specialty training in a primary care an approved specialty, and shall be completed within a period not to exceed twice the number of years for which loans were awarded;

(4) (c) If a borrower who is a medical student determines during the

first or second year of medical education that his or her commitment to the loan program cannot be honored, the borrower may repay the outstanding loan principal, plus six percent simple interest per year from the date the loan was granted, prior to graduation from medical school without further penalty or obligation. Physician assistant student loan recipients shall not be eligible for this provision;

(4) If a borrower who is a medical student determines during the third or fourth year of medical education or prior to completion of residency that his or her commitment to the loan program cannot be honored, the borrower shall repay the outstanding loan principal plus twenty-four percent simple interest per year from the date the loan was granted. Such repayment shall commence within six months of the borrower's notification of such intent to the state and shall be completed within a period not to exceed twice the number of years for which loans were awarded; and

(5) If the borrower discontinues the course of study for which the loan was granted, the borrower shall repay one hundred percent of the outstanding loan principal. Such repayment shall commence within six months of the date of discontinuation of the course of study and shall be completed within a period of time not to exceed the number of years for which loans were awarded; and

(6) In the event of a borrower's total and permanent disability or death, the unpaid debt accrued under the Rural Health Systems and Professional Incentive Act shall be canceled.

Sec. 55. Section 71-5667, Revised Statutes Supplement, 1994, is amended to read:

71-5667. Loan agreements executed prior to the operative date of this section July 1, 1991, under the Nebraska Medical Student Assistance Act or the Rural Health Systems and Professional Incentive Act may be renegotiated and new agreements executed to reflect the terms required by section 71-5666. No funds repaid by borrowers under the terms of agreements executed prior to the operative date of this section July 1, 1991, shall be refunded. Any repayments being made under the terms of prior agreements may be discontinued upon execution of a new agreement if conditions permit.

Sec. 56. Section 71-5668, Revised Statutes Supplement, 1994, is amended to read:

71-5668. Each loan repayment recipient shall execute an agreement with the state department and a local entity. Such agreement shall include, at a minimum, the following terms:

(1) The loan repayment recipient agrees to practice full-time primary care, mental health care, or psychiatry an approved specialty in a designated health profession shortage area for at least three years and to accept medicaid patients in his or her practice;

(2) In consideration of the agreement by the recipient, the State of Nebraska agrees to pay an amount and a local entity within the designated health profession shortage area will provide equal funding for the repayment of the recipient's qualified educational debts, in amounts up to ten thousand dollars per year per recipient for physicians and clinical psychologists and up to five thousand dollars per year per recipient for physician assistants, nurse practitioners, and master's level mental health professionals toward qualified educational debts for up to three years. Such payment shall be made The department shall make payments directly to the recipient; and and shall consist of quarterly payments of up to two thousand five hundred dollars to be made upon completion of three months of full-time practice;

(3) If the loan repayment recipient discontinues practice in the shortage area prior to completion of the three-year requirement, the recipient shall repay to the state one hundred twenty-five percent of the total amount of funds provided to the recipient toward for loan repayment. Upon repayment by the recipient to the department, the department shall reimburse the local entity its share of the funds. Such payment shall commence within three months of the discontinuation of practice and shall be completed within a period not to exceed twice the number of quarters of practice completed; and

(4) If, upon completion of the required three years of practice, the loan repayment recipient still has educational debts remaining and the recipient and the community desire that the practitioner remain in the community, the community may choose to continue to provide funds toward the practitioner's remaining educational debt.

Sec. 57. Section 71-5669, Revised Statutes Supplement, 1994, is amended to read:

71-5669. The office shall develop and implement a program by which communities or groups of communities within designated health profession shortage areas provide an equal match to state loan repayment funds for eligible health professionals. Such community match shall be (1) not more

than ten thousand dollars per year so that the total loan repayment does not exceed twenty thousand dollars per year per recipient for physicians and clinical psychologists and (2) not more than five thousand dollars per year so that the total loan repayment does not exceed ten thousand dollars per year per recipient for physician assistants, nurse practitioners, and master's level mental health professionals. The office shall develop guidelines for community participation in the community-match loan repayment program. The office shall provide consultation to potential community participants and facilitate the matching of communities and health professionals.

Sec. 58. Section 71-5801, Revised Statutes Supplement, 1994, is amended to read:

71-5801. Sections 71-5801 to 71-5870 and section 60 of this act shall be known and may be cited as the Nebraska Health Care Certificate of Need Act.

Sec. 59. Section 71-5803, Revised Statutes Supplement, 1994, is amended to read:

71-5803. For purposes of the Nebraska Health Care Certificate of Need Act, unless the context otherwise requires, the definitions found in sections 71-5804 to 71-5828 and section 60 of this act shall be used.

Sec. 60. Physician clinic shall mean a health clinic at which advice, counseling, diagnosis, treatment, care, or services relating to the preservation or maintenance of health is provided by a physician or physicians or other health care professionals under the supervision of a physician or physicians.

Sec. 61. Section 71-5805.01, Reissue Revised Statutes of Nebraska, is amended to read:

71-5805.01. Capital expenditure minimum shall mean a base amount of three million dollars for capital expenditures for residential care facilities, domiciliary facilities, and physician clinics which are not ambulatory surgical centers with any adjustments made by the department pursuant to this section. In all other cases, capital expenditure minimum shall mean a base amount of one million two hundred thousand dollars together with any adjustments made by the department pursuant to this section. On October 1 of each year the department shall adjust the base amount by an amount equal to the percentage change in the Department of Commerce Composite Construction Cost Index (1) from October 1, 1989, through the period most recently reported for the one-million-two-hundred-thousand-dollar base and (2) from the operative date of this section through the period most recently reported for the three-million-dollar base.

Sec. 62. Section 71-5810, Revised Statutes Supplement, 1994, is amended to read:

71-5810. Health care facility shall include hospitals, psychiatric hospitals, tuberculosis hospitals, skilled nursing facilities, kidney disease treatment centers, including freestanding hemodialysis units, intermediate care facilities, nursing facilities, ambulatory surgical centers, inpatient facilities owned or controlled by health maintenance organizations, rehabilitation facilities, and other comparable facilities without regard to location or ownership.

Health care facility shall not include (1) Christian Science Sanatoriums operated or listed and certified by the First Church of Christ Scientist, Boston, Massachusetts, (2) facilities operated solely as part of the professional practice of an independent practitioner, partnership, limited liability company, or professional corporation as defined in section 21-2202, (3) home health agencies, or (4) residential care facilities, (5) domiciliary facilities, (6) alcoholism or drug abuse treatment facilities which do not offer medical services under professional supervision, or (7) physician clinics.

Sec. 63. Section 71-5813, Reissue Revised Statutes of Nebraska, is amended to read:

71-5813. Institutional health services shall mean health services provided in or through health care facilities and shall include the entities in or through which such services are provided but shall not include home health, residential care, or domiciliary care services or services provided in or through physician clinics.

Sec. 64. Section 71-5828, Reissue Revised Statutes of Nebraska, is amended to read:

71-5828. Substantial change in health service shall mean (1) the offering of a health service which was not offered on a regular basis in or through a health care facility within the twelve-month period prior to the time the services would be offered or (2) the termination of a health service provided in or through a health care facility. Substantial change in health services shall not mean the development of home health, residential care, or

domiciliary care services or the offering of services by physician clinics. A technological improvement to a service already being offered shall not be considered a substantial change in health service, but a technological improvement may require a certificate of need under the provisions of subdivision (2), (5), (7), or (8) of section 71-5830.

Sec. 65. Section 71-5846, Reissue Revised Statutes of Nebraska, is amended to read:

71-5846. The department shall make a decision in writing to (1) approve the application and issue a certificate of need with or without any specified modifications, or (2) reject disapprove the application and deny a certificate of need, or (3) modify the application and issue a certificate of need on the project as modified after giving notice to the applicant of the modifications and providing an opportunity for the applicant to respond to the modifications. The department shall not make its decision subject to any condition not directly related to criteria adopted and promulgated under sections 71-5852 to 71-5855, and any condition or modification shall bear a direct and rational relationship to the project under review.

Sec. 66. Section 71-6615, Revised Statutes Supplement, 1994, is amended to read:

71-6615. Sections 71-6601 to 71-6615 shall not apply to any volunteers working on behalf of a hospice licensed under the Hospice Licensure Act program, as such program is defined by rules and regulations of the department, who, as part of their volunteer duties, provide home health care.

Sec. 67. Sections 67 to 71 of this act shall be known and may be cited as the False Medicaid Claims Act.

Sec. 68. For purposes of the False Medicaid Claims Act:

(1) Claim means an application for payments for goods or services, including any written or electronically submitted request or demand to the state agency or its agents or assignees for reimbursement for goods or services purported to have been provided to a recipient, whether or not the state agency pays any portion of such claim;

(2) Good or service includes (a) any particular item, device, medical supply, or service claimed to have been provided to a recipient and listed in an itemized claim for payment and (b) any entry in the cost report, books of account, or other documents supporting such good or service;

(3) Knows or should know means that a person, with respect to information:

(a) Has actual knowledge of the information;

(b) Acts in deliberate ignorance of the truth or falsity of the information; or

(c) Acts in reckless disregard of the truth or falsity of the information.

No proof of specific intent to defraud is required;

(4) Medicaid program means the medical assistance program under sections 68-1018 to 68-1025;

(5) Person means a provider of goods or services covered under the medicaid program or any employee of such provider whether the provider is an individual, individual medical vendor, firm, corporation, professional association, professional corporation, partnership, limited liability company, organization, or other legal entity, or such an entity which is not a provider but which provides goods or services to such a provider;

(6) Recipient means an individual who is eligible to receive goods or services for which payment may be made under the medicaid program; and

(7) State agency means the agency established or designated to administer or supervise the administration of the medicaid program.

Sec. 69. Any person that presents, or causes to be presented, to an officer, employee, assignee, or agent of the state agency a claim under the medicaid program presents a false claim if such person knows or should know:

(1) The goods or services were not provided as claimed;

(2) The claim is not true or is fraudulent;

(3) Such person made, used, or caused to be made or used a false record or statement to support a claim; or

(4) The good or service was provided by a person during a period that such person was excluded from the medicaid program pursuant to a determination by the United States Secretary of Health and Human Services or by the state agency.

Any person that presents a false claim is subject, in addition to any other remedies that may be prescribed by law, to a civil penalty of not more than five thousand dollars for each false claim. In addition, such person is subject to an award of twice the amount of damages sustained by the state agency because of such claim. In the court's discretion, the prevailing party may also recover the costs of a civil action brought to recover the



penalties or damages and for reasonable attorney's fees incurred, including the costs for no more than one expert used in the investigation and trial.

Sec. 70. In determining the amount of any penalties or assessments awarded under the False Medicaid Claims Act, the following shall be taken into account:

(1) The nature of claims and the circumstances under which they were presented;

(2) The degree of culpability, history of prior offenses, and financial condition of the person presenting the claims;

(3) Coordination of the total penalties, damages, and assessments arising from the same claims, goods, or services, whether based on state or federal statute; and

(4) Such other matters as justice requires.

Amounts recovered under the False Medicaid Claims Act shall be paid to the State Treasurer for credit to the Department of Health Cash Fund, except that damages that exceed compensatory damages shall be credited to the permanent school fund. The amount of such penalty or assessment, when finally determined, or the amount agreed upon in compromise, may be deducted from any sum then or later owing by the state agency to the person against whom the penalty or assessment has been assessed.

Sec. 71. (1) A civil action under the False Medicaid Claims Act may not be filed with respect to any claim later than six years after the date the claim was presented. Such an action may be brought for false claims made prior to the operative date of this section if the limitations period in this subsection has not passed.

(2) In an action brought under the act, the state shall prove all essential elements of the cause of action, including damages, by a preponderance of the evidence.

Sec. 72. For purposes of sections 72 to 76 of this act:

(1) Civil penalties include any remedies required under federal law and include the imposition of monetary penalties;

(2) Federal regulations for participation in the medicaid program means the regulations found in 42 C.F.R. part 442, as amended, for participation in the medicaid program under Title XIX of the federal Social Security Act, as amended; and

(3) Nursing facility means any skilled nursing facility or intermediate care facility, as defined in section 71-2017.01, which receives federal and state funds under Title XIX of the federal Social Security Act, as amended.

Sec. 73. (1) The Department of Social Services may assess, enforce, and collect civil penalties against a nursing facility which the Department of Health has found in violation of federal regulations for participation in the medicaid program pursuant to the authority granted to the Department of Health under section 81-604.03.

(2) If the Department of Social Services finds that a violation is life threatening to one or more residents or creates a direct threat of serious adverse harm to one or more residents, a civil penalty shall be imposed for each day the deficiencies which constitute the violation exist. The department may assess an appropriate civil penalty for other violations based on the nature of the violation. Any monetary penalty assessed shall not be less than fifty dollars nor more than ten thousand dollars for each day the facility is found to be in violation of such federal regulations. Monetary penalties assessed shall include interest at the rate specified in section 45-104.02, as such rate may from time to time be adjusted.

Sec. 74. The Department of Social Services shall adopt criteria for determining the type and amount of the civil penalty assessed under section 73 of this act. Such criteria shall include, but need not be limited to, consideration of the following factors:

(1) The period of time over which the violation occurred;

(2) The frequency of the violation;

(3) The nursing facility's history concerning the type of violation for which the civil penalty is assessed;

(4) The nursing facility's intent or reason for the violation;

(5) The effect, if any, of the violation on the health, safety, security, or welfare of the residents;

(6) The existence of other violations, in combination with the violation for which the civil penalty is assessed, which increase the threat to the health, safety, security, rights, or welfare of the residents;

(7) The accuracy, thoroughness, and availability of records regarding the violation, which the nursing facility is required to maintain; and

(8) The number of additional related violations occurring within the

same time span as the violation in question.

Sec. 75. (1) The Nursing Facility Penalty Cash Fund is created. Monetary penalties collected by the Department of Social Services pursuant to section 73 of this act shall be remitted to the State Treasurer for credit to such fund. The state investment officer shall invest any money in the fund available for investment pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act.

(2) The Department of Social Services shall adopt and promulgate rules and regulations which establish circumstances under which the department may distribute funds from the Nursing Facility Penalty Cash Fund to protect the health or property of individuals residing in nursing facilities which the Department of Health has found in violation of federal regulations for participation in the medicaid program. Circumstances considered as a basis for distribution from the fund include paying costs to:

(a) Relocate residents to other facilities;

(b) Maintain the operation of a nursing facility pending correction of violations;

(c) Close a nursing facility; and

(d) Reimburse residents for personal funds lost.

Sec. 76. The Department of Social Services shall adopt and promulgate rules and regulations to carry out sections 72 to 76 of this act, including rules and regulations for notice and appeal procedures.

Sec. 77. Section 81-604.03, Reissue Revised Statutes of Nebraska, is amended to read:

81-604.03. The Department of Health is hereby authorized to act as the survey and certification agency for the medicaid program and to enter into such agreements with the Department of Social Services as may be necessary to carry out its duties. Until January 1, 1997, the Department of Health shall notify the Department of Social Services of any violation by a nursing facility, as defined in section 72 of this act, of federal regulations for participation in the medicaid program. On and after January 1, 1997, the Department of Health and Human Services Regulation and Licensure shall notify the Department of Health and Human Services Finance and Support of any violation by a nursing facility, as defined in section 72 of this act, of federal regulations for participation in the medicaid program. Civil penalties will be determined pursuant to sections 72 to 76 of this act.

Sec. 78. Section 81-651, Reissue Revised Statutes of Nebraska, is amended to read:

81-651. (1) The Department of Health may provide visiting community nursing services or home health services to persons living in the state and may charge fees for such services. The department shall not be exempt from licensure under ~~subsection (19)~~ subdivision (18) of section 71-2017.01.

(2) The department may organize, license, and operate home health agencies to assist in providing services under subsection (1) of this section.

(3) The department (a) may employ necessary personnel, including, but not limited to, licensed nurses, physical therapists, physical therapy assistants, audiologists, speech-language pathologists, communication assistants, occupational therapists, occupational therapy assistants, home health aides, homemakers, respiratory care practitioners, nutritionists, social workers, and supervisory personnel, and may purchase equipment and materials necessary to maintain an effective program or (b) may contract with individuals or licensed agencies to obtain such services or to assist in providing services under subsection (1) of this section.

(4) The department may contract with any public, private, for-profit, or nonprofit agency or individual to provide home health services through any licensed home health agency created under subsection (2) of this section.

Sec. 79. Section 81-1021, Reissue Revised Statutes of Nebraska, is amended to read:

81-1021. (1) All motor vehicles acquired by the State of Nebraska shall be indelibly and conspicuously lettered, in plain letters of a contrasting color or reflective material:

(a) On each side thereof with the words State of Nebraska and following such words the name of whatever board, department, bureau, division, institution, including the University of Nebraska or state college, office, or other state expending agency of the state to which the motor vehicle belongs; and

(b) On the back thereof with the words State of Nebraska.

(2) This section shall not apply to motor vehicles used or controlled by:

(a) The Nebraska State Patrol, the Public Service Commission, the Game and Parks Commission, deputy state sheriffs employed by the Nebraska

Brand Committee and State Fire Marshal for state law enforcement purposes, inspectors employed by the Nebraska Liquor Control Commission, and persons employed by the Tax Commissioner for state revenue enforcement purposes, the exemption for state law enforcement purposes and state revenue enforcement purposes being confined strictly to the seven agencies specifically named;

(b) The Department of Public Institutions or the Department of Correctional Services for the purpose of apprehending and returning escaped offenders or parole violators to facilities in the Department of Correctional Services and transporting offenders and personnel of the Department of Correctional Services and patients and personnel of the Division of Medical Services Department of Public Institutions until January 1, 1997, and on and after January 1, 1997, the Department of Health and Human Services who are engaged in off-campus program activities;

(c) The Military Department;

(d) Vocational rehabilitation counselors and the Department of Health for the purposes of communicable disease control, for the prevention and control of those communicable diseases which endanger the public health, or used by such department in the enforcement of drug control laws;

(e) The Department of Agriculture for special investigative purposes; and

(f) The Nebraska Motor Vehicle Industry Licensing Board for investigative purposes.

Sec. 80. Section 83-1,147, Reissue Revised Statutes of Nebraska, is amended to read:

83-1,147. There is hereby created within the The Department of Public Institutions a Division of Medical Services which shall:

(1) Administer the clinical programs and services of the Beatrice State Developmental Center, the Nebraska Orthopedic Hospital, the Lincoln Regional Center, the Norfolk Regional Center, the Hastings Regional Center, and such other medical facilities, including skilled nursing care and intermediate care facilities, as may be provided by the department;

(2) Plan, develop, administer, and operate mental health and mental retardation clinics, programs, and services;

(3) Plan, develop, and execute the clinical programs and services carried on by the department; and

(4) Represent the Department of Public Institutions department in its relationship work with the University of Nebraska Medical Center concerning psychiatric services, except that sections 83-107-01, 83-1,147 to 83-1,152, 83-227-01, 83-305, 83-306, 83-307-01, 83-308, 83-312, 83-324, 83-336, 83-339, 83-340, 83-348, and 83-391 to 83-393 shall not otherwise alter the terms of the existing relationship between the Department of Public Institutions and the Board of Regents of the University of Nebraska relating to psychiatric services; and

(5) Have such additional responsibilities and perform such additional duties as may be assigned to it by law or by the Director of Public Institutions.

Sec. 81. The Department of Public Institutions shall utilize a rehabilitation model when appropriate for services provided at the regional centers under the jurisdiction of the department. For purposes of this section, rehabilitation model means a comprehensive approach to treatment and rehabilitation of a person with a disability caused by a mental illness in order to assure that such person can perform those physical, emotional, social, and intellectual skills needed to live and work in the community.

Sec. 82. Section 83-1,148, Reissue Revised Statutes of Nebraska, is amended to read:

83-1,148. The Director of Public Institutions shall appoint a Director of Medical Services who shall be a qualified licensed physician with appropriate training and experience in mental health, mental retardation, or public health administration. Until January 1, 1997, the Director of Medical Services shall serve at the pleasure of the Director of Public Institutions and the Director of Public Institutions shall assign duties to the Director of Medical Services. On and after January 1, 1997, the Director of Medical Services shall serve at the pleasure of the Director of Health and Human Services and the Director of Health and Human Services shall assign duties to the Director of Medical Services. Before entering upon the duties of his or her office, the Director of Medical Services shall subscribe and take the constitutional oath of office; shall file such oath in the office of the Secretary of State, and shall be bonded under the blanket surety bond required by section 11-201. The Director of Medical Services may be removed by the Director of Public Institutions only for disability, neglect of duty, or malfeasance in office and only after delivering to him or her a statement of the charges and giving him or her an opportunity to be heard.

Sec. 83. The Director of Public Institutions shall appoint the chief executive officer of each facility referred to in subdivision (1) of section 80 of this act. Each chief executive officer shall report to the director or his or her designee and shall serve full time and without term at the pleasure of the director.

Sec. 84. Section 83-227.01, Reissue Revised Statutes of Nebraska, is amended to read:

83-227.01. The Division of Medical Services Department of Public Institutions is authorized to utilize space which is temporarily surplus to the needs of the Lincoln Regional Center and the Norfolk Regional Center facilities under their jurisdiction for patients committed to or lawfully confined in the Beatrice State Developmental Center. Patients so transferred to the Lincoln Regional Center or the Norfolk Regional Center shall be housed in facilities separate and apart from facilities used to house patients committed to such hospital, and after their transfer such patients shall receive the same type of care, custody, and treatment as they would have received had they remained at the Beatrice State Developmental Center, and the charges for their care and maintenance shall be the same as though they were housed at the Beatrice State Developmental Center, and the charges shall be collected in the manner provided in this section and sections 83-227.02, 83-350, and 83-363 to 83-380.

Sec. 85. Section 83-305, Reissue Revised Statutes of Nebraska, is amended to read:

83-305. The state hospital established in Lancaster County for the treatment of mental diseases illnesses shall be located on the campus known as the Lincoln Regional Center. The state hospital established in Madison County shall be located on the campus known as the Norfolk Regional Center. The state hospital established in Adams County shall be located on the campus known as the Hastings Regional Center.

Sec. 86. Section 83-306, Reissue Revised Statutes of Nebraska, as amended by section 941, Legislative Bill 1044, Ninety-fourth Legislature, Second Session, 1996, is amended to read:

83-306. (1) The three state hospitals for the mentally ill described in section 83-305 shall provide care and treatment for all persons suffering from mental diseases illnesses who are admitted to the state hospitals.

(2) Subject to such special limitations as to classes of patients as may be prescribed by law, state hospitals, described in section 83-305, shall receive and treat mentally ill dangerous persons committed by mental health boards or by district courts, or who voluntarily apply for admission to the mental health boards or to the Director of Medical Services Public Institutions until January 1, 1997, and on and after January 1, 1997, the Department of Health and Human Services, except as provided in subsection (3) of this section.

(3) The mental health board may commit mentally ill dangerous persons to the Douglas County Hospital, or other public or private hospitals with acute psychiatric care facilities, in the State of Nebraska if the facility and staff have been certified by the Director of Medical Services of Public Institutions until January 1, 1997, and on and after January 1, 1997, the Director of the Department of Health and Human Services as adequate for the care and treatment of mentally ill dangerous persons. The county and state shall contribute toward the payment of the costs of such commitment, as defined in section 83-376, in an amount which would have been paid if such mentally ill dangerous person had become a patient and received care and treatment at a state hospital described in section 83-305, except that the state's cost of care for such mentally ill dangerous person shall not exceed the individual cost as defined in section 83-365. A person committed to the Douglas County Hospital shall be considered a patient committed to the State of Nebraska for care and treatment, and the provisions of such commitment shall be identical to those provisions relating to a mentally ill dangerous person committed to a state hospital as defined in section 83-305.

(4) Bipsomania, inebriates, and other persons Persons addicted to the excessive use of alcoholic liquor alcohol shall, unless request is made in writing by the patient that he or she be committed to another state hospital, be committed to the Hastings Regional Center and shall be placed and kept together in a separate building or in one ward, except when, in the opinion of the superintendent, some individual patients would be detrimental to the treatment, care, and program adopted. If no space is available at the Hastings Regional Center to take care of the patient, he or she may be committed to and accepted by any of the other state hospitals having space available.

Sec. 87. Section 83-308, Reissue Revised Statutes of Nebraska, is

amended to read:

83-308. The amount of the salary of the superintendents of the three state ~~mental~~ hospitals for the mentally ill as described in section 83-305, shall be determined by the Director of ~~Medical Services Public Institutions~~ and paid in the same manner as other state officers.

Sec. 88. Section 83-324, Reissue Revised Statutes of Nebraska, is amended to read:

83-324. The Director of ~~Medical Services Public Institutions~~ may accept patients for care and treatment upon the written application of a patient. Such written application may be made by persons desiring to receive care and treatment in one of the state hospitals for the mentally ill to the superintendent of the state hospital in which the patient wishes to receive treatment.

Sec. 89. Section 83-336, Reissue Revised Statutes of Nebraska, is amended to read:

83-336. The Director of ~~Medical Services Public Institutions~~ shall provide the county board of mental health with blanks for warrants, certificates, ~~etc.~~ and other forms, such as will enable them to comply with sections 83-306, 83-307, 83-311 to 83-351, and 83-354 to 83-357, and also with printed copies of the applicable rules and regulations of the ~~Division of Medical Services Department of Public Institutions~~.

Sec. 90. Section 83-339, Reissue Revised Statutes of Nebraska, is amended to read:

83-339. The Director of ~~Medical Services Public Institutions~~ shall adopt and promulgate rules and regulations for the discharge or removal from the state regional centers of incurable and harmless patients, except that persons admitted to a regional center pursuant to the Nebraska Mental Health Commitment Act shall be released pursuant to section 83-1079.

Sec. 91. Section 83-340, Reissue Revised Statutes of Nebraska, is amended to read:

83-340. Any voluntary patient in a state hospital for the mentally ill who is cured shall be immediately discharged by the superintendent. Upon discharging such patient or any other patient, the superintendent shall furnish the patient, unless he or she is otherwise supplied, with suitable clothing, and a sum of money not exceeding twenty dollars, which shall be charged to the care of that patient in the hospital. The relatives of any patient not susceptible to cure by medical treatment in the hospital, and not dangerous to be at large, shall have the right to take charge of and remove the patient on the consent of the Director of ~~Medical Services Public Institutions~~.

Sec. 92. Section 83-391, Reissue Revised Statutes of Nebraska, is amended to read:

83-391. For purposes of sections 83-108, ~~83-147~~, 83-305, and 83-391 to 83-393, unless the context otherwise requires:

- (1) Department shall mean means the Department of Public Institutions; and
- (2) Facility shall mean means a skilled nursing care or intermediate care facility.

Sec. 93. Section 83-1001, Reissue Revised Statutes of Nebraska, is amended to read:

83-1001. It is hereby declared to be the public policy of the State of Nebraska that mentally ill dangerous persons be encouraged to obtain voluntary treatment. If voluntary treatment is not obtained, such persons shall be subject to lengthier and more restrictive involuntary custody and treatment only after mental health board proceedings as provided by ~~this act~~ the Nebraska Mental Health Commitment Act. Such persons shall be subjected to emergency protective custody under limited conditions and for a limited period of time. Procedures shall be changed to provide that while such persons are in custody or undergoing treatment, additional rights relating to restrictive conditions shall be instituted. It is also declared to be public policy that all personal records required by ~~this act~~ the act shall be confidential except as otherwise specifically provided.

Sec. 94. Section 83-1014, Reissue Revised Statutes of Nebraska, is amended to read:

83-1014. Subject shall mean any person against whom a certificate or petition has been filed under ~~the provisions of this act~~ the Nebraska Mental Health Commitment Act. Subject shall not include any person under eighteen years of age unless such person is an emancipated minor.

Sec. 95. Section 83-1020, Reissue Revised Statutes of Nebraska, is amended to read:

83-1020. (1) Whenever any peace officer believes that any individual is a mentally ill dangerous person and that the harm described by

section 83-1009 is likely to occur before mental health board proceedings under the Nebraska Mental Health Commitment Act may be invoked to obtain custody of the individual, such peace officer may immediately take such individual into custody, cause him or her to be taken into custody, or continue his or her custody if he or she is already in custody. A physician or psychologist shall have a limited privilege to hold an individual until a peace officer arrives if such physician or psychologist has probable cause to believe such individual is a mentally ill dangerous person. When a mental health center, a state hospital, or other government or private hospital has the capability to detain such an individual in the county in which the individual is found, the individual shall be placed in such facility.

(2)(a) ~~Until January 1, 1991, a county with a city of the first class within its boundaries may contract with medical facilities inside or outside the county to provide a place where individuals subject to subsection (1) of this section may be held. Such individuals in such counties may be placed in a jail only if they cannot be adequately protected in other facilities.~~

(b) ~~Commencing January 1, 1991, a county with a city of the first class within its boundaries All counties shall contract with medical facilities inside or outside the county to provide a place where individuals subject to subsection (1) of this section shall be held. Such individuals in such counties shall not be placed in a jail.~~

(3) ~~Each county other than a county with a city of the first class within its boundaries may contract with medical facilities inside or outside the county to provide a place where individuals subject to subsection (1) of this section shall be held. When such an individual is placed in a jail, the person in charge of the jail shall immediately notify the community mental health center for the area that the individual is being held and is in need of placement in an appropriate facility. The community mental health center shall identify an appropriate placement such as a mental health center, a state hospital, or other government or private hospital. Until a placement is identified, the community mental health center shall report to the jail every twenty-four hours on the status of the placement. Once an appropriate placement is identified, it shall be implemented within twenty-four hours.~~

(4) ~~Community mental health centers shall collect data on all individuals subject to subsection (3) of this section and make regular reports to the Department of Public Institutions as required by the department.~~

Sec. 96. Section 83-1021, Reissue Revised Statutes of Nebraska, is amended to read:

83-1021. At the time of the admission, the peace officer responsible for taking an individual into custody shall execute a written certificate, as prescribed and provided by the Director of Medical Services for the Department of Public Institutions, which certificate shall allege that such officer believes that the subject in custody is a mentally ill dangerous person and that the harm described by section 83-1009 is likely to occur before mental health board proceedings under ~~this act~~ the Nebraska Mental Health Commitment Act may be invoked to obtain custody of the subject. The certificate shall contain a summary of the subject's behavior supporting such allegations. A copy of such certificate shall be forwarded immediately to the county attorney.

Sec. 97. Section 83-1022, Reissue Revised Statutes of Nebraska, is amended to read:

83-1022. Mental health board proceedings shall be deemed to have commenced when the county attorney communicates to the sheriff or the director of the mental health center or government, private, or state hospital his or her intention to file the petition provided for in sections 83-1024 and 83-1025. The time of, receipt of, substance of, and name of the county attorney making such communication shall be recorded on the subject's certificate by the sheriff or director of the mental health center or hospital. A true copy of the certificate upon which the subject is admitted shall be made a part of the subject's records. Upon admission, he or she shall be given a list of the rights of subjects provided by sections 83-1047 to 83-1067, and if he or she is a ~~minor or~~ legally incompetent, the sheriff or director shall notify his or her ~~parent or~~ legal guardian of his or her admission.

Sec. 98. Section 83-1027, Reissue Revised Statutes of Nebraska, is amended to read:

83-1027. Upon the filing of the petition provided by sections 83-1025 and 83-1026 stating the county attorney's belief that the immediate custody of the subject is not required for the reasons provided by sections 83-1025 and 83-1026, the clerk of the district court shall cause a summons fixing the time and place for a hearing to be prepared and issued to the

sheriff for service. The sheriff shall personally serve upon the subject, as well as his or her parent or legal guardian, if he or she is a minor or legally incompetent, the summons and copies of the petition, the list of rights provided by sections 83-1047 to 83-1067, and a notice of the names, addresses, and telephone numbers of the mental health professionals in that locale by whom the subject may be evaluated prior to his or her hearing. The summons shall fix a time for the hearing within seven days after the subject has been taken into protective custody. Should the subject fail to appear as required after proper service upon him or her of a summons under this section, such failure shall constitute grounds for the issuance of a warrant for his or her custody as provided by section 83-1028.

Sec. 99. Section 83-1028, Reissue Revised Statutes of Nebraska, is amended to read:

83-1028. (1) Upon the filing of the petition provided by sections 83-1025 and 83-1026 stating the county attorney's belief that the immediate custody of the subject is required for the reasons provided by sections 83-1025 and 83-1026 or if the subject has previously failed to appear as required after proper service upon him or her of a summons under section 83-1027, the mental health board may issue a warrant directing the sheriff to take the subject into custody. When a mental health center, a state hospital, or other government or private hospital has the capability to detain such subject in the county in which the subject is found, the subject shall be placed in such facility, where he or she shall be held pending his or her hearing. At the time of execution of the warrant, the sheriff shall personally serve upon the subject, as well as his or her parent or legal guardian, if he or she is a minor or legally incompetent, a notice of the time and place fixed for the hearing and copies of the petition and list of rights provided by sections 83-1047 to 83-1067.

(2)(a) Until January 1, 1991, a county with a city of the first class within its boundaries may contract with medical facilities inside or outside the county to provide a place where subjects described in subsection (1) of this section may be held. Such subjects in such counties may be placed in a jail only if they cannot be adequately protected in other facilities.

(b) Commencing January 1, 1991, a county with a city of the first class within its boundaries all counties shall contract with medical facilities inside or outside the county to provide a place where subjects described in subsection (1) of this section shall be held. Such subjects in such counties shall not be placed in a jail.

(3) Each county other than a county with a city of the first class within its boundaries shall contract with medical facilities inside or outside the county to provide a place where subjects described in subsection (1) of this section shall be held. When such a subject is placed in a jail, the person in charge of the jail shall immediately notify the community mental health center for the area that the subject is being held and is in need of placement in an appropriate facility. The community mental health center shall identify an appropriate placement such as a mental health center, a state hospital, or other government or private hospital. Until a placement is identified, the community mental health center shall report to the jail every twenty-four hours on the status of the placement. Once an appropriate placement is identified, it shall be implemented within twenty-four hours.

(4) Community mental health centers shall collect data on all subjects described in subsection (3) of this section and make regular reports to the Department of Public Institutions as required by the department.

Sec. 100. Section 83-1029, Reissue Revised Statutes of Nebraska, is amended to read:

83-1029. The sheriff or the director of the mental health center or government, private, or state hospital shall have each subject admitted by warrant under section 83-1028 evaluated by a mental health professional as soon as reasonably possible after his or her admission, but in no event later than thirty-six hours following admission, unless the subject was evaluated within the preceding twenty-four hours. The examining mental health professional shall submit to the county attorney a signed statement concerning the subject's mental state. The examining mental health professional may not be a member of the mental health board that will preside over the petition hearing. If, from such evaluation, it is the judgment of the mental health professional that the subject is either not a mentally ill dangerous person, or that the harm described by section 83-1009 is not likely to occur before a hearing could be held, the sheriff or the director of the mental health center or government, private, or state hospital shall immediately communicate this judgment to the county attorney, the subject, the subject's counsel, if he or she has counsel, and his or her parent or legal guardian, if he or she is a minor or legally incompetent.

Sec. 101. Section 83-1036, Reissue Revised Statutes of Nebraska, is amended to read:

83-1036. If the subject denies the allegations of the petition, the mental health board shall proceed with its hearing on the merits of the petition. If the board concludes from the evidence at the hearing that there is not clear and convincing proof that the subject is a mentally ill dangerous person, it shall enter an order dismissing the petition and unconditionally discharging the subject. If the board concludes that there is clear and convincing proof that the subject is a mentally ill dangerous person, but that voluntary hospitalization or other treatment alternatives less restrictive of the subject's liberty than a mental health board-ordered treatment disposition are available and would suffice to prevent the harm described by section 83-1009, the board may either dismiss the petition and unconditionally discharge the subject, or suspend further proceedings for a period not to exceed ninety days from the date of the final hearing in order to determine the results of voluntary treatment alternatives. At any time during such ninety-day period, the county attorney may file an application with the board to reinstate the proceedings, and after notice to the subject, his or her parent or legal guardian, if he or she is a minor or legally incompetent, and his or her counsel, if he or she has counsel, the board shall hear the application. If no application to reinstate the proceedings is on file and pending at the expiration of ninety days from the initial suspension of proceedings, the board shall enter an order dismissing the petition and unconditionally discharging the subject of such petition.

Sec. 102. Section 83-1037, Reissue Revised Statutes of Nebraska, is amended to read:

83-1037. If either the subject of the petition either admits, or the mental health board concludes from the evidence at the hearing, that there is clear and convincing proof that the subject is a mentally ill dangerous person and that neither voluntary hospitalization nor other treatment alternatives less restrictive of the subject's liberty than a mental health board-ordered treatment disposition are available or would suffice to prevent the harm described in section 83-1009, the board shall so find and shall within forty-eight hours enter an order of final disposition providing for the treatment of the subject of the petition. The order of final disposition shall indicate whether the subject is a mentally ill dangerous person pursuant to either subdivision (1) or (2) of section 83-1009 or both.

Sec. 103. Section 83-1039, Reissue Revised Statutes of Nebraska, is amended to read:

83-1039. (1) Following a subject's mental health board adjudication as a mentally ill dangerous person in need of board-ordered treatment and pending the entry of an order of final disposition, the mental health board may order the subject retained in custody upon finding that the harm described in section 83-1009 is otherwise likely to occur before the entry of an order of final disposition. In the absence of such finding, the board shall order the subject released from custody on whatever reasonable conditions may be imposed by the board short of total custody which are the least restrictive alternatives required to assure the subject's appearance at a later disposition hearing and to prevent the harm described by section 83-1009 from occurring before such later hearing. If a subject is to be retained in custody and a mental health center, a state hospital, or other government or private hospital has the capability to detain such subject in the county in which the subject is found, the subject shall be placed in such facility.

(2)(a) ~~Until January 1, 1991, a county with a city of the first class within its boundaries may contract with medical facilities inside or outside the county to provide a place where subjects described in subsection (1) of this section may be held. Such subjects in such counties may be placed in a jail only if they cannot be adequately protected in other facilities.~~

(b) ~~Commencing January 1, 1991, a county with a city of the first class within its boundaries~~ All counties shall contract with medical facilities inside or outside the county to provide a place where subjects described in subsection (1) of this section shall be held. Such subjects in such counties shall not be placed in a jail.

(c) ~~Each county other than a county with a city of the first class within its boundaries shall contract with medical facilities inside or outside the county to provide a place where subjects described in subsection (1) of this section shall be held. When such a subject is placed in a jail, the person in charge of the jail shall immediately notify the community mental health center for the area that the subject is being held and is in need of placement in an appropriate facility. The community mental health center shall identify an appropriate placement such as a mental health center, a state hospital, or other government or private hospital. Until a placement is~~



identified, the community mental health center shall report to the jail every twenty-four hours on the status of the placement. Once an appropriate placement is identified, it shall be implemented within twenty-four hours.

(4) Community mental health centers shall collect data on all subjects described in subsection (3) of this section and make regular reports to the Department of Public Institutions as required by the department.

Sec. 104. Section 83-1040, Reissue Revised Statutes of Nebraska, is amended to read:

83-1040. In order to aid the mental health board in determining the best available treatment alternative for a subject found to be a mentally ill dangerous person in need of board-ordered treatment, the board may request that a predisposition investigation be conducted by a qualified physician or a psychologist licensed to engage in the practice of psychology and report and recommendations be submitted to it by the program administrator, or his or her designee, of the comprehensive community mental health services program in the mental health region in which the proceedings against the subject were held under the Nebraska Mental Health Commitment Act. The board may also require the Director of Medical Services of the Department of Public Institutions or such director's designee to provide such assistance as may be necessary to place the subject of the petition in an appropriate facility or program pursuant to section 71-5003. The board may further request predisposition assistance from the Department of Social Services pursuant to section 68-1202 and any other statutory or other authority which it may have to provide such assistance. The board may finally obtain assistance from any other public or private agency or persons familiar with available treatment resources and qualified to render such assistance. The board may require the subject to submit to reasonable psychiatric and psychological evaluation calculated to assist the mental health board in its choice of the best treatment disposition.

Sec. 105. Section 83-1044, Reissue Revised Statutes of Nebraska, is amended to read:

83-1044. As part of its order of final disposition under section 83-1037, the mental health board shall designate one of the officials, agencies or other persons who may be requested for predisposition assistance under section 83-1040, or the director or other representative of the treatment program or facility to which the subject is assigned, to be responsible for supervising the preparation and implementation of an individualized treatment plan, recording the subject's progress under the plan, and reporting such progress to the mental health board and other interested parties. The individualized treatment plan shall contain a statement of the nature of the specific mental and physical problems and needs of the subject, a statement of the least restrictive treatment conditions necessary to achieve the purposes of the board's order of final disposition and a description of intermediate and long-range treatment goals, with a projected timetable for their attainment. A copy of such plan shall be completed, filed with the mental health board for review and inclusion in the subject's board file, and served upon the county attorney, the subject, his or her counsel, if he or she has counsel, and his or her parent or legal guardian, if he or she is a minor or legally incompetent, within five working days after the entry of the board's order of final disposition. Treatment under such plan shall be commenced within two working days after the plan is completed. At the request of the mental health board, the treatment facility shall inform the mental health board, in writing, as to all aspects of the treatment and supervision of persons committed to the facility by the mental health board. Such reports shall include information regarding the time and location of periods spent outside of the treatment facility.

Sec. 106. Section 83-1045, Reissue Revised Statutes of Nebraska, is amended to read:

83-1045. The official, agency or other person designated by the mental health board under section 83-1044 to be responsible for the subject's individualized treatment plan shall submit periodic progress reports to the board, which board shall distribute copies to other interested parties. Each progress report shall summarize progress which has been made under the plan and shall state whether the treatment plan has been modified. Such progress reports shall be filed with the board for review and inclusion in the subject's board file, and served upon the county attorney, the subject and his or her counsel, if he or she has counsel, and his or her parent or legal guardian, if he or she is a minor or legally incompetent, within ten days of the submission of the individualized treatment plan of a subject whose order of final disposition requires full-time inpatient hospitalization or custody. Such progress reports shall be so filed and served, in the cases of all subjects undergoing board-ordered treatment pursuant to section 83-1040, no

less frequently than every ninety days following the filing of their initial individualized treatment plans for a period of one year from the date of such filing and every six months thereafter.

Sec. 107. Section 83-1045.02, Reissue Revised Statutes of Nebraska, is amended to read:

83-1045.02. The mental health board shall, upon the motion of the county attorney, or may, upon its own motion, hold a hearing to determine whether a subject committed to outpatient treatment can be adequately and safely served by the present treatment plan. The mental health board may issue a warrant directing any law enforcement officer in the state to take the subject into custody. The board shall order the sheriff to transport the subject to a mental health center or public or private hospital with available space specified by the board where he or she will be held pending the hearing. No person may be held in custody pending the hearing for a period exceeding seven days except upon a continuance granted by the board. At the time of execution of the warrant, the sheriff or a person designated by the board shall personally serve upon the subject, the subject's counsel, and the subject's parent or legal guardian if the subject is a minor or legally incompetent a notice of the time and place fixed for the hearing, a copy of the petition, and a list of the rights provided by the Nebraska Mental Health Commitment Act. The subject of the hearing shall be accorded all the rights guaranteed to a subject by the act. Following the hearing, the board shall determine whether outpatient treatment will be continued, modified, or ended.

Sec. 108. Section 83-1046, Reissue Revised Statutes of Nebraska, is amended to read:

83-1046. Following each filing of the periodic progress reports described in section 83-1045, the subject, the subject's counsel, or the subject's parent or legal guardian if the subject is a minor or legally incompetent may request a review hearing and upon request shall have the right to a review hearing by the mental health board and to seek from the board an order of discharge from commitment or change in treatment disposition. The mental health board shall schedule the review hearing to be held within fourteen days of receipt of the written request. The mental health board may schedule such a review hearing (1) at any time pursuant to section 83-1079 or 83-1080, (2) upon the request of the subject, the subject's counsel, the subject's parent or legal guardian if the subject is a minor or legally incompetent, the county attorney, the official, agency, or other person designated by the mental health board under section 83-1044 to be responsible for the subject's individualized treatment plan, or the mental health professional directly involved in implementing the subject's individualized treatment plan, or (3) upon the board's own motion.

Whenever it is shown by any person or it appears upon the record of the periodic progress reports, to the satisfaction of the mental health board, that either cause no longer exists for the care or treatment or a less restrictive alternative exists for a person committed as a mentally ill dangerous person, the mental health board shall order the immediate discharge of that person or change the treatment disposition. When discharge or a change in disposition is in issue, due process protections afforded under the Nebraska Mental Health Commitment Act shall attach to the subject.

Sec. 109. Section 83-1064, Reissue Revised Statutes of Nebraska, is amended to read:

83-1064. The subject of a petition may waive any of the proceedings or rights incident to proceedings granted him or her by section 83-1047 or any other provision of this act by failing to request any right expressly required to be requested but, in the case of all other such rights, only if the record reflects that such waiver was made personally, intelligently, knowingly, understandingly, and voluntarily by the subject, and such subject's parent or legal guardian if he or she is a minor or legally incompetent. When the mental health board determines that the subject is not able to waive his or her rights under the conditions set forth in this section, it shall be up to the discretion of the subject's counsel to exercise the right. When the subject is not represented by counsel the rights may not be waived.

Sec. 110. Section 83-1067, Reissue Revised Statutes of Nebraska, is amended to read:

83-1067. The subject of a petition may waive or consent to the denial of any of the rights incident to such subject's custody or treatment granted by sections 83-1065 and 83-1066 or any other provisions of ~~this act~~ the Nebraska Mental Health Commitment Act, but only if such waiver or consent is made in writing personally, intelligently, knowingly, understandingly, and voluntarily by the subject, and his or her parent or legal guardian if the subject is a minor or legally incompetent. Such rights may otherwise be denied only by court order for good cause shown after notice to the subject,

the subject's counsel, and such subject's parent or guardian if he or she is a minor or incompetent, and an opportunity given them to be heard.

Sec. 111. Section 83-1068, Reissue Revised Statutes of Nebraska, is amended to read:

83-1068. (1) All records kept on any subject of a petition shall remain confidential, except as may be provided otherwise by law. Such records shall be accessible to ~~(1)~~ (a) the subject except as provided in subsection ~~(2) of this section,~~ ~~(2)~~ (b) the subject's counsel, ~~(3)~~ ~~(c)~~ the subject's parents or guardian if the subject is a minor or legally incompetent, ~~(4)~~ (d) the mental health board having jurisdiction over the subject, ~~(5)~~ ~~(e)~~ persons authorized by an order of a judge or court, or ~~(6)~~ ~~(f)~~ persons authorized by written permission of the subject.

(2) Upon application by the county attorney or by the director of the facility where the subject is in custody and upon a showing of good cause therefor, a judge of the district court of the county where the mental health board proceedings were held or of the county where the facility is located may order that the records shall not be made available to the subject if, in the judgment of the court, the availability of such records to the subject will adversely affect his or her mental state and the treatment thereof.

~~(3) When a subject is absent without authorization from a hospital or treatment program as described in section 112 of this act and is currently considered to be dangerous to others, the subject's name and description and a statement that the subject is believed to be considered currently dangerous to others may be disclosed in order to aid in the subject's apprehension and to warn of such dangerousness.~~

Sec. 112. Section 83-308.02, Reissue Revised Statutes of Nebraska, is amended to read:

~~83-308.02. When any person committed to one of the state hospitals for the mentally ill or any other treatment program for persons with mental illness pursuant to this section and sections 29-2203, 80-601, 83-306, 83-312, 83-314, 83-318, 83-324, 83-327, 83-329, 83-351, and 83-1001 to 83-1078 escapes an order of a court or mental health board is absent without authorization from such hospital or other treatment program, the superintendent of such hospital or program director of such treatment program shall immediately notify the Nebraska State Patrol and the court or clerk of the mental health board of the county from which such person was committed. The notification shall include the person's name and description and a determination by a psychiatrist, clinical director, superintendent, or program director as to whether the person is believed to be currently dangerous to others. The 7 and the clerk shall forthwith issue the warrant of the board, directed to the sheriff of the county, for the arrest and detention of such person. Such warrant may be executed by the sheriff or any other peace officer. Pending the issuance of the warrant of the mental health board, any peace officer may seize and detain such person when the peace officer has probable cause to believe that the person is reported to be absent without authorization as described in this section. Such person shall be returned to the hospital or treatment program or shall be taken to a facility as described in section 83-1020 until he or she can be returned to the hospital or treatment program. The powers of arrest herein provided shall be in addition to powers heretofore provided.~~

Sec. 113. ~~The Governor may, upon demand from officials of another state, deliver to the executive authority of another state or his or her designee any person who is absent without authorization from a hospital, facility, or treatment program for persons with mental illness to which such person has been committed under the laws of the other state either through civil commitment, as a result of being found not responsible for a criminal act by reason of insanity or mental illness, or as a result of being found not competent to stand trial for a criminal charge. The demand shall be accompanied by a certified copy of the commitment and sworn statement by the superintendent or other director of the hospital, facility, or treatment program stating that (1) the person is absent without authorization, (2) the person is currently dangerous to himself, herself, or others, and (3) the demanding state is willing to accept the person back for further treatment. If the Governor is satisfied that the demand conforms to law, the Governor shall issue a warrant under seal of this state authorizing the return of such person to the demanding state at the expense of the demanding state.~~

Sec. 114. ~~(1) A person arrested upon a warrant pursuant to section 113 of this act shall not be delivered to a demanding state until he or she is notified of the demand for his or her surrender and has had an opportunity to apply for a writ of habeas corpus. If an application is filed, notice of the time and place for hearing on the writ shall be given to the county attorney of the county where the arrest was made. The person arrested shall have the~~

right to counsel and the right to have counsel appointed for him or her if the person is indigent. Pending the determination of the court upon the application for the writ, the person detained shall be maintained in a suitable facility as described in section 83-1020 or a hospital for persons with mental illness.

(2) At a hearing on a writ of habeas corpus, the State of Nebraska shall show that there is probable cause to believe that (a) such person is absent without authorization from a hospital, facility, or treatment program for persons with mental illness to which he or she was committed located in the demanding state, (b) the demanding state has reason to believe that such person is currently dangerous to himself, herself, or others, and (c) the demanding state is willing to accept the person back for further treatment.

Sec. 115. The Governor may appoint an agent to demand of the executive authority of another state any person who is located in such other state, who is committed to a hospital, facility, or treatment program pursuant to the Nebraska Mental Health Commitment Act or section 29-1823, 29-2203, or 29-3701 to 29-3704, and who is absent without authorization from a hospital, facility, or treatment program for persons with mental illness in this state. The demand shall be accompanied by a certified copy of the commitment and a sworn statement by the superintendent or other director of the hospital, facility, or treatment program stating that (1) the person is absent without authorization, (2) the superintendent or director believes that such person is currently dangerous to himself, herself, or others, and (3) the hospital, facility, or treatment program is willing to accept the person back for further treatment. This section does not prevent extradition under the Uniform Criminal Extradition Act if the act applies.

Sec. 116. Section 83-1078, Reissue Revised Statutes of Nebraska, is amended to read:

83-1078. Sections 83-308-02, 83-312, 83-318, 83-337, 83-351, and 83-1001 to 83-1080 and sections 112 to 115 of this act shall be known and may be cited as the Nebraska Mental Health Commitment Act.

Sec. 117. If regional centers are downsized and patients are returned to Nebraska's communities, it is the policy of the State of Nebraska that all state and federal funds which supported services in the state's regional centers shall be reinvested in the community-based mental health system to provide cost-effective psychiatric or psychosocial rehabilitation services to Nebraskans with severe and persistent mental illnesses.

Sec. 118. Sections 22, 23, 43 to 45, 47 to 57, 118, 119, and 122 of this act become operative on their effective date. The other sections of this act become operative three calendar months after the adjournment of this legislative session.

Sec. 119. Original sections 68-716 and 68-1026, Reissue Revised Statutes of Nebraska, sections 71-5211 to 71-5213, 71-5652 to 71-5654, 71-5662, and 71-5664 to 71-5669, Revised Statutes Supplement, 1994, and section 71-5661, Revised Statutes Supplement, 1995, are repealed.

Sec. 120. Original sections 43-905, 43-1723, 43-1726, 43-1727, 44-772, 44-776, 44-777, 71-1002, 71-5002, 71-5103, 71-5122, 71-5123, 71-5805.01, 71-5813, 71-5828, 71-5846, 81-604.03, 81-651, 81-1021, 83-1,147, 83-1,148, 83-227.01, 83-305, 83-308, 83-308.02, 83-324, 83-336, 83-339, 83-340, 83-391, 83-1001, 83-1014, 83-1020, 83-1021, 83-1022, 83-1027, 83-1028, 83-1029, 83-1036, 83-1037, 83-1039, 83-1040, 83-1044, 83-1045, 83-1045.02, 83-1046, 83-1064, 83-1067, 83-1068, and 83-1078, Reissue Revised Statutes of Nebraska, sections 42-358, 43-258, 43-1718.02, 43-1720, 43-1722, 71-507, 71-1637, 71-2017, 71-2017.01, 71-2017.07, 71-4604.01, 71-4606, 71-4608, 71-5001, 71-5508, 71-5801, 71-5803, 71-5810, and 71-6615, Revised Statutes Supplement, 1994, sections 43-105, 44-773, 48-647, 71-1,132.06, 71-1,132.17, 71-387, 71-5102, and 71-5108, Revised Statutes Supplement, 1995, and section 83-306, Reissue Revised Statutes of Nebraska, as amended by section 941, Legislative Bill 1044, Ninety-fourth Legislature, Second Session, 1996, are repealed.

Sec. 121. The following sections are outright repealed: Sections 12-608, 12-612.01, 68-721, 83-1,150 to 83-1,152, 83-308.01, and 83-344, Reissue Revised Statutes of Nebraska, section 68-1036.01, Revised Statutes Supplement, 1994, sections 12-610 to 12-612, 43-901, 43-902, 43-904, 43-909, 43-910, 43-913, 47-408, 68-214, and 83-1,149, Reissue Revised Statutes of Nebraska, as amended by sections 49 to 51, 181, 182, 184, 189, 190, 191, 273, 293, and 927, respectively, Legislative Bill 1044, Ninety-fourth Legislature, Second Session, 1996, sections 12-607, 12-609, 68-1019.06, and 68-1019.08, Revised Statutes Supplement, 1994, as amended by sections 47, 48, 321, and 322, respectively, Legislative Bill 1044, Ninety-fourth Legislature, Second Session, 1996, and section 68-157, Revised Statutes Supplement, 1995, as amended by section 292, Legislative Bill 1044, Ninety-fourth Legislature,

Second Session, 1996.

Sec. 122. Since an emergency exists, this act takes effect when passed and approved according to law.