

LEGISLATIVE BILL 798

Approved by the Governor June 11, 1997

Introduced by Crosby, 29; Witek, 31

AN ACT relating to public health and welfare; to amend sections 71-20,103, 71-20,107, 71-5801, 71-5803, 71-5804, 71-5806, 71-5808, 71-5809.01, 71-5809.02, 71-5810, 71-5816, 71-5818.01, 71-5818.02, 71-5819, 71-5822, 71-5824, 71-5830.01, 71-5836, 71-5837, 71-5846, 71-5848, 71-5848.01, 71-5859, 71-5865, 71-5868, 71-5869, and 71-5870, Reissue Revised Statutes of Nebraska, and section 84-1409, Revised Statutes Supplement, 1996; to add, change, and eliminate provisions relating to health care certificates of need; to harmonize provisions; to repeal the original sections; to outright repeal sections 71-5802, 71-5805, 71-5805.01, 71-5807, 71-5809, 71-5811, 71-5812, 71-5813, 71-5814, 71-5815, 71-5817, 71-5818, 71-5818.03, 71-5820, 71-5821, 71-5821.01, 71-5823, 71-5825, 71-5826, 71-5828, 71-5829, 71-5830, 71-5831, 71-5832, 71-5832.01, 71-5833, 71-5834, 71-5835, 71-5836.01, 71-5836.02, 71-5838, 71-5840, 71-5841, 71-5849, 71-5851, 71-5852, 71-5853, 71-5854, 71-5855, 71-5857, 71-5859.01, 71-5859.02, 71-5859.03, 71-5859.04, and 71-5866, Reissue Revised Statutes of Nebraska; and to declare an emergency.

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

Section 1. Section 71-20,103, Reissue Revised Statutes of Nebraska, is amended to read:

71-20,103. For purposes of the Nonprofit Hospital Sale Act:

(1) Department means the Department of Health;

(2) Hospital has the definition found in subdivision (3) of section 71-2017.01;

(3) Acquisition means any acquisition by a person or persons of an ownership or controlling interest in a hospital, whether by purchase, merger, lease, gift, or otherwise, which results in a change of ownership or control of twenty percent or greater or which results in the acquiring person or persons holding a fifty percent or greater interest in the ownership or control of a hospital, but acquisition does not include the acquisition of an ownership or controlling interest in a hospital owned by a nonprofit corporation if the transferee (a) is a nonprofit corporation having a substantially similar charitable health care purpose as the transferor or is a governmental entity, (b) is exempt from federal income tax under section 501(c)(3) of the Internal Revenue Code or as a governmental entity, and (c) will maintain representation from the affected community on the local board; and

(4) Person has the meaning found in section 71-5822 16 of this act.

Sec. 2. Section 71-20,107, Reissue Revised Statutes of Nebraska, is amended to read:

71-20,107. (1) If the Attorney General determines to review the application, he or she shall review the application in accordance with the standards enumerated in section 71-20,108. Within sixty days after receipt of an application, the Attorney General shall approve or disapprove the acquisition.

If the Attorney General does not act within sixty days after receipt of an application, the application shall be deemed approved. If the Attorney General approves or disapproves the acquisition, the applicant, or any person who has submitted comments under section 71-20,106, if the person has a legal interest in the hospital being acquired or in another hospital that has contracted with the acquired hospital for the provision of essential health services, may bring an action for declaratory judgment under the Uniform Declaratory Judgments Act for a determination that the acquisition is or is not in the public interest as provided in section 71-20,108.

(2) The department shall review the completed application in accordance with the standards enumerated in section 71-20,109. Within sixty days after receipt of a completed application, the department shall:

(a) Approve the acquisition, with or without any specific modifications; or

(b) Disapprove the acquisition.

The department shall not make its decision subject to any condition not directly related to criteria enumerated in section 71-20,109, and any condition or modification shall bear a direct and rational relationship to the application under review.

The applicant or any affected person may contest a denial in the manner provided in the Administrative Procedure Act for contested cases. The findings, conclusions, and decisions of the department shall constitute the determination of the department, except that the applicant, or any affected person who has intervened in the contested case before the department, may seek judicial review as provided in sections 84-917 to 84-919. The department shall adopt and promulgate rules and regulations establishing procedures by which any affected person may appeal a final decision by the department under the Nonprofit Hospital Sale Act to the Certificate of Need Review Committee created under section 71-5859.01 under procedures substantially similar to those for appeals of health care certificate of need decisions. The committee shall have the same powers and duties with respect to appeals under the Nonprofit Hospital Sale Act as exist for appeals to the committee under the Nebraska Health Care Certificate of Need Act. The findings, conclusions, and decisions of the committee shall constitute the determination of the department, except that the department, the applicant, or any affected person who has intervened in the matter before the committee may seek judicial review as provided in sections 84-917 to 84-919.

Sec. 3. Section 71-5801, Reissue Revised Statutes of Nebraska, is amended to read:

71-5801. Sections 71-5801 to 71-5870 and sections 5 to 25 of this act shall be known and may be cited as the Nebraska Health Care Certificate of Need Act.

Sec. 4. Section 71-5803, Reissue Revised Statutes of Nebraska, 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 5 to 19 of this act shall be used.

Sec. 5. Acute care bed means a bed in a hospital that is or will be licensed under Chapter 71, article 20, for acute care services or a bed that is part of a hospital or unit of a hospital that is excluded from prospective payment system under Title XVIII of the federal Social Security Act, as amended, as a rehabilitation hospital or rehabilitation unit.

Sec. 6. Section 71-5804, Reissue Revised Statutes of Nebraska, is amended to read:

71-5804. Ambulatory surgical center shall have the definition found has the same meaning as in section 71-2017.01.

Sec. 7. Section 71-5806, Reissue Revised Statutes of Nebraska, is amended to read:

71-5806. Certificate of need shall mean means a written authorization by the department for a person to implement the project under review.

Sec. 8. Section 71-5808, Reissue Revised Statutes of Nebraska, is amended to read:

71-5808. Department shall mean means the Department of Health and Human Services Regulation and Licensure.

Sec. 9. Section 71-5809.01, Reissue Revised Statutes of Nebraska, is amended to read:

71-5809.01. Domiciliary facility shall have has the same meaning as in section 71-2017.01.

Sec. 10. Section 71-5810, Reissue Revised Statutes of Nebraska, is amended to read:

71-5810. Health care facility means shall include hospitals, psychiatric hospitals, tuberculosis hospitals, skilled nursing facilities, kidney disease treatment centers, including freestanding hemodialysis units, intermediate care facilities, and 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, (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. 11. Health planning region means one of the twenty-six health planning regions established in the Nebraska State Health Plan, 1986-1991.

Sec. 12. Section 71-5816, Reissue Revised Statutes of Nebraska, is amended to read:

~~71-5816-~~ Hospital has the same meaning as in section 71-2017.01, shall mean an institution or facility which is primarily engaged in providing to inpatients, by or under the supervision of physicians, diagnostic services and therapeutic services for medical diagnosis, treatment, and care of injured, disabled, or sick persons, or rehabilitation services for the rehabilitation of injured, disabled, or sick persons, but does not include psychiatric and tuberculosis hospitals.

Sec. 13. Section 71-5819, Reissue Revised Statutes of Nebraska, is amended to read:

~~71-5819-~~ Intermediate care facility has the same meaning as in section 71-2017.01 and shall mean an institution or facility which provides, on a regular basis, health related care and services to individuals who do not require the degree of care and treatment which a hospital or skilled nursing facility is designed to provide but who, because of their mental or physical condition, require health-related care and services above the minimum level of room and board. Intermediate care facility shall include includes an intermediate care facility for the mentally retarded which has the same meaning as in section 71-2017.01. A licensed intermediate care facility for the mentally retarded shall not be required to apply for and receive a certificate of need upon transfer to licensure as an intermediate care facility so long as such transfer does not involve the development or the offering of any new institutional health services in violation of the Nebraska Health Care Certificate of Need Act.

Sec. 14. Long-term care bed means a bed that is or will be licensed under Chapter 71, article 20, as a skilled nursing facility, intermediate care facility, nursing facility, or long-term care hospital bed. Long-term care beds do not include residential care beds, domiciliary beds, or swing beds. For purposes of this section swing beds means beds which may be used by a hospital for acute or long-term care in a facility located in an area which is not designated as urban by the United States Bureau of the Census and which has up to one hundred beds, excluding beds for newborns and intensive-care-type inpatient units.

Sec. 15. Section 71-5809.02, Reissue Revised Statutes of Nebraska, is amended to read:

~~71-5809-02-~~ Nursing facility shall have has the same meaning as in section 71-2017.01.

Sec. 16. Section 71-5822, Reissue Revised Statutes of Nebraska, is amended to read:

~~71-5822-~~ Person shall mean means an individual, a trust or estate, a partnership, a limited liability company, a corporation, including associations, joint-stock companies, and insurance companies, a state, a political subdivision or instrumentality, including a municipal corporation, of a state, or any legal entity recognized by the state.

Sec. 17. Section 71-5818.01, Reissue Revised Statutes of Nebraska, is amended to read:

~~71-5818-01-~~ Rehabilitation facility shall mean bed means a bed that is or will be licensed under Chapter 71, article 20, in an inpatient facility which is operated for the primary purpose of assisting in the rehabilitation of disabled persons through an integrated program of medical and other services which are provided under professional supervision and that is part of a hospital or unit of a hospital that is excluded from the prospective payment system under Title XVIII of the federal Social Security Act as a rehabilitation hospital or rehabilitation unit.

Sec. 18. Section 71-5818.02, Reissue Revised Statutes of Nebraska, is amended to read:

~~71-5818-02-~~ Residential care facility shall have has the same meaning as in section 71-2017.01.

Sec. 19. Section 71-5824, Reissue Revised Statutes of Nebraska, is amended to read:

~~71-5824-~~ Skilled nursing facility has the same meaning as in section 71-2017.01, shall mean an institution or facility or a distinct part of an institution or facility which is primarily engaged in providing to inpatients skilled nursing care and related services for patients who require medical or nursing care or rehabilitation services for the rehabilitation of injured, disabled, or sick persons.

Sec. 20. (1) For two years after the effective date of this act in counties which have a population of thirty thousand inhabitants or less as determined by the last federal decennial census, the Nebraska Health Care Certificate of Need Act as it existed immediately prior to the effective date of this act shall apply to ambulatory surgical centers and to any capital expenditure by a hospital to increase the number of surgical suites dedicated to the performance of outpatient surgical procedures.

(2) Until January 1, 1999, in counties which have a population of greater than thirty thousand inhabitants but less than sixty thousand inhabitants as determined by the last federal decennial census, the Nebraska Health Care Certificate of Need Act as it existed immediately prior to the effective date of this act shall apply to ambulatory surgical centers and to any capital expenditure by a hospital to increase the number of surgical suites dedicated to the performance of outpatient surgical procedures.

Sec. 21. Until two years after the effective date of this act, no person, including persons acting for or on behalf of a health care facility, shall engage in any action which results in:

(1) The initial establishment of a hospital;

(2) An increase in the acute care beds of a hospital, if the acute care beds of such hospital will have increased by more than ten beds or more than ten percent of total bed capacity, whichever is greater, over a two-year period; or

(3) The relocation of the acute care beds of a hospital from one physical facility or site to another physical facility or site which is more than one mile away from the existing physical facility or site, if more than ten beds or more than ten percent of total bed capacity, whichever is greater, will have been relocated from one physical facility or site to another physical facility or site which is more than one mile away from the existing physical facility or site over a two-year period, unless the relocation is in connection with replacement of an existing hospital and is required in order to:

(a) Eliminate or prevent imminent safety hazards as defined by federal, state, or local fire, building, or life safety codes or regulations;

(b) Comply with accreditation or certification standards which need to be met to receive reimbursement under Title XVIII or XIX of the federal Social Security Act, as amended;

(c) Respond to an emergency situation created by a natural disaster such as tornadoes, floods, fire, or explosions; or

(d) Improve physical conditions which are related to operational or functional deficiencies.

Sec. 22. No person, including persons acting for or on behalf of a health care facility, shall engage in any of the following activities without having first applied for and received the necessary certificate of need:

(1) The initial establishment of long-term care beds or rehabilitation beds except as permitted under subdivision (5) of this section;

(2) An increase in the long-term care beds or rehabilitation beds of a health care facility by more than ten beds or more than ten percent of the total bed capacity, whichever is less, over a two-year period;

(3) A relocation of long-term care beds from a health care facility at one physical facility or contiguous site to another noncontiguous site within the same health planning region if the relocation will cause an aggregate increase in long-term care beds between those locations of more than ten beds or more than ten percent of the total bed capacity, whichever is less, over a two-year period;

(4) Any relocation of long-term care beds from a health care facility located in one health planning region to a health care facility in a different health planning region;

(5) Any conversion by a hospital of any type of hospital beds to long-term care beds or rehabilitation beds if the total bed capacity of the hospital will have changed by more than ten beds or more than ten percent of the total bed capacity, whichever is less, over a two-year period;

(6) Any change by a residential care facility to convert residential care beds to long-term care beds; or

(7) Any change by a domiciliary facility to convert domiciliary beds to long-term care beds.

Sec. 23. (1) All long-term care beds which require a certificate of need under section 22 of this act are subject to a moratorium unless one of the following exceptions applies:

(a) An exception to the moratorium may be granted if the department establishes that the needs of individuals whose medical and nursing needs are complex or intensive and are above the level of capabilities of staff and above the services ordinarily provided in a long-term care bed are not currently being met by the long-term care beds licensed in the health planning region; or

(b) If the average occupancy for all licensed long-term care beds located in a twenty-five mile radius of the proposed site have exceeded ninety percent occupancy during the most recent three consecutive calendar quarters as reported at the time of the application filing and there is a long-term care bed need as determined by the formula in this section, the department may

grant an exception to the moratorium and issue a certificate of need. If the department determines average occupancy for all licensed long-term care beds located in a twenty-five mile radius of the proposed site has not exceeded ninety percent occupancy during the most recent three consecutive calendar quarters as reported at the time of the application filing, the department shall deny the application.

(2) The department shall review applications which require a certificate of need under section 22 of this act and determine if there is a need for additional long-term care beds based on the following formula: Long-term care bed need is equal to the population, multiplied by the utilization rate goal, and the result divided by the minimum occupancy rate goal. No such application shall be approved if the current supply of licensed long-term care beds in the health planning region of the proposed site exceeds the long-term care bed need for that health planning region, determined by aggregating the long-term care bed need established for each sex and age group using the formula.

In reaching this determination:

(a) The population includes the total population of the health planning region of the proposed site, disaggregated into the following age categories: Birth through sixty-four years of age, sixty-five years of age through seventy-four years of age, seventy-five years of age through eighty-four years of age, and eighty-five years of age and over. Each listed age category shall be further categorized by gender. The most recent population projections available from the department for the year which is closest to the fifth year following the date of the application shall be used to determine the population used in the formula.

(b) The utilization rate goal is the number of people using long-term care beds per one thousand persons living in the health planning region in which the proposed project is located. Such utilization rate shall be computed for each of the population categories listed in subdivision (2)(a) of this section and based on the most current utilization data available from the department; and

(c) The minimum occupancy rate goal is ninety-five percent for health planning regions which are part of or contain a Metropolitan Statistical Area as defined by the United States Bureau of the Census. For all other health planning regions in the state, the minimum occupancy rate goal is ninety percent.

Sec. 24. If two or more applications are submitted within thirty days after the receipt of the first application for the same health planning region and the approval of all the applications would result in long-term care beds in the health planning region in excess of the long-term care bed need established in section 23 of this act, the department shall grant the application and issue a certificate of need, subject to any reduction in beds required by section 71-5846 to the applicant which is better able to: (1) Provide quality care; (2) operate a long-term care facility in a cost-effective manner based on annual cost reports submitted to the Department of Health and Human Services Finance and Support; (3) accumulate financial resources to complete the project; and (4) serve medicare, medicaid, and medically indigent long-term care patients in the area. The department shall show a preference to an application filed by an applicant with facilities in Nebraska. Information to make these determinations shall be limited to the application and data currently collected by the state. If the applicant does not have a facility in Nebraska, the department may request information from other states in which the applicant is offering services to make its determination.

Sec. 25. All rehabilitation beds which require a certificate of need are subject to a moratorium, except under the following condition: If the average occupancy for all rehabilitation beds located in Nebraska has exceeded ninety percent occupancy during the most recent three consecutive calendar quarters as reported at the time of the filing of the application, the department may grant an exception to the moratorium and issue a certificate of need. If the department determines the average occupancy for all rehabilitation beds located in Nebraska does not exceed ninety percent occupancy during the most recent three consecutive calendar quarters as reported at the time of the filing of the application, the department shall deny the application.

Sec. 26. Section 71-5830.01, Reissue Revised Statutes of Nebraska, is amended to read:

71-5830.01. Notwithstanding any other provisions of the Nebraska Health Care Certificate of Need Act, a certificate of need shall not be is not required for:

(1) A change in classification between an intermediate care

facility, a nursing facility, or a skilled nursing facility; and

(2) A project of a county in which is located a city of the metropolitan class for which a bond issue has been approved by the electorate of such county on or after January 1, 1994. The acquisition of clinical equipment to be used solely for research or the obligation of a capital expenditure to be made solely for research if the person proposing such activity notifies the department in writing of the use to be made of such equipment or capital expenditure prior to such activity. A certificate of need shall be required if such notice is not given or if the department finds within sixty days of receipt of such notice that the equipment or expenditure will not be solely for research. For purposes of this section, the term solely for research shall mean that the activity does not (a) affect charges for the provision of medical and other patient care services other than the services which are included in the research; (b) substantially change the bed capacity of a health care facility; or (c) substantially change the medical or other patient care services of a facility which were offered before the acquisition, offering, or obligation. The term solely for research shall include patient care provided on an occasional and irregular basis and not as part of a research program;

(2) The closing of a hospital;

(3) A change in classification of a facility from intermediate care to skilled nursing care or from skilled nursing care to intermediate care;

(4) The acquisition of computer equipment or software for use other than diagnostic or therapeutic purposes; or

(5) The sale of a health maintenance organization;

Sec. 27. Section 71-5836, Reissue Revised Statutes of Nebraska, is amended to read:

71-5836. The department, after consulting with appropriate governmental agencies and affected persons, shall, by rule and regulation:

(1) Prescribe the form to be used in applying for certificates of need and for applying for renewal, modification, or amendment of such certificates. The department may not require information under this section which is not prescribed and published as being required information, nor shall the department require an applicant to supply data or information as to other health care facilities;

(2) Prescribe the information and data an application must contain for the application to be considered complete for the purposes of review;

(3) Prescribe the form and procedure for notification of intent to file an application subject to review under the Nebraska Health Care Certificate of Need Act. The notification application shall contain (a) the name and address of the sponsor, (b) the anticipated date for filing the application placing the beds in service, (c) the location, (d) and estimated costs of the project, (d) the source of funds, (e) the number of new beds, if applicable, (f) (e) a concise, narrative description of the project showing the type and description of the proposed construction acute care beds, rehabilitation beds, or long-term care beds, major equipment, or proposed health services; and (g) (f) the certification and telephone number of a responsible officer; and

(4) Describe (2) By rule and regulation describe and clarify the procedures to be followed in the review of an application. Such procedures shall be issued with each application form, and

(5) Establish criteria for determining when it shall not be feasible to complete the review of an application for a certificate of need as provided under section 71-5836. If the department determines that these criteria have been met for a particular project, the review shall be extended for a period not to exceed sixty days with the consent of the applicant. The department shall disseminate notice of any extensions to the deliberation of a certificate of need application through public channels and to the applicant, to health care facilities providing similar services in the area affected by the application, and to any person who has requested such notice.

Sec. 28. Section 71-5837, Reissue Revised Statutes of Nebraska, is amended to read:

71-5837. (1) An application for a certificate of need shall be filed with the department. All applications for a certificate of need shall be accompanied by a one-thousand-dollar nonrefundable fee, as follows:

(a) For an application or project which is granted nonsubstantive review status, one thousand dollars;

(b) For an amendment to an application determined to be complete by the department, one thousand dollars;

(c) For any other application involving an expenditure in excess of the capital expenditure minimum or the annual operating expenditure minimum, twenty-five hundredths of one percent of the total cost of the proposed

project, and

(d) For any other application, one thousand dollars.

(2) Such fee shall be remitted to the State Treasurer for credit to the General Fund.

Sec. 29. 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, (2) disapprove the application and deny a certificate of need, or (3) if the application is for more long-term care beds than allowed under section 23 of this act, approve the application but issue a certificate of need only for the reduced number of beds that section 23 of this act allows. 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 within sixty days after the date the application was received, 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. 30. Section 71-5848, Reissue Revised Statutes of Nebraska, is amended to read:

71-5848. The department shall, when it approves or rejects an application, provide in writing to the applicant and, upon request, to affected persons the decision and the findings and conclusions on which it based the decision, including the criteria adopted and promulgated under sections 71-5852 to 71-5855 used by the department in making such a decision.

Sec. 31. Section 71-5848.01, Reissue Revised Statutes of Nebraska, is amended to read:

71-5848.01. The application for a certificate of need shall specify a timetable for making the service or equipment available. A new, or modified, or amended certificate of need shall be valid for a period of one year from the date of issuance and shall may be renewed at the expiration of such period for one or more times for periods of up to one year, until the service or equipment is made available, if the holder of the certificate establishes that the holder is meeting the timetable or making a good faith effort to meet it. The department may adopt and promulgate rules and regulations to assure timely completion of the project and to prescribe the form, content, and procedure for renewal applications. The department shall give written notice to an applicant for a renewal certificate of its decision within thirty days of after receipt of an application, submitted in accordance with the rules and regulations. Such decision shall be considered a final decision of the department for purposes of appeal. If the decision is not appealed, it shall be final as of the date issued.

Sec. 32. Section 71-5859, Reissue Revised Statutes of Nebraska, is amended to read:

71-5859. The department shall adopt and promulgate rules and regulations establishing procedures in accordance with the Administrative Procedure Act by which any affected person the applicant may appeal a final decision by the department to the Director of Regulation and Licensure. The applicant may appeal a final decision of the director to the district court in accordance procedures shall include an opportunity for appeal to the review committee and shall comply with the Administrative Procedure Act, except that the appeal shall be filed within fifteen days of the date the department issues the decision and provides the written findings and conclusions on which the decision is based.

Sec. 33. Section 71-5865, Reissue Revised Statutes of Nebraska, is amended to read:

71-5865. In an appeal of a decision to deny a certificate of need, the person requesting the appeal shall bear the burden of proving that the project meets the applicable criteria established in sections 21 to 25 of this act, specified in the written findings of the department under section 71-5848. In an appeal of a decision to grant a certificate of need, the person appealing that decision shall bear the burden of proof that the application does not meet the applicable criteria. The appeals shall be de novo and conducted in a manner prescribed by the review committee pursuant to law which shall include a requirement that any interested person wishing to present oral or written evidence to the review committee shall so notify the review committee within a reasonable time before the hearing and that no such person, except upon a showing of good cause, will be permitted to testify absent such notice. The review committee may provide for a preliminary conference between such interested persons for the purposes of listing and

agreeing on admission of documents, simplification of the issues, identification of witnesses and the scope of testimony, and limitation of hearing time. The review committee may further provide that documents not listed at the preliminary conference will not be received into evidence by the review committee except upon a showing of good cause.

Sec. 34. Section 71-5868, Reissue Revised Statutes of Nebraska, is amended to read:

71-5868. The department may, in accordance with the laws of the state governing injunctions and other process, maintain an action in the name of the state against any person who is engaging in an activity identified as requiring a certificate of need under the Nebraska Health Care Certificate of Need Act undertaking a capital expenditure or instituting a new institutional health service without first having a valid certificate of need or who is engaging in an activity prohibited under the act, therefor or against any person otherwise in violation of the Nebraska Health Care Certificate of Need Act.

Sec. 35. Section 71-5869, Reissue Revised Statutes of Nebraska, is amended to read:

71-5869. (1) A license or permit which has been issued by the department pursuant to Chapter 71, article 20, or any other state statute to a health care facility which engaged in the activities an activity identified in section 71-5830 as requiring a certificate of need under the Nebraska Health Care Certificate of Need Act without having first obtained a certificate of need shall be or which engaged in an activity prohibited under the act is subject to revocation or suspension. Nothing contained in this section shall limit the rights of appeal of a health care facility from such decision as provided in Chapter 71, article 20.

(2) No license or permit may be issued or renewed by the department pursuant to Chapter 71, article 20, or any other state statute, nor may any type of approval be granted to any health care facility which engaged in the activities identified in section 71-5830 an activity identified as requiring a certificate of need under the Nebraska Health Care Certificate of Need Act without having first obtained a certificate of need or which engaged in an activity prohibited under the act.

Sec. 36. Section 71-5870, Reissue Revised Statutes of Nebraska, is amended to read:

71-5870. Any person who violates the Nebraska Health Care Certificate of Need Act by developing or offering any new institutional health service engaging in any activity which requires a certificate of need without first obtaining a certificate of need as required by the act shall be or by engaging in an activity prohibited under the act is guilty of a Class IV misdemeanor. Each day of violation shall constitute constitutes a separate offense. The magnitude of the violation shall be is the primary consideration in establishing the amount of the fine.

Sec. 37. Section 84-1409, Revised Statutes Supplement, 1996, is amended to read:

84-1409. For purposes of sections 84-1408 to 84-1414, unless the context otherwise requires:

(1) Public body shall mean (a) governing bodies of all political subdivisions of the State of Nebraska, (b) governing bodies of all agencies, now or hereafter created by the Constitution of Nebraska, statute, or otherwise pursuant to law, of the executive department of the State of Nebraska, (c) all independent boards, commissions, bureaus, committees, councils, subunits, or any other bodies, now or hereafter created by the Constitution of Nebraska, statute, or otherwise pursuant to law, (d) the Certificate of Need Review Committee, ~~(e)~~ all study or advisory committees of the executive department of the State of Nebraska whether having continuing existence or appointed as special committees with limited existence, ~~(f)~~ ~~(e)~~ advisory committees of the bodies referred to in subdivisions (a), (b), and (c) of this subdivision, and ~~(g)~~ ~~(f)~~ instrumentalities exercising essentially public functions. Sections 84-1408 to 84-1414 shall not apply to (i) subcommittees of such bodies unless a quorum of the public body attends a subcommittee meeting or unless such subcommittees are holding hearings, making policy, or taking formal action on behalf of their parent body, (ii) judicial proceedings unless a court or other judicial body is exercising rulemaking authority, deliberating, or deciding upon the issuance of administrative orders, and (iii) meetings of the Policy Cabinet created in section 81-3009;

(2) Meeting shall mean all regular, special, or called meetings, formal or informal, of any public body for the purposes of briefing, discussion of public business, formation of tentative policy, or the taking of any action of the public body; and

(3) Videoconferencing shall mean conducting a meeting involving

participants at two or more locations through the use of audio-video equipment which allows participants at each location to hear and see each meeting participant at each other location, including public input. Interaction between meeting participants shall be possible at all meeting locations.

Sec. 38. Original sections 71-20,103, 71-20,107, 71-5801, 71-5803, 71-5804, 71-5806, 71-5808, 71-5809.01, 71-5809.02, 71-5810, 71-5816, 71-5818.01, 71-5818.02, 71-5819, 71-5822, 71-5824, 71-5830.01, 71-5836, 71-5837, 71-5846, 71-5848, 71-5848.01, 71-5859, 71-5865, 71-5868, 71-5869, and 71-5870, Reissue Revised Statutes of Nebraska, and section 84-1409, Revised Statutes Supplement, 1996, are repealed.

Sec. 39. The following sections are outright repealed: Sections 71-5802, 71-5805, 71-5805.01, 71-5807, 71-5809, 71-5811, 71-5812, 71-5813, 71-5814, 71-5815, 71-5817, 71-5818, 71-5818.03, 71-5820, 71-5821, 71-5821.01, 71-5823, 71-5825, 71-5826, 71-5828, 71-5829, 71-5830, 71-5831, 71-5832, 71-5832.01, 71-5833, 71-5834, 71-5835, 71-5836.01, 71-5836.02, 71-5838, 71-5840, 71-5841, 71-5849, 71-5851, 71-5852, 71-5853, 71-5854, 71-5855, 71-5857, 71-5859.01, 71-5859.02, 71-5859.03, 71-5859.04, and 71-5866, Reissue Revised Statutes of Nebraska.

Sec. 40. Since an emergency exists, this act takes effect when passed and approved according to law.