

LEGISLATIVE BILL 1354

Approved by the Governor April 18, 1998

Introduced by Wesely, 26; Tyson, 19; Bohlke, 33; Robak, 22

AN ACT relating to public health and welfare; to amend sections 71-1002, 71-1339, 71-2023, 71-6008, 71-6015, 71-6038, 71-6602, 71-6605, and 79-249, Reissue Revised Statutes of Nebraska, and sections 71-1911, 71-2017.01, 71-2024, and 81-3201, Revised Statutes Supplement, 1997; to clarify the role of regional centers and the provisions of behavioral health services; to state intent; to create a task force to change provisions relating to the cremation and disposition of the remains of indigent persons; to adopt the Medication Aide Act; to eliminate provisions relating to care staff members and medication assistants; to provide powers and duties; to harmonize provisions; to provide operative dates; to repeal the original sections; to outright repeal sections 71-2050 to 71-2055, 71-6009, 71-6501, 71-6701, and 71-6703 to 71-6717, Reissue Revised Statutes of Nebraska, section 83-1227, Revised Statutes Supplement, 1996, and section 71-6702, Revised Statutes Supplement, 1997; and to declare an emergency.

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

Section 1. It is the intent of the Legislature to ensure that the level of care provided at the regional centers is maintained at a sufficient level to effectively serve persons with mental illness or addiction to alcohol or a controlled substance in need of services as long as the demand for such services exist. It is the further intent of the Legislature to ensure existing regional center services are maintained until such services have been developed and are available at the community level to provide needed care and support to all persons with mental illness or addiction to alcohol or a controlled substance who are appropriate for care in a community-based, less restrictive setting. This will allow the regional centers to transition current psychosocial rehabilitation levels of care to the community and assume the appropriate role of providing inpatient hospital care and secure residential services within a full continuum of behavioral health services.

Sec. 2. The Governor shall appoint a task force to examine the delivery of services to persons with mental illness or addiction to alcohol or a controlled substance, including, but not limited to, the appropriate setting, financing, and delivery of such services. The task force shall include one member each representing the Department of Health and Human Services, a private mental health provider, consumers of services or their family members, a mental health advocacy organization, and regional center employees; two members from the mental health regions; and four at-large members. The Department of Health and Human Services shall provide necessary staff support to the task force. The task force, in consultation with the State Mental Health Planning and Evaluation Council as defined in section 71-5008, shall issue a report of its findings and recommendations to the Governor, the Clerk of the Legislature, the chairperson of the Appropriations Committee of the Legislature, and the chairperson of the Health and Human Services Committee of the Legislature after November 15, 1998, and no later than December 15, 1998.

Sec. 3. Any person who does not meet criteria for inpatient or secure residential level of care or any person who is discharge-ready from a regional center shall be referred to and have priority status for receiving immediate appropriate public behavioral health community-based services.

Sec. 4. On or after July 1, 1998, and at such time as the utilization of available community-based services, including the development and use of state-operated, community-level services by the Department of Health and Human Services where such services would not otherwise be provided, has sufficiently reduced the demand for regional center services to the point that the services may be offered at a reduced level, the Department of Health and Human Services, before reducing such services, shall issue a report to the Governor, the Clerk of the Legislature, the chairperson of the Appropriations Committee of the Legislature, and the chairperson of the Health and Human Services Committee of the Legislature. The report shall identify the community services involved and certify that such services possess sufficient capacity and capability to effectively replace the service needs which otherwise would have been provided at a regional center. The report will be issued no later than thirty days prior to any action taken to reduce any

regional center service.

Sec. 5. As behavioral health services are transitioned from regional centers to community services and new institutional services, state regional center employees shall have the opportunity to continue as state employees to deliver replacement services in the state behavioral health system. The Department of Health and Human Services shall provide to these employees the training and support necessary to transition into new state positions in the state behavioral health system.

Sec. 6. Section 71-1002, Reissue Revised Statutes of Nebraska, is amended to read:

71-1002. (1) All public officers, agents, and servants of this state, 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 State Anatomical Board, or such agent, school, college, or person as may be designated by the board, of the dead human body. Such institution shall, without fee or reward, surrender and deliver such dead human body to the board or to such agent, schools, colleges, physicians, and surgeons as may be designated by the board for anatomical use and study.

(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 claims the body for burial within ten days after death, (b) 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 (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, (b) such claimant agrees in writing to assume the expense of burial or cremation, and (c) the 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 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 or cremated. The expense of such burial or cremation shall be fixed and paid by order of the county commissioners from any funds available for such purpose.

Sec. 7. Section 71-1339, Reissue Revised Statutes of Nebraska, is amended to read:

71-1339. The right to control the disposition of the remains of a deceased person, unless other directions have been given by the decedent, vests in the following persons in the order named: (1) The surviving spouse; (2) if the surviving spouse is incompetent or not available, or if there be no surviving spouse, adult child of the decedent; (3) a surviving parent of the decedent; (4) an adult brother or sister of the decedent; ~~or~~ (5) an adult person in the next degrees of kindred in the order named by the laws of Nebraska as entitled to succeed to the estate of the decedent; (6) the State Anatomical Board; or (7) the county board of the county in which death occurred.

The liability for the reasonable cost of interment devolves jointly and severally upon all kin of the decedent in the same degree of kindred and upon the estate of the decedent and, in cases when the county board has the right to control disposition of the remains under subdivision (7) of this section, upon the county in which death occurred from funds available for such purpose.

Sec. 8. Sections 8 to 32 of this act shall be known and may be cited as the Medication Aide Act.

Sec. 9. The Legislature finds that the administration of medications by persons other than oneself or one's caretaker should be a regulated act and there is a need to define a system to safely assist individuals to take medications who do not have the ability to take medications independently. The Medication Aide Act sets forth provisions of such a system.

Sec. 10. The purposes of the Medication Aide Act are to ensure the health, safety, and welfare of the public by providing for the accurate, cost-effective, efficient, and safe utilization of medication aides to assist in the administration of medications by (1) competent individuals, (2) caretakers who are parents, foster parents, family, friends or legal

guardians, and (3) licensed health care professionals. The act applies to all settings in which medications are administered except the home. The act does apply to medication administered in the home when provided through a licensed home health agency or licensed or certified home and community-based provider.

Sec. 11. For purposes of the Medication Aide Act:

(1) Ability to take medications independently means the individual is physically capable of (a) the act of taking or applying a dose of a medication, (b) taking or applying the medication according to a specific prescription or recommended protocol, and (c) observing and monitoring himself or herself for desired effect, side effects, interactions, and contraindications of the medication and taking appropriate actions based upon those observations;

(2) Administration of medication includes, but is not limited to (a) providing medications for another person according to the five rights, (b) recording medication provision, and (c) observing, monitoring, reporting, and otherwise taking appropriate actions regarding desired effects, side effects, interactions, and contraindications associated with the medication;

(3) Caretaker means a parent, foster parent, family member, friend, or legal guardian who provides care for an individual;

(4) Child care facility means an entity or a person licensed under sections 71-1908 to 71-1917;

(5) Competent individual means an adult who is the ultimate recipient of medication and who has the capability and capacity to make an informed decision about taking medications;

(6) Department means the Department of Health and Human Services Regulation and Licensure;

(7) Direction and monitoring means the acceptance of responsibility for observing and taking appropriate action regarding any desired effects, side effects, interactions, and contraindications associated with the medication by a (a) competent individual for himself or herself, (b) caretaker, or (c) licensed health care professional;

(8) Facility means an entity defined in section 71-2017.01 or an entity or person certified by the Department of Health and Human Services Regulation and Licensure or the Department of Health and Human Services Finance and Support to provide home and community-based services;

(9) Five rights means getting the right drug to the right recipient in the right dosage by the right route at the right time;

(10) Health care professional means an individual for whom administration of medication is included in the scope of practice;

(11) Home means the residence of an individual but does not include any facility or school;

(12) Intermediate care facility for the mentally retarded has the definition found in section 71-2017.01;

(13) Informed decision means a decision made knowingly, based upon capacity to process information about choices and consequences, and made voluntarily;

(14) Medication means any prescription or nonprescription drug intended for treatment or prevention of disease or to affect body function in humans;

(15) Medication aide means an individual who is listed on the medication aide registry operated by the Department of Health and Human Services Regulation and Licensure;

(16) Nonprescription drug has the definition found in section 71-1,142;

(17) Nursing home means any facility or a distinct part of any facility that provides care as defined in subdivision (6), (10), (11), or (20) of section 71-2017.01;

(18) Prescription drug has the definition found in section 71-1,142;

(19) Provision of medication means the component of the administration of medication that includes giving or applying a dose of a medication to an individual and includes helping an individual in giving or applying such medication to himself or herself;

(20) PRN means an administration scheme in which a medication is not routine, is taken as needed, and requires assessment for need and effectiveness;

(21) Recipient means a person who is receiving medication;

(22) Routine, with reference to medication, means the frequency of administration, amount, strength, and method are specifically fixed; and

(23) School means an entity or person meeting the requirements for a school set by Chapter 79.

Sec. 12. Administration of medication may be done by competent individuals to themselves, by caretakers of recipients receiving medication,

or by licensed health care professionals for whom administration of medication is included in their scope of practice.

A medication aide, a person licensed to operate a child care facility or a staff member of a child care facility, or a staff member of a school may participate in medication administration, when directed and monitored by a competent individual, caretaker, or health care professional, by providing medications in compliance with the Medication Aide Act and rules and regulations adopted and promulgated under the act. In each case, the individual responsible for providing direction and monitoring shall be identified in writing and indication that such individual has accepted such responsibility shall also be identified in writing.

Sec. 13. (1) A medication aide, a person licensed to operate a child care facility or a staff member of a child care facility, or a staff member of a school may provide routine medications by the following routes: (a) Oral; (b) inhalation; (c) topical; and (d) instillation into the eyes, ears, and nose.

(2) A medication aide, a person licensed to operate a child care facility or a staff member of a child care facility, or staff member of a school may provide medication by additional routes not listed in subsection (1) of this section, provide PRN medication, or participate in observing and reporting for monitoring medications only under the following conditions:

(a) A determination has been made by a competent individual, a caretaker, or a licensed health care professional and placed in writing that the medication aide, person licensed to operate a child care facility or staff member of a child care facility, or staff member of a school is competent to perform these activities; and

(b) It has been determined by a licensed health care professional and placed in writing that these activities can be done safely for a specified recipient.

Direction for additional routes not listed in subsection (1) of this section must be for recipient-specific procedures and must be in writing. Direction for PRN medication must be in writing and include the parameters for provision of the PRN medication. Direction for observing and reporting for monitoring medication must be in writing and include the parameters for the observation and reporting. A medication aide, a person licensed to operate a child care facility or a staff member of a child care facility, or a staff member of a school acting under this subsection shall comply with the written directions. Subdivision (b) of this subsection does not apply to nonprescription drugs when direction and monitoring is done by a competent individual for himself or herself or by a caretaker.

Sec. 14. A medication aide, a facility using a medication aide, a child care facility using the services of a person licensed to operate a child care facility or a staff member of a child care facility, or a school using the services of a staff member of the school shall keep and maintain accurate medication administration records. The medication administration records shall be available to the Department of Health and Human Services Regulation and Licensure, the Department of Health and Human Services, and the State Department of Education for inspection and copying. The medication administration records shall include information and data the departments require by rules and regulations adopted under the Medication Aide Act.

Sec. 15. (1) The minimum competencies for a medication aide, a person licensed to operate a child care facility or a staff member of a child care facility, or a staff member of a school shall include (a) maintaining confidentiality, (b) complying with a recipient's right to refuse to take medication, (c) maintaining hygiene and current accepted standards for infection control, (d) documenting accurately and completely, (e) providing medications according to the five rights, (f) having the ability to understand and follow instructions, (g) practicing safety in application of medication procedures, (h) complying with limitations and conditions under which a medication aide may provide medications, and (i) having an awareness of abuse and neglect reporting requirements and any other areas as shall be determined by rules or regulations.

(2) The Department of Health and Human Services Regulation and Licensure shall adopt and promulgate rules and regulations setting minimum standards for competencies listed in subsection (1) of this section and methods for competency assessment of medication aides. The Department of Health and Human Services shall adopt and promulgate rules and regulations setting methods for competency assessment of the person licensed to operate a child care facility or staff of child care facilities. The State Department of Education shall adopt and promulgate rules and regulations setting methods for competency assessment of the school staff member.

(3) A medication aide (except one who is employed by a nursing home,

intermediate care facility for the mentally retarded, or an assisted-living facility), a person licensed to operate a child care facility or a staff member of a child care facility, or a staff member of a school shall not be required to take a course. The medication aide shall be assessed to determine that the medication aide has the competencies listed in subsection (1) of this section.

(4) A medication aide providing services in an assisted-living facility as defined in section 71-2017.01 shall be required to have successfully completed a twenty-hour course on the competencies listed in subsection (1) of this section and competency standards established through rules and regulations as provided for in subsection (2) of this section. Competency assessment shall include passing an examination developed and administered by the Department of Health and Human Services Regulation and Licensure. Criteria for establishing a passing standard for the examination shall be established in rules and regulations.

(5) A medication aide providing services in a nursing home or an intermediate care facility for the mentally retarded shall be required to have completed a forty-hour course on the competencies listed in subsection (1) of this section and competency standards established through rules and regulations as provided for in subsection (2) of this section. Competency assessment shall include passing an examination developed and administered by the department. Criteria for establishing a passing standard for the examination shall be established in rules and regulations. Before providing services in a nursing home or an intermediate care facility for the mentally retarded, a medication aide who has previously met the requirements of subsection (4) of this section shall be required to complete an additional twenty-hour course. This twenty-hour course, together with the twenty-hour course set forth in subsection (4) of this section shall be equivalent to the forty-hour course set forth in this subsection. Medication aides providing services in nursing homes or intermediate care facilities for the mentally retarded shall also meet the requirements set forth in section 71-6039.

Sec. 16. (1) To register as a medication aide, an individual shall (a) have successfully completed the requirements in section 15 of this act, (b) be at least eighteen years of age, (c) be of good moral character, (d) file an application with the department, and (e) pay the applicable fee.

(2) An applicant or medication aide shall report to the department, in writing, any conviction for a felony or misdemeanor. A conviction is not a disqualification for placement on the registry unless it relates to the standards identified in such section.

(3) An applicant or medication aide may report any pardon or setting aside of a conviction to the department. If a pardon or setting aside has been obtained, the conviction for which it was obtained shall not be maintained on the Medication Aide Registry.

Sec. 17. (1) The department shall list each medication aide registration in the Medication Aide Registry as a Medication Aide-Nursing Home, Medication Aide-Intermediate Care Facility for the Mentally Retarded, Medication Aide-Assisted-Living, or Medication Aide. A listing in the registry shall be valid for the term of the registration and upon renewal unless such listing is refused renewal or is removed as provided in section 20 of this act.

(2) The registry shall contain the following information on each individual who meets the conditions in section 16 of this act: (a) The individual's full name; (b) information necessary to identify individuals, including those qualified to provide medications in nursing homes, intermediate care facilities for the mentally retarded, or assisted-living facilities; (c) any conviction of a felony or misdemeanor reported to the department; and (d) other information as the department may require by rule and regulation.

Sec. 18. Registration as a medication aide shall be renewed triennially based upon competency. The department may prescribe by rule and regulation how a medication aide can show competency for purposes of renewal. Payment of the applicable fee shall be a condition of renewal.

Sec. 19. The department may conduct periodic and random screening or review of entities conducting competency assessments or courses and of the activities of applicants and medication aides as may be necessary to ensure compliance with the Medication Aide Act and the rules and regulations.

Sec. 20. (1) The department may deny registration or refuse renewal of or remove a registration from the Medication Aide Registry for failure to meet the standards in section 15 of this act or for violation of the Medication Aide Act or the rules and regulations.

(2) If the department proposes to deny, refuse renewal of, or remove a registration, it shall send the applicant or registrant a notice setting

forth the action to be taken and the reasons for the determination. The denial, refusal to renew, or removal shall become final thirty days after mailing the notice unless the applicant or registrant gives written notice to the department of his or her desire for an informal conference or for a formal hearing.

(3) Notice may be served by any method specified in section 25-505.01, or the department may permit substitute or constructive service as provided in section 25-517.02 when service cannot be made with reasonable diligence by any of the methods specified in section 25-505.01.

Sec. 21. If an informal conference is requested, the department shall assign a representative of the department to hold an informal conference with the applicant or registrant within fifteen working days after receipt of a request. Within seven working days after the conclusion of such conference, the representative shall affirm, modify, or dismiss the action. The representative shall state in writing the specific reasons for affirming, modifying, or dismissing the action and shall immediately transmit copies of the statement to the department and to the applicant or the registrant. If the representative affirms or modifies the action, it shall become final unless the applicant or registrant, within ten working days after receipt of the written notice, requests in writing a formal hearing to contest the action.

Sec. 22. Except as provided by section 21 of this act, an applicant or registrant who desires to contest an action or to further contest an affirmed or modified action shall do so in the manner provided in the Administrative Procedure Act for contested cases. The hearings on a petition for judicial review of any final decision regarding an action for an alleged violation shall be set for hearing at the earliest possible date. The times for pleadings and hearings in such action shall be set by the judge of the court with the object of securing a decision at the earliest possible time.

Sec. 23. A person whose registration has been denied, refused renewal, or removed from the Medication Aide Registry may reapply for registration or for lifting of the disciplinary sanction at any time in accordance with the rules and regulations.

Sec. 24. The department shall set fees for registration and renewal of registration as set forth in sections 16 and 18 of this act in an amount not to exceed twenty dollars, for testing as set forth in subsections (4) and (5) of section 15 of this act in an amount not to exceed twenty dollars, and for competency assessment as set forth in subsection (3) of such section when conducted by the department in an amount not to exceed five dollars. The fees shall be used to carry out the purposes of the Medication Aide Act. The fees received pursuant to the act shall be remitted to the State Treasurer for credit to the Department of Health and Human Services Regulation and Licensure Cash Fund. The fees are nonrefundable. Such fund shall be used by the department for the purpose of administering the act as provided in this section.

Sec. 25. A facility shall be subject to discipline under the Nebraska Nursing Home Act or sections 71-2017 to 71-2029 or other relevant statutes for violation of the Medication Aide Act or the rules and regulations. A school shall be subject to discipline under Chapter 79 for violation of the act or the applicable rules and regulations. A child care facility shall be subject to discipline under sections 71-1908 to 71-1917 for violation of the act or the rules and regulations.

Sec. 26. (1) Any facility or person using the services of a medication aide shall report to the department, in the manner specified by the department by rule and regulation, any facts known to him, her, or it, including, but not limited to, the identity of the medication aide and the recipient, when it takes action adversely affecting a medication aide due to alleged incompetence. The report shall be made within thirty days after the date of the action or event.

(2) Any person may report to the department any facts known to him or her concerning any alleged incompetence of a medication aide.

(3) A report made to the department under this section shall be confidential. The facility, organization, association, or person making such report shall be immune from criminal or civil liability of any nature, whether direct or derivative, for filing a report or for disclosure of documents, records, or other information to the department under this section. The reports and information shall be subject to the investigatory and enforcement provisions of the regulatory provisions listed in the Medication Aide Act. This subsection does not require production of records protected by section 25-12,123 or 71-2048 except as otherwise provided in either of such sections.

Sec. 27. Complaints, investigational records, reports, and investigational files of any kind of the department shall not be public

record, shall not be subject to subpoena or discovery, and shall be inadmissible in evidence in any legal proceeding of any kind or character except an informal conference or formal hearing before the department. Such complaints, investigational records, reports, and investigational files shall be a public record if made part of the record of a formal hearing before the department. No person, including, but not limited to, department employees, having access to complaints, investigational records, reports, or investigational files, shall disclose such records or information except as required for investigation of the alleged violation or for purposes of a hearing before the department. Such information, files, and records may be disclosed to other law enforcement agencies by the department, and such disclosure shall not make the information, files, or records public records.

Sec. 28. On and after July 1, 1999, the clerk of any county court or district court in this state shall report to the department the conviction in such court of any medication aide of any felony or any misdemeanor. The Attorney General or the city prosecutor or county attorney prosecuting any such criminal action shall provide the court with information concerning the registration of the defendant. Notice to the department shall be filed within thirty days after the conviction in a manner agreed to by the department and the State Court Administrator.

Sec. 29. On and after July 1, 1999, no person, facility, or school shall use or employ any individual to provide medications to a recipient unless the individual is a medication aide registered under the Medication Aide Act or is otherwise authorized to administer or provide medication, except that a child care facility may use or employ an individual licensed to operate a child care facility or a staff member of a school determined to be competent under the act. On and after July 1, 1999, no individual shall provide medication to a recipient unless the individual is a medication aide registered under the act or is otherwise authorized to administer or provide medication. Nothing in the act shall be construed to require any school to employ or use a school nurse or medication aide in order to be in compliance with the act.

Sec. 30. The department may maintain an action for an injunction in the name of the state for violation of the Medication Aide Act or the rules and regulations.

Sec. 31. Any person who intentionally violates the Medication Aide Act is guilty of a Class III misdemeanor.

Sec. 32. Any person who, on July 1, 1999, is approved by the department to act as a care staff member or medication assistant shall automatically and without payment of any fee be registered as a medication aide.

Sec. 33. Section 71-1911, Revised Statutes Supplement, 1997, is amended to read:

71-1911. (1) A person may furnish a program for three or less children without having a license issued by the department, except that if such person has had a license issued pursuant to subsection (2) of this section and such license has been suspended or revoked pursuant to section 71-1915, such person shall not furnish a program for three or less children until the person is licensed pursuant to this section.

(2) No person shall furnish or offer to furnish a program for four or more children under his or her direct supervision, care, and control at any one time from families other than that of the provider without having in full force and effect a written license issued by the department upon such terms as may be prescribed by the rules and regulations adopted and promulgated by the department. If the applicant is an individual, the application for a license shall include the applicant's social security number. The license may be a provisional license, a probationary license, or an operating license. A city, village, or county which has rules, regulations, or ordinances in effect on July 10, 1984, which apply to programs furnished for two or three children from different families may continue to license providers of such programs. If the license of a person is suspended or revoked pursuant to section 71-1915, such person shall not be licensed by any city, village, or county rules, regulations, or ordinances until the person is licensed pursuant to this section. Any provider not covered by sections 71-1908 to 71-1917 may voluntarily subject himself, herself, or itself to coverage.

(3) A provisional license shall be issued to all applicants following the completion of preservice orientation training approved or delivered by the department for the first year of operation. At the end of one year of operation the department shall either issue an operating license or renew or refuse to renew the provisional license. The provisional license may be renewed once if the department determines that:

(a) A licensee is unable to comply with all licensure requirements and standards, is making a good faith effort to comply, and is capable of compliance within the next six months;

(b) The effect of the current inability to comply with a rule or regulation does not present an unreasonable risk to the health, safety, or well-being of children or staff; and

(c) The licensee has a written plan of correction that has been approved by the department which is to be completed within the renewal period.

(4) The department may issue a probationary license to a licensee holding an operating license for up to six months. The probationary license may be issued if the department determines that:

(a) A licensee is unable to comply with all licensure requirements and standards or has had a history of noncompliance;

(b) The effect of noncompliance with any rule or regulation does not present an unreasonable risk to the health, safety, or well-being of children or staff; and

(c) The licensee has a written plan of correction that has been approved by the department.

(5) Operating licenses issued under sections 71-1908 to 71-1917 shall remain in full force and effect subject to annual inspections and maintenance of complaint tracking. The department may amend a license upon change of ownership or location. Amending a license requires a site inspection by the department at the time of amendment except for amendment of a family child care home I license for which an inspection shall occur within sixty days. When a program is to be permanently closed, the licensee shall return the license to the department within one week after the closing.

(6) There shall be a twenty-five-dollar fee charged for the issuance of each license for providers with a licensing capacity of less than thirty children and a fifty-dollar fee charged for the issuance of each license for providers with a licensing capacity of thirty or more children. An annual license fee of twenty-five dollars shall be paid by providers with a licensing capacity of less than thirty children and an annual license fee of fifty dollars shall be paid by providers with a licensing capacity of thirty or more children. The license fee shall be paid to the department which shall retain the fee, except that when a city, village, or county has adopted any rule, regulation, or ordinance which establishes standards for licensed providers pursuant to subsection (2) of section 71-1914 and conducts all necessary inspections of any licensed provider pursuant to such subsection, the department shall transmit the fees paid by such provider to the city, village, or county conducting the inspections.

(7) On and after July 1, 1999, no license shall be issued to any person if the applicant plans to provide medication unless the applicant complies with the requirements of the Medication Aide Act.

(8) A license may be denied for cause, after notice and hearing, in accordance with such rules and regulations as may be adopted and promulgated by the department. A person who has had a license suspended or revoked pursuant to section 71-1915 shall not be eligible to reapply for a license for a period of two years.

~~(8)~~ (9) A license shall be denied or revoked if an applicant or licensee has been found guilty of a crime involving the neglect, physical abuse, or sexual abuse of a child or an adult.

Sec. 34. Section 71-2017.01, Revised Statutes Supplement, 1997, is amended to read:

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

(1) Care means 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 includes, but is not 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 also includes 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 means (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 includes, but is not limited to, facilities or parts of facilities which provide space for general acute hospitals, short-term hospitals, rehabilitation hospitals, long-term care hospitals, limited-service rural hospitals, psychiatric or mental hospitals, and emergency hospitals or treatment centers. Hospital does not 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 means 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 means 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 does not mean a facility for the treatment of mental diseases, a rehabilitation hospital, or a substance abuse treatment center;

(5) Rehabilitation hospital means 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 means 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 (20) of this section;

(7) Psychiatric or mental hospital means 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 means 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 means an institution, a facility, a place, a building, or any distinct part of an institution, a facility, a place, or a building, not licensed as a hospital, in which 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 distinct part of such institution, facility, place, or building. Health clinic includes, but is not limited to, a public health clinic or 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 be operated as a part of a parent clinic and share administration and services. Health clinic does not include the residence, office, clinic, or any distinct part of the residence, office, or clinic of a physician or association of physicians in which counseling, diagnosis, treatment, care, or services relating to the preservation or maintenance of health are provided by a physician or physicians or other health care professionals under the supervision of a physician or 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, clinic, or distinct part of the residence, office, or clinic. Health clinic does 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 means 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 means a simple interview or testing procedure to collect basic information on health status;

(10) Skilled nursing facility means 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 means 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~~ medication aide 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 means 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) Assisted-living facility means any institution, facility, place, or building in which there are provided for a period exceeding twenty-four consecutive hours, through ownership, contract, or preferred provider arrangements, accommodation, board, and an array of services for assistance with or provision of personal care, activities of daily living, health maintenance activities, or other supportive services, as defined in section 71-20.115, for four or more nonrelated individuals who have been determined to need or want these services. Assisted living promotes resident self-direction and participation in decisions which emphasize independence, individuality, privacy, dignity, and residential surroundings. This definition does not include (a) those homes, apartments, or facilities providing casual care at irregular intervals and (b) those homes, apartments, or facilities in which a competent resident provides or contracts for his or her own personal or professional services if no more than twenty-five percent of the residents receive such services. A competent resident is someone who has the capability and capacity to make an informed decision;

(14) Mental health center means 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;

(15) Center for the developmentally disabled means 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;

(16) Substance abuse treatment center means 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 are substance abusers. Substance abuse treatment center includes 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. Specific types or categories of 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 means 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 means the use of substances in ways that have or are likely to have significant adverse social consequences;

(17) Home health agency means 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 means the primary home health agency which establishes, maintains, and assures administrative and supervisory control of branch offices and subunits. Branch office means 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 means 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 does not include private duty nursing registries as long as the private duty nursing registrant is the direct payee from the patient. Home health agency does 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;

(18) Developmental disability means 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 of lifelong or extended duration and are individually planned and coordinated;

(19) Qualified mental retardation professional means any person who meets the requirements of 42 C.F.R. 483.430(a);

(20) Nursing facility means 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;

(21) Department means the Department of Health and Human Services Regulation and Licensure;

(22) Ambulatory surgical center means 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 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 does not include an office or clinic used solely by a practitioner or group of practitioners in the practice of medicine, dentistry, or podiatry;

(23) Public health clinic means the department, any county, city-county, or multicounty health department, or any private not-for-profit family planning clinic licensed as a health clinic; and

(24) Limited-service rural hospital means a facility which (a) provides inpatient care to ill or injured persons prior to their transportation to a hospital or provides inpatient medical care to persons needing such care for a period of no longer than ninety-six hours, (b) is located no less than twenty road miles from the nearest hospital, (c) may have up to fifteen acute care inpatient beds and can participate in the swing-bed program, (d) makes available emergency services on a twenty-four-hour basis, and (e) is required to have formal agreements with at least one hospital and other appropriate providers for such services as patient referral and transfer, communications systems, provision of emergency and nonemergency transportation, and backup medical and emergency services.

Sec. 35. Section 71-2023, Reissue Revised Statutes of Nebraska, is amended to read:

71-2023. The Department of Health and Human Services Regulation and Licensure shall issue licenses for the operation of health care facilities subject to sections 71-2017 to 71-2029 and the Nebraska Nursing Home Act which are found to comply with such sections or act and such rules and regulations as are lawfully adopted and promulgated by the department. As a condition for licensure or renewal of a license, such institutions shall submit to the department a list of the names of all individual owners, partners, limited liability company members, and members of boards of directors owning or managing such institutions and any other persons with financial interests or investments in such institutions. Every such licensed institution shall have a sign prominently posted in the lobby or entry area of such institution. Such sign shall be in the form of a printed card with a minimum height of twenty inches and a width of fourteen inches with each letter to be a minimum of one-fourth inch in height. The sign shall contain the name, street address, city, state, and zip code of all individual owners, partners, limited liability company members, and members of the board of directors owning or managing such institution, except that the name of any owner who owns less than five percent of the institution shall not be included on the sign.

The department may (1) deny, suspend, or revoke licenses of such health care facilities or (2) take other disciplinary measures against the license of any such health care facility, other than a hospital, on any of the following grounds:

(a) Violation of any of the provisions of sections 71-2017 to 71-2029 or the Nebraska Nursing Home Act or the rules and regulations lawfully adopted and promulgated pursuant thereto;

(b) Permitting, aiding, or abetting the commission of any unlawful act;

(c) Conduct or practices detrimental to the health or safety of patients, residents, and employees of the facility, except that this

subdivision shall not be construed to have any reference to healing practices authorized by law;

(d) Failure to allow a state long-term care ombudsman or an ombudsman advocate access to such facility for the purposes of investigation necessary to carry out the duties of the office of the state long-term care ombudsman as specified in the rules and regulations promulgated by the Department of Health and Human Services;

(e) Discrimination or retaliation against an employee or resident of any such facility who has presented a grievance or information to the office of the state long-term care ombudsman;

(f) Violation of the Emergency Box Drug Act; or

(g) Failure to file a report required by section 71-168.02; or

(h) Violation of the Medication Aide Act.

If the Department of Health and Human Services Regulation and Licensure determines to deny, suspend, or revoke a license, it shall send to the applicant or licensee, by either registered or certified mail, a notice setting forth the particular reasons for the determination. The denial, suspension, or revocation shall become final thirty days after the mailing of the notice unless the applicant or licensee, within such thirty-day period, requests a hearing in writing. Thereupon the applicant or licensee shall be given a fair hearing before the department and shall have the right to present such evidence as may be proper. On the basis of such evidence, the determination involved shall be affirmed or set aside, and a copy of such decision setting forth the finding of facts and the particular reasons upon which it is based shall be sent by either registered or certified mail to the applicant or licensee. The decision shall become final thirty days after the copy is mailed unless the applicant or licensee, within such thirty-day period, appeals the decision under section 71-2027. The procedure governing hearings authorized by this section shall be in accordance with rules and regulations adopted and promulgated by the department. A full and complete record shall be kept of all proceedings. Witnesses may be subpoenaed by either party and shall be allowed fees at a rate prescribed by the rules and regulations.

Other disciplinary actions taken shall be in accordance with the applicable provisions of sections 71-2023.01 to 71-2023.07 or 71-6025 to 71-6031.

Sec. 36. Section 71-2024, Revised Statutes Supplement, 1997, is amended to read:

71-2024. To protect the health, safety, and welfare of the public and to insure to the greatest extent possible the efficient, adequate, and safe practice of health care in any hospital or related institution as defined in sections 71-2017 to 71-2029 consistent with the Medication Aide Act, the Nebraska Nursing Home Act, the Uniform Controlled Substances Act, the Uniform Licensure Law, and sections 28-1437 to 28-1439.05, 71-2017 to 71-2029, 71-20,115 to 71-20,119, ~~71-6504, and 71-6601 to 71-6615, and 71-6701 to 71-6717~~, the department shall adopt, promulgate, and enforce rules, regulations, and standards with respect to the different types of hospitals and related institutions except nursing homes to be licensed hereunder as may be designed to further the accomplishment of the purposes of sections 71-2017 to 71-2029. Such rules, regulations, and standards shall be modified, amended, or rescinded from time to time in the public interest by the department. The department, with the advice of the Nursing Home Advisory Council, shall adopt, promulgate, and enforce rules, regulations, and standards with respect to nursing homes. Such rules, regulations, and standards shall be in compliance with the Nebraska Nursing Home Act. Such rules, regulations, and standards shall be modified, amended, or rescinded from time to time in the public interest by the department with the advice of the Nursing Home Advisory Council.

Sec. 37. The Department of Health and Human Services Regulation and Licensure may adopt and promulgate rules and regulations which shall ensure proper storage, handling, and disposal of medication in facilities and schools as defined in section 11 of this act.

Sec. 38. Section 71-6008, Reissue Revised Statutes of Nebraska, is amended to read:

71-6008. As used in the Nebraska Nursing Home Act, unless the context otherwise requires, the definitions found in sections ~~71-6009~~ 71-6010 to 71-6017 shall apply.

Sec. 39. Section 71-6015, Reissue Revised Statutes of Nebraska, is amended to read:

71-6015. Orderly shall mean an employee of the nursing home, other than a registered nurse, licensed practical nurse, ~~care staff member~~ medication aide, or nurse's aide, who performs routine or heavy work, but

shall not include persons hired by a nursing home for the primary purpose of (1) preparing or aiding in the preparation of meals for residents or (2) maintaining the physical facilities of the nursing home.

Sec. 40. Section 71-6038, Reissue Revised Statutes of Nebraska, is amended to read:

71-6038. For purposes of sections 71-6038 to 71-6042, unless the context otherwise requires:

(1) Department shall mean the Department of Health and Human Services Regulation and Licensure; and

(2) Care staff member shall mean a nursing assistant who meets the following qualifications: (a) Has attained the age of eighteen; (b)-(i) prior to October 17, 1990, for nursing assistants at all nursing homes, and on and after such date for nursing assistants at intermediate care facilities for the mentally retarded, has completed training approved by the department of at least ninety hours consisting of a basic resident care course of no fewer than twenty hours and an advanced course consisting of no fewer than forty hours in pharmacology, medication administration, and oxygen administration by means of an oxygen concentrator plus at least thirty hours of anatomy and physiology and advanced therapeutics if not included in the basic resident care course or (ii) on or after October 17, 1990, for nursing assistants at all nursing homes other than intermediate care facilities for the mentally retarded (A) has completed training approved by the department of at least one hundred fifteen hours consisting of a basic resident care course of no fewer than seventy-five hours and an advanced course consisting of no fewer than forty hours in pharmacology, medication administration, and oxygen administration by means of an oxygen concentrator or (B) has passed a written or oral examination and competency evaluation deemed to meet the federal seventy-five-hour-training requirement for a nurse aide and successfully completed an advanced course consisting of at least forty hours of pharmacology, medication administration, and oxygen administration by means of an oxygen concentrator; (c) has received a grade of eighty percent or higher in an advanced course test administered by the department; has received a grade of eighty percent or higher in a non-facility-based program approved by the department, or has successfully completed a course in another state which has been approved by the department and has received a grade of eighty percent or higher in an advanced course test administered by the department; and (d) has been approved by the nursing home administrator and the department to administer oral and external medication and oxygen as provided in section 71-6501. An individual who fails the advanced course test administered by the department three times in succession shall retake the advanced course consisting of no fewer than forty hours in pharmacology, medication administration, and oxygen administration by means of an oxygen concentrator before the individual shall be permitted to retake the test. An individual who has been approved by the department as a care staff member shall be retested every three years on medication administration and oxygen administration by means of an oxygen concentrator and shall receive a grade of eighty percent or higher on such test. An individual who has been approved by the department as a care staff member who fails the test on medication administration and oxygen administration by oxygen concentrator three times in succession shall retake the advanced course of no fewer than forty hours in pharmacology, medication administration, and oxygen administration by means of an oxygen concentrator before the individual shall be allowed to take the test. An individual who has not worked for a period of three years as an approved care staff member shall complete an approved forty-hour pharmacology and medication administration course and receive a grade of eighty percent or higher on an advanced course test administered by the department. To maintain the status of an approved care staff member, such member shall attend twelve hours of inservice programs with topics dealing in medications or medication administration and oxygen administration by means of an oxygen concentrator every three years.

(3) (2) Nursing assistant shall mean any person, other than a licensed registered or practical nurse, employed by a nursing home for the purpose of aiding a licensed registered or practical nurse through the performance of nonspecialized tasks related to the personal care and comfort of residents.

(4) External medication shall mean a drug that is to be applied topically to the skin, by drop to the ears, eyes, or nose, or by a rectal suppository, and

(5) Oral medication shall mean a drug that is to be taken by the mouth and shall include sublingual and buccal routes of administration.

Sec. 41. Section 71-6602, Reissue Revised Statutes of Nebraska, is amended to read:

71-6602. As used in sections 71-6601 to 71-6615, unless the context otherwise requires:

- (1) Activities of daily living shall mean assistance with ambulation, toileting, feeding, and similar activities;
- (2) Administering medication shall mean giving a dosage unit of a drug to a home health agency patient;
- ~~(3) Assistance with medication shall mean the storage of medication, handling and opening containers of medication, reminding home health agency patients of the time for taking medication, and assistance with the application of topical medication;~~
- (4) Basic therapeutic care shall mean basic health care procedures, including, but not limited to, measuring vital signs, applying hot and cold applications and nonsterile dressings, and assisting with, but not administering, internal and external medications which are normally self-administered. Basic therapeutic care shall not include health care procedures which require the exercise of nursing or medical judgment;
- ~~(5) (3) Department shall mean the Department of Health and Human Services Regulation and Licensure;~~
- ~~(6) (4) Home health agency shall mean a home health agency as defined in section 71-2017.01;~~
- ~~(7) (5) Home health aide shall mean a person who is employed by a home health agency to provide personal care, assistance with the activities of daily living, and basic therapeutic care to patients of the home health agency;~~
- ~~(8) (6) Personal care shall mean bathing, hair care, nail care, shaving, dressing, oral care, and similar activities;~~
- ~~(9) (7) Supervised practical training shall mean training in a laboratory or other setting in which the trainee demonstrates knowledge while performing tasks on an individual under the direct supervision of a registered nurse or licensed practical nurse; and~~
- ~~(10) (8) Vital signs shall mean temperature, pulse, respiration, and blood pressure.~~

Sec. 42. Section 71-6605, Reissue Revised Statutes of Nebraska, is amended to read:

71-6605. Home health aides may perform only personal care, assistance with the activities of daily living, and basic therapeutic care. A home health aide may provide assistance with medication but shall not administer medication or prefill syringes with medication only in compliance with the Medication Aide Act. Home health aides may not perform acts which require the exercise of nursing or medical judgment.

Sec. 43. Section 79-249, Reissue Revised Statutes of Nebraska, is amended to read:

79-249. The Department of Health and Human Services Regulation and Licensure shall adopt and promulgate rules and regulations for conducting school health inspections, the qualifications of the person or persons authorized to make such inspections, and the health conditions to be observed and remedied and shall furnish to school authorities regulations and other useful materials for carrying out the purposes of sections 79-248 to 79-253.

On and after July 1, 1999, no staff member of any school shall administer medication unless the school complies with the applicable requirements of the Medication Aide Act. Notwithstanding any other provision, nothing in the act shall be construed to require any school to employ or use a school nurse or medication aide in order to be in compliance with the act.

Sec. 44. Section 81-3201, Revised Statutes Supplement, 1997, is amended to read:

81-3201. (1) The Director of Regulation and Licensure appointed by the Governor for the Department of Health and Human Services Regulation and Licensure shall (a) have administrative experience in an executive capacity and some special training in public health work and (b) be either a graduate of a recognized school of medicine and licensed to practice medicine and surgery in the State of Nebraska or a person with a recognized and demonstrated expertise in and knowledge of health and human services delivery. If the director appointed is not a licensed physician, the Governor shall appoint a chief medical officer to be responsible for oversight of health issues in the health and human services system, as defined in section 81-3003, and decisions in contested cases under the Uniform Licensing Law as specified in section 71-155.01 and of health care facilities and occupations as specified in this section.

(2) The chief medical officer is subject to confirmation by a majority of the members of the Legislature. The chief medical officer shall be a graduate of a recognized school of medicine and licensed to practice medicine and surgery in the State of Nebraska and have some special training

in public health work. If a chief medical officer is appointed, he or she shall perform the duties under the Uniform Licensing Law specified in section 71-155.01 and shall be the final decisionmaker in contested cases of (a) the health care facilities defined in section 71-2017.01 arising under sections 71-2023, 71-2023.01 to 71-2023.07, 71-6025 to 71-6031, 71-6042, ~~71-6712,~~ and 81-604.03, (b) boarding homes under section 71-5906, and (c) occupations referenced in sections 71-6038 ~~and 71-6039,~~ ~~71-6702,~~ and ~~71-6710.~~

Sec. 45. Sections 6, 7, and 46 of this act become operative three calendar months after the adjournment of this legislative session. The other sections of this act become operative on their effective date.

Sec. 46. Original sections 71-1002 and 71-1339, Reissue Revised Statutes of Nebraska, are repealed.

Sec. 47. Original sections 71-2023, 71-6008, 71-6015, 71-6038, 71-6602, 71-6605, and 79-249, Reissue Revised Statutes of Nebraska, and sections 71-1911, 71-2017.01, 71-2024, and 81-3201, Revised Statutes Supplement, 1997, are repealed.

Sec. 48. The following sections are outright repealed: Sections 71-2050 to 71-2055, 71-6009, 71-6501, 71-6701, and 71-6703 to 71-6717, Reissue Revised Statutes of Nebraska, section 83-1227, Revised Statutes Supplement, 1996, and section 71-6702, Revised Statutes Supplement, 1997.

Sec. 49. Since an emergency exists, this act takes effect when passed and approved according to law.