

LEGISLATURE OF NEBRASKA  
NINETY-SIXTH LEGISLATURE  
FIRST SESSION

**LEGISLATIVE BILL 819**

Introduced by Jensen, 20

Read first time January 20, 1999

Committee: Health and Human Services

A BILL

1 FOR AN ACT relating to public health and welfare; to amend sections  
2 2-3403, 17-961, 18-2803, 20-162, 23-3501, 23-3554,  
3 23-3594, 23-3597, 29-3703, 30-2624, 30-3402, 32-944,  
4 37-1254.06, 43-245, 44-526, 44-771, 44-772, 44-782,  
5 44-2806, 44-2827.01, 44-5418, 44-6827, 44-7003, 44-7103,  
6 44-7203, 44-7303, 58-212, 60-4,164.01, 60-6,201,  
7 60-6,202, 60-6,204, 68-115, 68-1002, 68-1036.02, 69-2507,  
8 71-185.01, 71-1,147.09, 71-1,147.10, 71-1,147.15,  
9 71-1,200, 71-3,106, 71-2002, 71-2049, 71-2075, 71-2076,  
10 71-2079, 71-2084 to 71-2096, 71-20,112, 71-3401, 71-3608,  
11 71-3613, 71-5033, 71-6053, 71-6601, 71-6603, 71-6606,  
12 71-6609, 71-7702, 76-1304, 77-2702.14, 77-2702.15,  
13 77-2704.12, 77-3504, 81-604.01, 81-604.03, 81-1247, and  
14 83-392, Reissue Revised Statutes of Nebraska, and  
15 sections 28-326, 28-372, 30-2627, 30-2639, 68-1006.01,  
16 68-1038, 71-168.02, 71-1,103, 71-1,142, 71-1,147.08,  
17 71-1,147.35, 71-507, 71-511, 71-516.03, 71-533, 71-1637,

1 71-1638, 71-2048.01, 71-2097, 71-20,103, 71-2411,  
2 71-2601, 71-5803.01, 71-5803.02, 71-5803.05, 71-5803.06,  
3 71-5803.08, 71-5803.10, 71-5803.13, 71-5869, 71-6602,  
4 71-6721, 71-6725, 71-6735, 71-7102, 71-7613, 71-7901,  
5 71-8219, 81-2,245.01, 81-2,270, 81-502, 81-651, 81-658,  
6 81-2243, 81-3201, 83-101.06, 83-108, 83-391, and 83-1006,  
7 Revised Statutes Supplement, 1998; to adopt the Uniform  
8 Facility Licensing Act; to change provisions relating to  
9 regulation and licensure of health and human services  
10 facilities; to provide for the termination of certain  
11 regulation and licensure provisions, the Hospice  
12 Licensure Act, and the Nebraska Nursing Home Act; to  
13 repeal the Clinical Laboratories Certification Act and  
14 provisions regulating boarding homes; to harmonize  
15 provisions; to provide operative dates; to repeal the  
16 original sections; and to outright repeal sections  
17 43-507, 71-5901, 71-5902, 71-5904 to 71-5909, 71-6802 to  
18 71-6815.01, and 71-6817 to 71-6831, Reissue Revised  
19 Statutes of Nebraska, and sections 71-5903, 71-6801, and  
20 71-6816, Revised Statutes Supplement, 1998.

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

1           Section 1.   Sections 1 to 67 of this act shall be known  
2 and may be cited as the Uniform Facility Licensing Act.

3           Sec. 2.    (1) The purpose of the Uniform Facility  
4 Licensing Act is to develop a uniform facility licensing procedure  
5 to regulate health and human services facilities in order to  
6 safeguard the public health, safety, and welfare, ensure adequate,  
7 effective, and safe treatment and care practices to the greatest  
8 extent possible, and ensure continued improvement in providing  
9 treatment and care.

10           (2) It is the intent of the Legislature to provide a  
11 regulation system which is uniform for health and human services  
12 facilities and which will protect the public against unsafe  
13 practices, abuse, neglect, and the spread of communicable diseases;  
14 measure compliance with statutory requirements through recipient  
15 outcomes; communicate to the public the type of treatment or care  
16 provided by a facility according to the category of licensure;  
17 communicate to applicants the requirements for licensure, including  
18 standards of treatment and care, licensure procedures, and  
19 recipient outcomes; for each category of licensure, include a  
20 method of compliance assessment and a level of regulation  
21 correlated to the degree of risk posed by the type of treatment or  
22 care being provided and the vulnerability of the population being  
23 served; and provide authority for the department to sanction  
24 facilities which fail to maintain the prescribed standards.

25           Sec. 3.   For purposes of the Uniform Facility Licensing  
26 Act, the definitions found in sections 4 to 19 of this act apply.

27           Sec. 4.    Activities of daily living means transfer,  
28 ambulation, exercise, toileting, eating, self-administered

1 medication, and similar activities.

2           Sec. 5. Ambulatory facility means a facility in which  
3 either treatment or care is provided to four or more recipients who  
4 do not need to reside in or be confined to the facility.

5           Sec. 6. Assisted-living facility means a facility in  
6 which shelter and care are provided in a residential setting to  
7 four or more recipients who require or request care and which does  
8 not provide continuous nursing services nor complex nursing  
9 interventions.

10           Sec. 7. Care means the exercise of concern or  
11 responsibility and the provision of services for the comfort and  
12 welfare of recipients who require or request assistance with or  
13 supervision of the provision of food, shelter, personal care,  
14 health maintenance activities, activities of daily living, or other  
15 supportive services.

16           Sec. 8. Complex nursing interventions means  
17 interventions which require nursing judgment to safely alter  
18 standard procedures in accordance with the needs of the recipient  
19 of treatment or care, which require nursing judgment to determine  
20 how to proceed from one step to the next, or which require a  
21 multidimensional application of the nursing process.

22           Sec. 9. Department means the Department of Health and  
23 Human Services Regulation and Licensure.

24           Sec. 10. Facility means either a place or a service  
25 built or established to provide treatment or care.

26           Sec. 11. Health maintenance activities means noncomplex  
27 interventions which can safely be performed according to exact  
28 directions, which do not require alteration of the standard

1 procedure, and for which the results and responses of the recipient  
2 of treatment or care are predictable.

3           Sec. 12. Hospital means a facility in which treatment  
4 and associated care is provided to one or more recipients who  
5 require temporary confinement for more than twenty-four hours for  
6 the provision of medical, nursing, and allied health services.

7           Sec. 13. Personal care means bathing, hair care, nail  
8 care, shaving, dressing, oral care, and similar activities.

9           Sec. 14. Nursing assistant means any person, other than  
10 a licensed registered or practical nurse, employed by a facility  
11 for the purpose of aiding a licensed registered or practical nurse  
12 through the performance of nonspecialized tasks related to the care  
13 or treatment of recipients.

14           Sec. 15. Residential care and treatment facility means a  
15 facility in which care and associated treatment is provided in a  
16 residential setting to more than one recipient who requires  
17 continuous nursing or allied health services for purposes of health  
18 maintenance, rehabilitation, habilitation, or palliation.

19           Sec. 16. Residential setting means a place, other than a  
20 hospital, where a recipient of treatment or care stays more or less  
21 continuously for an extended period of time.

22           Sec. 17. Routine health screenings means the collection  
23 of health data through the administration of a screening tool  
24 designed for a specific health problem, evaluation and comparison  
25 of results to referral criteria, and referral to appropriate  
26 sources for care, if indicated. Routine health screening is not  
27 considered treatment.

28           Sec. 18. Screening tool means a compilation or

1 compendium of questions or testing procedures to collect basic  
2 information on health status.

3           Sec. 19. Treatment means the provision of a therapy,  
4 modality, product, device, or other intervention to diagnose,  
5 assess, alleviate, or maintain a condition that is due to  
6 disability, injury, illness, disease, or any similar situation.

7           Sec. 20. (1) The department shall license four  
8 categories of facilities subject to the Uniform Facility Licensing  
9 Act. The categories shall be based on the following criteria:

10           (a) Whether the treatment or care is provided in a  
11 residential or nonresidential setting; and

12           (b) Whether the facility is providing only treatment,  
13 only care, or both treatment and care.

14           (2) The four categories of licensure are:

15           (a) An ambulatory facility license, which authorizes  
16 either treatment or care, but not both, in a nonresidential setting  
17 for four or more persons;

18           (b) An assisted-living facility license, which authorizes  
19 care in a residential setting for four or more persons;

20           (c) A hospital license, which authorizes treatment and  
21 associated care in a nonresidential setting for one or more  
22 persons; and

23           (d) A residential care and treatment facility license,  
24 which authorizes care and associated treatment in a residential  
25 setting for more than one person.

26           (3) A person may furnish ambulatory facility services or  
27 assisted-living facility services for three or less recipients of  
28 treatment or care without having the respective license under the

1 Uniform Facility Licensing Act, except that if such person has had  
2 a license for that type of facility suspended or revoked, such  
3 person shall not furnish the respective services for three or less  
4 recipients until the person is licensed pursuant to the act.

5           Sec. 21. The department may adopt and promulgate rules  
6 and regulations establishing subcategories within each category of  
7 licensure based on any one or a combination of the following  
8 criteria:

9           (1) The length of time involved in or the duration of the  
10 treatment or care;

11           (2) The complexity of the treatment or care;

12           (3) The vulnerability of the recipient of the treatment  
13 or care;

14           (4) The degree of risk to the recipient of the treatment  
15 or care; and

16           (5) The specific type of treatment or care being provided  
17 to recipients.

18           Sec. 22. The department shall adopt and promulgate rules  
19 and regulations establishing standards for each category of  
20 licensure and may establish standards for subcategories established  
21 under section 21 of this act. The rules and regulations shall  
22 establish a level of regulation for each category or subcategory of  
23 licensure that correlates to the degree of risk posed by the type  
24 of treatment or care being provided and the vulnerability of the  
25 population being served. The rules and regulations shall set  
26 standards for the structure, processes, and outcomes for each of  
27 the following areas of regulation:

28           (1) Sanitation;

- 1           (2) Safety;
- 2           (3) Organizational structure or facility management;
- 3           (4) Physical plant and equipment;
- 4           (5) Rights of a recipient of treatment or care;
- 5           (6) Records;
- 6           (7) Staffing and staff training;
- 7           (8) Infection control;
- 8           (9) Care and services;
- 9           (10) Quality maintenance or improvement;
- 10          (11) Discharge or continuity of care planning; and
- 11          (12) Inspection and monitoring.

12           Sec. 23. The department shall adopt and promulgate rules  
13 and regulations to establish indicators of the quality of treatment  
14 and care. The indicators shall be established to ensure compliance  
15 with the rules and regulations established under section 22 of this  
16 act and to measure improvements in the quality of treatment and  
17 care.

18           Sec. 24. (1) It shall be unlawful to operate or hold  
19 oneself out as a facility which is required to be licensed under  
20 the Uniform Facility Licensing Act unless the facility is licensed  
21 in accordance with the Uniform Facility Licensing Act.

22           (2) No facility which is required to be licensed under  
23 the Uniform Facility Licensing Act shall be established, operated,  
24 or maintained in the State of Nebraska without first obtaining a  
25 license therefor from the department in the manner provided in the  
26 Uniform Facility Licensing Act.

27           Sec. 25. (1) An ambulatory facility license is not  
28 required under the Uniform Facility Licensing Act for an office in

1 which all treatment is provided by licensed professionals who own  
2 or operate the office and by their assistants if the treatment  
3 being provided is not highly complex as determined by the  
4 department and prescribed in rules and regulations. Highly complex  
5 treatment includes, but is not limited to, general anesthesia,  
6 dialysis services, and dispensing controlled substances.

7 (2) A facility in which ten or more abortions, as defined  
8 in subdivision (1) of section 28-326, are performed during any one  
9 calendar week must have an ambulatory facility license.

10 (3) An ambulatory facility license shall not be required  
11 under the Uniform Facility Licensing Act for a facility in which  
12 only routine health screenings or health education is provided.

13 (4) A private duty nursing registry shall not be required  
14 to have a residential care and treatment facility license if all  
15 care is provided by licensed nurses.

16 Sec. 26. (1) To open a facility which is required to be  
17 licensed under the Uniform Facility Licensing Act, a person shall  
18 file a written application with the department for an initial  
19 license. The application shall contain the information prescribed  
20 by the department and shall be accompanied by a license fee as  
21 provided in section 61 of this act.

22 (2) An application shall be signed by (a) the owner, if  
23 an individual or partnership, (b) two of its members, if a limited  
24 liability company, (c) two of its officers, if a corporation, or  
25 (d) the head of the governmental department having jurisdiction  
26 over it, if a governmental unit. The application shall set forth  
27 the full name and address of the institution for which a license is  
28 sought and of the owner in case of a different address, the names

1 of the persons in control of the institution, and such additional  
2 information as the department may require, including affirmative  
3 evidence of ability to comply with the rules and regulations  
4 adopted and promulgated under the Uniform Facility Licensing Act.  
5 The application shall include the applicant's social security  
6 number if the applicant is an individual. The social security  
7 number shall not be public record and may only be used for  
8 administrative purposes.

9           Sec. 27. A person shall apply for a license for every  
10 category of facility which the person plans to operate. The  
11 department may issue one license document that indicates the  
12 various categories for which the person receives a license or a  
13 separate license document for each category if the person so  
14 requests. If the person is applying for several license categories  
15 for one location, the department shall conduct simultaneous  
16 inspections for all categories of licensure unless the person  
17 requests otherwise. Separate buildings or structures on the same  
18 premises operating as the same licensure category and under one  
19 management shall require only one license, but upon request by the  
20 applicant or licensee, separate licenses shall be issued.

21           Sec. 28. (1) The department shall issue licenses for the  
22 operation of facilities subject to the Uniform Facility Licensing  
23 Act that are found to comply with the act and the rules and  
24 regulations adopted and promulgated by the department. The  
25 department shall issue a license only for the premises and person  
26 named in the application. The department shall assign a unique  
27 identifier to each licensee.

28           (2) A license issued under the Uniform Facility Licensing

1 Act is not assignable or transferable and is subject to  
2 disciplinary action at any time for failure to comply with the act  
3 or the rules and regulations adopted under the act.

4           Sec. 29. (1) To close a facility other than in an  
5 emergency as provided in section 30 of this act, the licensee shall  
6 notify the department within the timeframe established in the rules  
7 and regulations for the licensure category. The licensee shall  
8 comply with the rules and regulations of the department regarding  
9 closing the facility.

10           (2) The department shall adopt and promulgate rules and  
11 regulations for closing a facility, including provisions to ensure  
12 the health, safety, and welfare of the recipients of treatment or  
13 care and the public, record-keeping requirements for the records of  
14 the facility and the records of the recipients of treatment or  
15 care, and the return of the license to the department.

16           Sec. 30. (1) If the Director of Regulation and Licensure  
17 determines that the health, safety, or welfare of the recipients of  
18 treatment or care in a facility are in imminent danger of death or  
19 serious physical harm, he or she may temporarily suspend or  
20 temporarily limit the license of the licensee and, in addition, may  
21 order the immediate removal of such recipients and the temporary  
22 closure of the facility pending further action by the department.  
23 Simultaneously with any such action, the department shall institute  
24 proceedings for a hearing on the grounds for revocation,  
25 suspension, or limitation of the license. The hearing shall be  
26 held no later than fifteen days after the date of such temporary  
27 suspension or temporary limitation of the license.

28           (2) A continuance of the hearing shall be granted by the

1 department upon the written request of the licensee, and such a  
2 continuance shall not exceed thirty days. A temporary suspension  
3 or temporary limitation order by the director shall take effect  
4 when served upon the facility. When an order is served upon a  
5 facility pursuant to this section and the holder of the license for  
6 the facility is not actually involved in the daily operation of the  
7 facility, a copy of the notice shall also be mailed to the holder  
8 of the license for the facility. If the holder of the license is a  
9 corporation, a copy of the notice shall be sent to the  
10 corporation's registered agent.

11 (3) A temporary suspension or temporary limitation of a  
12 license under this section shall not be in effect for a period of  
13 time in excess of ninety days. If a decision is not reached within  
14 ninety days, the licensee shall be reinstated to full licensure  
15 unless and until the department reaches a decision to revoke,  
16 suspend, or limit the license or otherwise discipline the licensee.

17 (4) Any person aggrieved by a decision of the department  
18 after a hearing as provided in this section may appeal as provided  
19 in section 58 of this act.

20 Sec. 31. The department shall keep a record of all  
21 licenses in any medium selected by the department. The record  
22 shall include the name and location of the facility, the unique  
23 identifier assigned by the department under section 28 of this act,  
24 the date the license was issued and the expiration date, the status  
25 of the license, including any disciplinary action taken against the  
26 license, and the names of all persons owning or managing the  
27 facility, including individuals, partners, limited liability  
28 company members, and if the person is a corporation, its officers,

1 members of its board of directors, and persons holding more than  
2 five percent of its stock.

3           Sec. 32.    (1) Each initial license issued under the  
4 Uniform Facility Licensing Act after the operative date of this  
5 section to a facility which has not previously held a license for  
6 operation of that facility shall expire at the end of the month one  
7 year after the date of issuance. If a facility is licensed on the  
8 operative date of this section, the facility does not have to apply  
9 for an initial license under the act unless the facility is  
10 changing the type of treatment or care being provided.

11                   (2) Each renewal of a license pursuant to the act shall  
12 be valid for a period of time between six months and four years as  
13 determined by the department based on any one or a combination of  
14 the following criteria:

15                           (a) Category of licensure;

16                           (b) Subcategory of licensure;

17                           (c) History of disciplinary action;

18                           (d) Size of facility;

19                           (e) Other licenses held by the licensee; and

20                           (f) History of inspection reports or other compliance  
21 assessment indicating satisfactory or better performance.

22                   (3) As a condition for renewal of a license, a facility  
23 shall provide the department with any changes to the information  
24 described in section 31 of this act.

25                   (4) The department shall notify each licensee of the  
26 expiration of the license at least thirty days prior to the  
27 expiration date. If the licensee has not renewed the license  
28 within thirty days after the expiration date, the department shall

1 assess a late fee of fifty percent of the renewal fee in addition  
2 to the renewal fee. If the licensee has not renewed the license  
3 and paid the fees within sixty days after the expiration date, the  
4 license shall lapse and the facility shall not operate until  
5 relicensed.

6 (5) The department may adopt and promulgate rules and  
7 regulations to carry out this section.

8 Sec. 33. Every license shall be in the form of a  
9 certificate under the name and seal of the department and signed by  
10 the Director of Regulation and Licensure and the Governor and an  
11 accompanying licensure document that indicates the category of  
12 licensure and the expiration date.

13 Sec. 34. A facility shall make its license, license  
14 record information, and facility inspection reports available to  
15 the public for review upon request and may display the license,  
16 license record information, and facility inspection reports on the  
17 licensed premises.

18 Sec. 35. Each license shall be valid until the  
19 expiration date unless disciplinary action is taken by the  
20 department under the Uniform Facility Licensing Act.

21 Sec. 36. (1) The department may accept accreditation by  
22 a recognized independent accreditation body or public agency, which  
23 has standards that are at least as stringent as those of the State  
24 of Nebraska, or certification under a federal program as evidence  
25 that the facility complies with the rules and regulations adopted  
26 and promulgated pursuant to the Uniform Facility Licensing Act.  
27 The department may adopt and promulgate rules and regulations which  
28 list accreditation bodies, public agencies, and federal programs

1 that meet this standard.

2 (2) If a facility has been issued a license or had a  
3 license renewed pursuant to accreditation or certification accepted  
4 under subsection (1) of this section and its accreditation is  
5 modified, terminated, or withdrawn or its certification is  
6 sanctioned, terminated, or withdrawn for any reason, the facility  
7 shall notify the department within fifteen days after the facility  
8 receives notice of such action and shall submit a copy of the  
9 accreditation report or the certification action with the notice.  
10 If the accreditation or certification is terminated or withdrawn,  
11 the facility may continue to operate unless the department  
12 determines that the facility does not meet the requirements for an  
13 initial license under the Uniform Facility Licensing Act.

14 Sec. 37. Any employee, representative, or agent of the  
15 Department of Health and Human Services, the Department of Health  
16 and Human Services Finance and Support, the Department of Health  
17 and Human Services Regulation and Licensure, a law enforcement  
18 agency, or the local county attorney shall be permitted access at  
19 any hour to any recipient of treatment or care in any facility.  
20 Friends and relatives of a recipient of treatment or care residing  
21 or confined in a facility shall have access during normal visiting  
22 and business hours of the facility. Representatives of community  
23 legal services programs, volunteers, and members of community  
24 organizations shall have access, after making arrangements with  
25 proper personnel of the facility, during regular visiting and  
26 business hours if the purpose of such access is to:

27 (1) Visit, talk with, and make personal, social, and  
28 legal services available to all recipients of treatment or care;

1           (2) Inform recipients of treatment or care of their  
2 rights and entitlements and their corresponding obligations under  
3 federal and state laws by means of educational materials and  
4 discussions in groups and with individual recipients of treatment  
5 or care;

6           (3) Assist recipients of treatment or care in asserting  
7 their legal rights regarding claims for public assistance, medical  
8 assistance, and social security benefits, as well as in all other  
9 matters in which recipients of treatment or care are aggrieved.  
10 Assistance may include counseling and litigation services; or

11           (4) Engage in other methods of asserting, advising, and  
12 representing recipients of treatment or care so as to extend to  
13 them full enjoyment of their rights.

14           Sec. 38. Any person entering a facility pursuant to  
15 section 37 of this act shall first notify appropriate facility  
16 personnel of his or her presence. He or she shall, upon request,  
17 produce identification to establish his or her identity. No such  
18 person shall enter the immediate living area of any recipient of  
19 treatment or care without first identifying himself or herself and  
20 then receiving permission from such recipient to enter. The rights  
21 of other recipients of treatment or care present in the room shall  
22 be respected.

23           Sec. 39. (1) Notwithstanding the provisions of sections  
24 37 and 38 of this act, the administrator of a facility may refuse  
25 access to the facility to any person if the presence of such person  
26 in the facility would be injurious to the health and safety of a  
27 recipient of treatment or care or would threaten the security of  
28 the property of a recipient of treatment or care or the facility or

1 if the person seeks access to the facility for commercial purposes.  
2 Any person refused access to a facility may maintain an action for  
3 any type of relief, including injunctive and declaratory relief,  
4 permitted by law. The wrongful refusal of a facility to grant  
5 access to any person as required in sections 37 and 38 of this act  
6 shall constitute a violation of the Uniform Facility Licensing Act.

7 (2) Nothing in this section and sections 37 and 38 of  
8 this act shall be construed to prevent (a) an employee of the  
9 Department of Health and Human Services, the Department of Health  
10 and Human Services Regulation and Licensure, or the Department of  
11 Health and Human Services Finance and Support, acting in his or her  
12 official capacity, from entering a facility for any inspection  
13 authorized by the act or any rule or regulation adopted and  
14 promulgated pursuant thereto.

15 Sec. 40. (1) A residential care and treatment facility  
16 shall not transfer or discharge a recipient of treatment or care  
17 except (a) upon his or her consent, (b) for medical reasons, (c)  
18 for his or her safety or the safety of other recipients of  
19 treatment or care or employees of the facility, (d) when  
20 rehabilitation is such that movement to a less restrictive setting  
21 is possible, or (e) for nonpayment for the stay, except as  
22 prohibited by section 42 of this act or by Title XVIII or XIX of  
23 the federal Social Security Act as amended.

24 (2) Involuntary transfer from a residential care and  
25 treatment facility or discharge of a recipient of treatment or care  
26 shall be preceded by a minimum written notice of thirty days,  
27 except that when subdivision (1)(d) of this section applies, five  
28 days' written notice shall be given, and when subdivision (1)(e) of

1 this section applies, ten days' written notice shall be given if  
2 the charges are five days or more in arrears. This subsection  
3 shall not apply when (a) an emergency transfer or discharge is  
4 mandated by the individual's health care needs and is in accord  
5 with the written orders and medical justification of the attending  
6 physician or (b) the transfer is mandated by the physical safety of  
7 other recipients of treatment or care or employees of the facility,  
8 as documented in the facility's records.

9           Sec. 41. (1) The notice required by subsection (2) of  
10 section 40 of this act shall contain:

11           (a) The stated reason for the proposed transfer or  
12 discharge;

13           (b) The effective date of the proposed transfer or  
14 discharge; and

15           (c) In not less than twelve-point type, the text of  
16 section 48 of this act.

17           (2) A copy of the notice required by subsection (2) of  
18 section 40 of this act shall be transmitted to the recipient of  
19 treatment or care and his or her representative, if a  
20 representative has been designated.

21           Sec. 42. A residential care and treatment facility  
22 seeking or renewing a license shall be required to retain a  
23 recipient of treatment or care whose economic status changes so  
24 that such recipient receives medicaid or becomes eligible for  
25 medicaid if such resident has resided in the facility for a period  
26 of at least one year after July 17, 1986, unless ten percent of the  
27 recipients of treatment or care in such facility are receiving  
28 medicaid or are eligible for medicaid. Such requirement shall

1 constitute a condition of licensure. This section does not apply  
2 to the Nebraska veterans homes established pursuant to Chapter 80,  
3 article 3.

4           Sec. 43. (1) No person shall act as a nursing assistant  
5 in a facility unless such person:

6           (a) Is at least sixteen years of age and has good moral  
7 character;

8           (b) Is able to speak and understand the English language  
9 or a language understood by a substantial portion of the recipients  
10 of treatment or care in the facility;

11           (c) Has successfully completed a basic course of training  
12 approved by the department for nursing assistants within one  
13 hundred twenty days after initial employment in the capacity of a  
14 nursing assistant at any facility; and

15           (d) Meets any other criteria prescribed by the  
16 department.

17           (2) The department may adopt and promulgate rules and  
18 regulations for courses of training for nursing assistants. The  
19 length and content of the courses of training may be specific to a  
20 licensure subcategory established pursuant to section 21 of this  
21 act. The content of the courses of training and competency  
22 evaluation programs shall be consistent with federal requirements  
23 developed by the United States Department of Health and Human  
24 Services. The department may approve courses of training if such  
25 courses of training meet the requirements of this section. Such  
26 courses of training shall include instruction on the responsibility  
27 of each nursing assistant to report suspected abuse or neglect  
28 pursuant to sections 28-372 and 28-711. Facilities may carry out

1 approved courses of training within the facility, except that  
2 facilities may not conduct the competency evaluation part of the  
3 program. The prescribed training shall be administered by a  
4 licensed registered nurse.

5 (3) This section shall not prohibit any facility from  
6 exceeding the minimum hourly or training requirements.

7 Sec. 44. The department may maintain an action in the  
8 name of the state against any person for a violation of section 43  
9 of this act. In charging any defendant in a complaint in such  
10 action, it shall be sufficient to charge that such defendant did,  
11 upon a certain day and in a certain county, violate such section  
12 without alleging any further or more particular facts concerning  
13 the same.

14 Sec. 45. (1) Any person may submit a complaint to the  
15 department and request investigation of an alleged violation of the  
16 Uniform Facility Licensing Act or rules and regulations issued  
17 under such act. The department shall review all complaints and  
18 determine whether to conduct an investigation and in making such  
19 determination may consider factors such as:

20 (a) Whether the complaint pertains to a matter within the  
21 authority of the department to enforce;

22 (b) Whether the circumstances indicate that a complaint  
23 is made in good faith and is not malicious, frivolous, or  
24 vexatious;

25 (c) Whether the complaint is timely or has been delayed  
26 too long to justify present evaluation of its merit;

27 (d) Whether the complainant may be a necessary witness if  
28 action is taken and is willing to identify himself or herself and

1 come forward to testify; or

2 (e) Whether the information provided or within the  
3 knowledge of the complainant is sufficient to provide a reasonable  
4 basis to believe that a violation has occurred or to secure  
5 necessary evidence from other sources.

6 A complaint submitted to the department shall be  
7 confidential, and a person submitting a complaint shall be immune  
8 from criminal or civil liability of any nature, whether direct or  
9 derivative, for submitting a complaint or for disclosure of  
10 documents, records, or other information to the department.

11 (2) An advisory board may designate one of its  
12 professional members to serve as a consultant to the department in  
13 reviewing complaints and on issues of professional practice that  
14 may arise during the course of an investigation. Such consultation  
15 shall not be required for the department to evaluate a complaint or  
16 to proceed with an investigation. A board may also recommend or  
17 confer with a consultant member of its profession to assist the  
18 board or department on issues of professional practice.

19 (3) All meetings of the advisory boards or between a  
20 board and staff of the department on investigatory matters shall be  
21 held in closed session, including the voting of the board on any  
22 matter pertaining to the investigation or recommendation.

23 Sec. 46. (1) The department may inspect the location  
24 where treatment or care will be provided prior to initial licensure  
25 of a facility. The department may inspect the location where  
26 treatment or care will be provided prior to renewal of a license.  
27 The department may conduct such an inspection at any other time as  
28 determined necessary by the department.

1           (2) The department shall issue an inspection report and  
2 provide a copy of the report to the facility within ten working  
3 days after it completes an inspection.

4           (3) If the inspection report indicates compliance, no  
5 further action is necessary.

6           (4) If the inspection report indicates a finding of  
7 noncompliance, the department shall review each reported finding of  
8 noncompliance within twenty working days after the inspection. If  
9 the findings are supported by the evidence, the department shall  
10 proceed pursuant to section 50, 51, or 52 of this act, except that  
11 if the findings indicate one or more violations that create no  
12 imminent danger of death or serious physical harm and no direct or  
13 immediate adverse relationship to the health, safety, or security  
14 of the recipients of treatment or care in the facility, the  
15 department may send a letter to the facility requesting a statement  
16 of compliance. The letter shall include a description of each such  
17 violation, a request that the facility submit a statement of  
18 compliance within ten working days, and a notice that the  
19 department may take further steps if the statement of compliance is  
20 not submitted. The statement of compliance shall indicate any  
21 steps which have been or will be taken to correct each violation  
22 and the period of time estimated to be necessary to correct each  
23 violation. If the facility fails to submit and implement a  
24 statement of compliance which indicates a good faith effort to  
25 correct the violations, the department may proceed pursuant to  
26 section 50, 51, or 52 of this act.

27           Sec. 47. Following any inspection of a facility by the  
28 department, the findings of the inspection with respect to

1 compliance by the facility with the Uniform Facility Licensing Act  
2 and any rules and regulations adopted and promulgated pursuant  
3 thereto shall be made available to the public, together with the  
4 facility's response, if any, to any findings, in a readily  
5 available form and place not later than twenty-one working days  
6 after the findings are made available to the facility. When the  
7 findings are made available to the public, they shall include no  
8 reference to any cited violation that has been corrected to the  
9 department's satisfaction unless the same reference also clearly  
10 notes that the violation has been corrected. Other information,  
11 including, but not limited to, medical records, personnel records,  
12 names of recipients of treatment or care, and names of persons who  
13 have submitted complaints, relating to any facility obtained by the  
14 department through reports, investigations, complaints, or as  
15 otherwise authorized by the act and rules and regulations adopted  
16 and promulgated pursuant thereto, that is not a part of the  
17 department's findings from an inspection of the facility, shall not  
18 be made available to the public except in proceedings involving the  
19 discipline of a facility. The name of a complainant shall not be  
20 disclosed to a facility unless the complainant consents to  
21 disclosure. The department may make compilations of data based on  
22 its findings during inspections. The department may publish  
23 analyses of any information received during inspections and from  
24 other sources for scientific and public health purposes in such a  
25 manner as to assure that the identity of any recipient of treatment  
26 or care cannot be ascertained. Such analyses may identify  
27 individual facilities.

28           Sec. 48. A facility shall not discriminate or retaliate

1 against a recipient of treatment or care or employee of a facility  
2 who has initiated or participated in any proceeding authorized by  
3 the Uniform Facility Licensing Act or who has presented a complaint  
4 or information to the administrator of a facility, the Department  
5 of Health and Human Services, the Department of Health and Human  
6 Services Finance and Support, the Department of Health and Human  
7 Services Regulation and Licensure, or other public officials. A  
8 recipient of treatment or care or employee may maintain an action  
9 under the act for any other type of relief, including injunctive  
10 and declaratory relief, permitted by law.

11           Sec. 49. In addition to or in lieu of the authority to  
12 inspect for purposes of licensure and renewal, the department may  
13 adopt and promulgate rules and regulations which permit the use of  
14 alternative methods for assessing the compliance by a facility with  
15 the Uniform Facility Licensing Act and the rules and regulations  
16 adopted and promulgated pursuant to the act. The rules and  
17 regulations shall establish a method of compliance assessment for  
18 each category of licensure that correlates to the degree of risk  
19 posed by the type of treatment or care being provided and the  
20 vulnerability of the population being served.

21           Sec. 50. If a facility is in substantial compliance with  
22 the requirements for initial licensure as established by the  
23 Uniform Facility Licensing Act and the rules and regulations  
24 adopted and promulgated under the act but fails to meet all the  
25 requirements and the nature of the failure would not pose an  
26 imminent danger of death or physical harm to the recipients of the  
27 treatment or care, the department may issue a provisional license  
28 to the facility. The provisional license shall be valid for a

1 period of up to one year and may be converted to a regular license  
2 upon a showing that the facility is in compliance with the act and  
3 the rules and regulations. Acceptance of a provisional license is  
4 an admission by the facility that it does not meet the requirements  
5 for licensure. A facility may accept the provisional license, or  
6 it may decline the provisional license and appeal the decision  
7 pursuant to section 56 of this act.

8           Sec. 51. The department may deny or refuse to renew a  
9 license if the facility fails to meet the requirements for  
10 licensure as established by the Uniform Facility Licensing Act and  
11 the rules and regulations adopted and promulgated under the act,  
12 including failing an inspection pursuant to section 46 of this act,  
13 failing to meet a compliance assessment standard adopted under  
14 section 49 of this act, having had a license revoked within the  
15 five-year period preceding application, or any of the grounds  
16 listed in section 52 of this act.

17           Sec. 52. The department may take disciplinary action  
18 against the license of a facility on any of the following grounds:

19           (1) Violation of any of the provisions of the Uniform  
20 Facility Licensing Act or the rules and regulations adopted and  
21 promulgated pursuant to the act;

22           (2) Committing or permitting, aiding, or abetting the  
23 commission of any unlawful act;

24           (3) Conduct or practices detrimental to the health or  
25 safety of recipients of treatment or care in the facility and  
26 employees of the facility;

27           (4) A report from an accreditation body or public agency  
28 modifying, terminating, or withdrawing the accreditation of the

1 facility or a report from a federal program sanctioning,  
2 terminating, or withdrawing the certification of the facility;

3 (5) Failure to allow an agent or employee of the  
4 Department of Health and Human Services, the Department of Health  
5 and Human Services Finance and Support, or the Department of Health  
6 and Human Services Regulation and Licensure access to such facility  
7 for the purposes of review, investigation, or other information  
8 collection activities necessary to carry out the duties of the  
9 respective department;

10 (6) Discrimination or retaliation against a recipient of  
11 treatment or care in a facility or an employee of a facility who  
12 has submitted a complaint or information to the Department of  
13 Health and Human Services, the Department of Health and Human  
14 Services Finance and Support, or the Department of Health and Human  
15 Services Regulation and Licensure; or

16 (7) Failure to file a report of suspected abuse or  
17 neglect as required by sections 28-372 and 28-711.

18 Sec. 53. (1) The department may impose any one or a  
19 combination of the following types of disciplinary action against  
20 the license of a facility:

21 (a) A fine not to exceed ten thousand dollars per  
22 violation;

23 (b) A prohibition on admissions or readmissions, a  
24 limitation on enrollment, or a prohibition or limitation on the  
25 provision of treatment or care;

26 (c) A period of probation not to exceed two years during  
27 which the facility may continue to operate under terms and  
28 conditions fixed by the order of probation;

1           (d) A period of suspension not to exceed three years  
2 during which the facility may not operate; and

3           (e) Revocation which is a permanent termination of the  
4 license and the licensee may not apply for a license for a minimum  
5 of five years.

6           (2) For purposes of imposing fines, each day a violation  
7 continues shall constitute a separate violation. Any fine imposed  
8 and unpaid under the Uniform Facility Licensing Act shall  
9 constitute a debt to the State of Nebraska which may be collected  
10 in the manner of a lien foreclosure or sued for and recovered in  
11 any proper form of action in the name of the State of Nebraska in  
12 the district court of the county in which the facility is located.  
13 The department shall, within thirty days after receipt, remit fines  
14 to the State Treasurer for credit to the permanent school fund.

15           Sec. 54. (1) In determining what type of disciplinary  
16 action to impose, the department shall consider:

17           (a) The gravity of the violation, including the  
18 probability that death or serious physical or mental harm will  
19 result, the severity of the actual or potential harm, and the  
20 extent to which the provisions of applicable statutes, rules, and  
21 regulations were violated;

22           (b) The reasonableness of the diligence exercised by the  
23 facility in identifying or correcting the violation;

24           (c) Any previous violations committed by the facility;  
25 and

26           (d) The financial benefit to the facility of committing  
27 or continuing the violation.

28           (2) The department may set forth in rules and regulations

1 specific violations which will result in a particular disciplinary  
2 action, including the use of scope and severity determinations.

3 (3) If the licensee fails to correct a violation or to  
4 comply with a particular type of disciplinary action, the  
5 department may take additional disciplinary action as described in  
6 section 53 of this act.

7 Sec. 55. (1) If the department determines to deny,  
8 refuse renewal of, or take disciplinary action against a license,  
9 the department shall, within twenty working days after an  
10 inspection, if an inspection was done, or after receipt of other  
11 compliance assessment information, send to the applicant or  
12 licensee, by either registered or certified mail, a notice setting  
13 forth the determination, the particular reasons for the  
14 determination, including a specific description of the nature of  
15 the violation and the statute, rule, or regulation violated, and  
16 the type of disciplinary action which is pending. The denial,  
17 refusal, or disciplinary action shall become final thirty days  
18 after the mailing of the notice unless the applicant or licensee,  
19 within such thirty-day period, requests in writing a hearing under  
20 section 56 of this act to formally contest the notice.

21 (2) When a notice is served upon a facility pursuant to  
22 this section and the holder of the license for the facility is not  
23 actually involved in the daily operation of the facility, a copy of  
24 the notice shall also be mailed to the holder of the license for  
25 the facility. If the holder of the license is a corporation, a  
26 copy of the notice shall be sent to the corporation's registered  
27 agent.

28 Sec. 56. (1) If the applicant or licensee requests a

1 hearing under section 50 or 55 of this act, the department shall  
2 hold a hearing and give the applicant or licensee the right to  
3 present such evidence as may be proper. On the basis of such  
4 evidence, the determination involved shall be affirmed, modified,  
5 or set aside, and a copy of such decision setting forth the  
6 findings of facts and the particular reasons upon which it is based  
7 shall be sent by either registered or certified mail to the  
8 applicant or licensee. The decision shall become final thirty days  
9 after the copy is mailed unless the applicant or licensee, within  
10 such thirty-day period, appeals the decision under section 58 of  
11 this act.

12 (2) The procedure governing hearings authorized by this  
13 section shall be in accordance with rules and regulations adopted  
14 and promulgated by the department. A full and complete record  
15 shall be kept of all proceedings. Witnesses may be subpoenaed by  
16 either party and shall be allowed fees at a rate prescribed by the  
17 rules and regulations.

18 Sec. 57. (1) A license issued under the Uniform Facility  
19 Licensing Act which has lapsed for nonpayment of fees or has been  
20 placed on probation or suspended is eligible for reinstatement at  
21 any time by petitioning the department and paying the applicable  
22 fee. A license which has been placed on probation or suspended is  
23 automatically reinstated at the end of the period of probation or  
24 suspension unless it expired during such period.

25 (2) A license which has been revoked for any reason may  
26 not be reinstated for five years after the date of revocation.

27 (3) The department shall adopt and promulgate rules and  
28 regulations for reinstatement.

1           Sec. 58. Any party to the decision shall have a right to  
2 judicial review under the Administrative Procedure Act.

3           Sec. 59. Any person who establishes, operates, or  
4 maintains a facility subject to the Uniform Facility Licensing Act  
5 without first obtaining a license as required under the Uniform  
6 Facility Licensing Act or who violates any of the provisions of the  
7 act or the rules and regulations adopted and promulgated under the  
8 act shall be guilty of a Class I misdemeanor. Each day such  
9 facility operates after a first conviction shall be considered a  
10 subsequent offense.

11           Sec. 60. The department may maintain an action in the  
12 name of the state against any person for establishing, operating,  
13 or maintaining a facility subject to the Uniform Facility Licensing  
14 Act without first having a license as required by the Uniform  
15 Facility Licensing Act. In charging any defendant in a complaint  
16 in such action, it shall be sufficient to charge that such  
17 defendant did, upon a certain day and in a certain county,  
18 establish, operate, or maintain a facility without having a license  
19 to do so without alleging any further or more particular facts  
20 concerning the same.

21           Sec. 61. (1) Licensure activities under the Uniform  
22 Facility Licensing Act shall be funded by federal and state funds  
23 and by licensure fees. The department shall adopt and promulgate  
24 rules and regulations to establish licensure fees for each facility  
25 licensure category and for facility licensure subcategories. The  
26 following formula shall be used on a biennial basis to establish  
27 the fees and to request appropriations from the General Fund:  
28 Total estimated costs of licensure activities minus certification

1 expense reimbursement equals adjusted cost of licensure activities.  
2 The adjusted cost of licensure activities shall be split evenly  
3 between licensure fees and General Fund appropriations.

4 (2)(a) The total estimated cost of licensure activities  
5 shall reflect both fixed and variable costs.

6 (b) Fixed costs are those costs associated with  
7 activities that are common to all facilities in a given licensure  
8 category, including, but not limited to, processing applications  
9 for initial and renewal licenses, initial inspections, and record  
10 keeping.

11 (c) Variable costs are costs associated with activities  
12 that are unique to licensure subcategories and costs associated  
13 with activities triggered by events in a given facility, including,  
14 but not limited to, processing and investigating complaints,  
15 disciplinary action, and compliance monitoring.

16 (3) The revenue collected from licensure fees shall not  
17 be used for activities other than those necessary for or relating  
18 to licensure of facilities.

19 (4) The department shall collect licensure fees at the  
20 time of application for an initial or renewal license and at other  
21 times as established by the department in the rules and  
22 regulations. The department shall remit the fees to the State  
23 Treasurer for credit to the General Fund. The department shall  
24 provide for the return of the license application fee for an  
25 applicant who withdraws his or her application or whose application  
26 is rejected by the department except for an administrative fee of  
27 twenty-five dollars to be retained by the department, unless the  
28 fee remitted is less than twenty-five dollars in which case such

1 fee shall be forfeited.

2           Sec. 62.   (1) The Uniform Facility Licensing Act shall  
3 not apply to treatment or care given in the home by and for family  
4 members. For purposes of this subsection, family member means an  
5 individual related to the person by blood, marriage, adoption, or  
6 legal guardianship as the person's spouse, child, parent, brother,  
7 sister, grandchild, grandparent, ward, or legal guardian or any  
8 individual so related to the person's spouse.

9           (2) The Uniform Facility Licensing Act shall not apply to  
10 gratuitous treatment or care.

11           (3) The Uniform Facility Licensing Act shall not apply to  
12 child care facilities or foster care facilities.

13           (4) The department may adopt and promulgate rules and  
14 regulations to carry out this section.

15           Sec. 63.   (1) The department may waive any rule,  
16 regulation, or standard adopted and promulgated by the department  
17 relating to construction or physical plant requirements of licensed  
18 facilities upon proof by the licensee satisfactory to the  
19 department (a) that the waiver of such rule, regulation, or  
20 standard will not jeopardize the health or welfare of the  
21 recipients of treatment or care in the facility, (b) that such  
22 rule, regulation, or standard would create an unreasonable hardship  
23 upon the facility, and (c) that a waiver will not cause the State  
24 of Nebraska to fail to comply with any of the applicable  
25 requirements of medicare or medicaid so as to make the state  
26 ineligible for the receipt of all funds to which it might otherwise  
27 be entitled.

28           (2) The licensee shall submit and the department shall

1 consider the following in evaluating the issue of unreasonable  
2 hardship: (a) The estimated cost of the modification or  
3 installation; (b) the extent and duration of the disruption of the  
4 normal use of areas used by recipients of treatment or care  
5 resulting from construction work; (c) the estimated period over  
6 which cost would be recovered through reduced insurance premiums  
7 and increased reimbursement related to cost; (d) the availability  
8 of financing; and (e) the remaining useful life of the building.

9 (3) Any such waiver may be under such terms and  
10 conditions and for such period of time as the department may  
11 prescribe in rules and regulations for licensure of facilities.  
12 Such terms and conditions may be different for licensed facilities  
13 operating on July 1, 1998, and facilities which will become  
14 operable after such date.

15 Sec. 64. The department may waive any rule, regulation,  
16 or standard adopted and promulgated by the department for the  
17 purposes of a pilot project that would experiment with a new or  
18 different method or philosophy of providing treatment or care,  
19 including, but not limited to, staffing levels and physical plant  
20 requirements. A facility may submit to the department a proposal  
21 for a pilot project. The proposal shall identify the rule,  
22 regulation, or standard which the facility desires to have waived  
23 and the reasons behind the waiver request. The proposal shall  
24 clearly indicate the risks involved and the safeguards that will be  
25 in place to handle the risks. The department shall assess the  
26 benefits and the risks and may grant the requested waiver if it  
27 determines that there will not be an unreasonable risk to the  
28 health and welfare of the recipients of treatment or care. The

1 department shall prescribe the terms and conditions of the waiver  
2 and the period of time the waiver will be valid. The department  
3 may adopt and promulgate rules and regulations for the waiver  
4 process under this section.

5           Sec. 65. The department shall systematically examine and  
6 reexamine the processes used to implement the Uniform Facility  
7 Licensing Act, including a review of the licensure procedures, the  
8 compliance assessment procedures, and the disciplinary action  
9 procedures. The department shall examine the extent to which the  
10 procedures are cost effective, efficient, obsolete, duplicative,  
11 and responsive to and providing adequate protection for the public,  
12 the facilities, and the recipients of treatment and care. The  
13 department shall coordinate its rules, regulations, and regulatory  
14 activities under the Uniform Facility Licensing Act with the rules,  
15 regulations, and regulatory activities provided by other state  
16 agencies to avoid duplication of regulation and services.

17           Sec. 66. (1) The Director of Regulation and Licensure  
18 shall appoint an advisory board for each category of licensure for  
19 the purpose of providing recommendations to the department  
20 regarding the adoption and promulgation of rules and regulations,  
21 disciplinary action including informal dispute resolution, or any  
22 other issue as determined by the director. The department shall  
23 provide administrative support and coordination for such boards,  
24 including maintenance of records.

25           (2) The department shall adopt and promulgate rules and  
26 regulations regarding the membership of the boards, the procedures  
27 to be followed by the boards, the types of issues which the boards  
28 will consider, and the course of action available to the boards.

1           (3) Meetings of the boards shall be conducted according  
2 to sections 84-1408 to 84-1414, except that the boards may hold  
3 meetings by video conferencing or telecommunications equipment.

4           Sec. 67. The department may adopt and promulgate rules  
5 and regulations to carry out the Uniform Facility Licensing Act.  
6 The rules and regulations shall be initially adopted by January 1,  
7 2002. A license issued prior to January 1, 2002, shall be valid  
8 until its renewal date or until the department notifies the  
9 licensee of a change in the renewal schedule unless revoked  
10 pursuant to disciplinary action against the license.

11           Sec. 68. Section 2-3403, Reissue Revised Statutes of  
12 Nebraska, is amended to read:

13           2-3403. For purposes of the Nebraska Poultry and Egg  
14 Resources Act, unless the context otherwise requires:

15           (1) Department shall mean the Department of Agriculture;

16           (2) Director shall mean the Director of Agriculture;

17           (3) Committee shall mean the advisory committee created  
18 by section 2-3404;

19           (4) Nebraska Poultry Industries, Inc. shall mean a body  
20 corporate formed under the provisions of the Nonprofit Corporation  
21 Act, the articles of incorporation of which were received by the  
22 Secretary of State and filed for record on January 13, 1970, and  
23 recorded as film roll number 35, Miscellaneous Incorporations at  
24 page 2206. Its purpose and objective is to promote, improve, and  
25 protect all branches of the poultry and egg industry and to  
26 coordinate all the activities of its member divisions of the  
27 poultry industry and to act as their agent in promoting such  
28 activities favorably to the poultry industry as a whole for the

1 entire State of Nebraska;

2 (5) Person shall mean any individual, firm, group of  
3 individuals, partnership, limited liability company, corporation,  
4 unincorporated association, cooperative, or other entity, public or  
5 private;

6 (6) Egg producer shall mean any person engaged in the  
7 production of commercial eggs who owns or contracts for the care of  
8 layer-type chickens;

9 (7) Turkey producer shall mean a person who owns or  
10 contracts for the care of turkeys sold through commercial channels;

11 (8) First purchaser shall mean any person who receives or  
12 otherwise acquires poultry or eggs from a producer and processes,  
13 prepares for marketing, or markets such poultry or eggs, including  
14 the poultry or eggs of his or her own production, and shall include  
15 a mortgagee, pledgee, lienor, or other person, public or private,  
16 having a claim against the producer when the actual or constructive  
17 possession of such poultry or eggs is taken as part payment or in  
18 satisfaction of such mortgage, pledge, lien, or claim;

19 (9) Poultry shall mean domestic chickens and turkeys;

20 (10) Commercial eggs shall mean, in the case of eggs  
21 produced in this state, eggs from domesticated chickens that are  
22 sold for human consumption either in shell egg form or for further  
23 processing and, in the case of eggs produced outside of this state,  
24 graded eggs sold to retailers, wholesalers, distributors, or food  
25 purveyors;

26 (11) Egg products shall mean commercial products  
27 produced, in whole or in part, from shell eggs;

28 (12) Market development shall mean research and

1 educational programs which are directed toward (a) better and more  
2 efficient production, marketing, and utilization of poultry, eggs,  
3 and the products thereof produced for resale, (b) better methods,  
4 to include, but not be limited to, public relations and other  
5 promotion techniques, for the maintenance of present markets and  
6 for the development of new or larger domestic or foreign markets  
7 and for the sale of poultry, eggs, and the products thereof, and  
8 (c) the prevention, modification, or elimination of trade barriers  
9 which obstruct the free flow of poultry, eggs, and the products  
10 thereof to market;

11 (13) Commercial channels shall mean the sale of poultry,  
12 eggs, or the products thereof for any use when sold to any  
13 commercial buyer, dealer, processor, or cooperative or to any  
14 person who resells any poultry, eggs, or the products thereof;

15 (14) Case shall mean a unit of thirty dozen eggs;

16 (15) Breaker shall mean a person engaged in the further  
17 processing of commercial eggs;

18 (16) Sale shall include any pledge or mortgage of  
19 poultry, eggs, or the products thereof to any person;

20 (17) Retailer shall mean a person who sells eggs or  
21 offers eggs for sale directly to consumers;

22 (18) Wholesaler or distributor shall mean a person who  
23 sells eggs to retailers, food purveyors, other wholesalers, or  
24 other distributors; and

25 (19) Food purveyor shall mean a person who operates a  
26 restaurant, cafeteria, hotel, hospital, nursing home, boarding  
27 house, residential care and treatment facility or assisted-living  
28 facility licensed under the Uniform Facility Licensing Act, school,

1 government institution, or other place where eggs are served in the  
2 shell or broken out for immediate consumption.

3 Sec. 69. Section 17-961, Reissue Revised Statutes of  
4 Nebraska, is amended to read:

5 17-961. (1) Cities of the second class and villages are  
6 hereby authorized and empowered to ~~(1)~~ (a) accept a gift or devise  
7 of or to purchase a facility or a building suitable for conversion  
8 into a facility, ~~(2)~~ (b) purchase real estate and erect a building  
9 or buildings thereon for the purpose of establishing a facility,  
10 and ~~(3)~~ (c) maintain, manage, improve, remodel, equip, and operate  
11 a facility.

12 (2) For purposes of sections 17-961 to 17-966, facility  
13 ~~shall mean means (a) prior to January 1, 2002, a municipal~~  
14 ~~hospital, a medical clinic, a nursing home, or multiunit housing~~  
15 and (b) beginning January 1, 2002, multiunit housing or a facility  
16 licensed under the Uniform Facility Licensing Act and operating as  
17 a municipal hospital, a medical clinic, or a residential care and  
18 treatment facility.

19 Sec. 70. Section 18-2803, Reissue Revised Statutes of  
20 Nebraska, is amended to read:

21 18-2803. For purposes of the Municipal Proprietary  
22 Function Act:

23 (1) Fiscal year shall mean the twelve-month period  
24 established by each governing body for each proprietary function of  
25 municipal government for determining and carrying on its financial  
26 affairs for each proprietary function;

27 (2) Governing body shall mean the city council in the  
28 case of a city of any class and the board of trustees in the case

1 of a village and shall include any city with a home rule charter;

2 (3) Municipal budget statement shall mean a budget  
3 statement adopted by a governing body for nonproprietary functions  
4 of the municipality under the Nebraska Budget Act;

5 (4) Proprietary budget statement shall mean a budget  
6 adopted by a governing body for each proprietary function pursuant  
7 to the Municipal Proprietary Function Act; and

8 (5) Proprietary function shall mean a water supply or  
9 distribution utility, a wastewater collection or treatment utility,  
10 an electric generation, transmission, or distribution utility, a  
11 gas supply, transmission, or distribution utility, an integrated  
12 solid waste management collection, disposal, or handling utility,  
13 or a hospital or a nursing home owned by a municipality prior to  
14 January 1, 2002, and beginning January 1, 2002, a facility licensed  
15 under the Uniform Facility Licensing Act and owned by a  
16 municipality.

17 Sec. 71. Section 20-162, Reissue Revised Statutes of  
18 Nebraska, is amended to read:

19 20-162. For purposes of sections 20-161 to 20-166,  
20 unless the context otherwise requires:

21 (1) Complaint shall mean any oral or written allegation  
22 by a person with a developmental disability or a mentally ill  
23 individual, the parent or guardian of such persons, a state agency,  
24 or any other responsible named individual or entity to the effect  
25 that the person with developmental disabilities or the mentally ill  
26 individual is being subjected to injury or deprivation with regard  
27 to his or her health, safety, welfare, rights, or level of care;

28 (2) Developmental disability shall mean a severe chronic

1 mental or physical disability as defined in the Developmental  
2 Disabilities Assistance and Bill of Rights Act, 42 U.S.C. 6000 et  
3 seq., as amended;

4 (3) Facility for mentally ill individuals shall mean any  
5 place within Nebraska where a mentally ill individual is an  
6 inpatient or a resident and that is organized to provide treatment,  
7 shelter, food, care, or supervision, including, but not limited to,  
8 those facilities described in Chapter 71, article 19, and those  
9 facilities described in Chapter 71, article ~~articles 19 and~~ 20, and  
10 sections 83-107.01 and 83-108 prior to January 1, 2002, and  
11 beginning January 1, 2002, a facility licensed pursuant to the  
12 Uniform Facility Licensing Act;

13 (4) Facility for persons with developmental disabilities  
14 shall mean a facility or a specified portion of a facility designed  
15 primarily for the delivery of one or more services to persons with  
16 one or more developmental disabilities, including, but not limited  
17 to, those facilities described in Chapter 71, article 19, and those  
18 facilities described in Chapter 71, article ~~articles 19 and~~ 20, and  
19 sections 83-107.01 and 83-108 prior to January 1, 2002, whenever a  
20 person with a developmental disability is residing in such facility  
21 and beginning January 1, 2002, a facility licensed pursuant to the  
22 Uniform Facility Licensing Act;

23 (5) Mentally ill individual shall mean an individual who  
24 has a significant mental illness or emotional impairment as  
25 determined by a mental health professional qualified under the  
26 laws, rules, and regulations of this state and who is an inpatient  
27 or resident in a facility for mentally ill individuals;

28 (6) Protection and advocacy system shall mean the entity

1 designated pursuant to the Developmental Disabilities Assistance  
2 and Bill of Rights Act, 42 U.S.C. 6000 et seq., as amended;

3 (7) Records shall mean all information and data obtained,  
4 collected, or maintained by a facility for persons with  
5 developmental disabilities or a facility for mentally ill  
6 individuals in the course of providing services to such persons  
7 which are reasonably related to the complaint to be investigated;  
8 and

9 (8) Services for persons with developmental disabilities  
10 shall mean services as defined in the Developmental Disabilities  
11 Assistance and Bill of Rights Act, 42 U.S.C. 6000 et seq., as  
12 amended.

13 Sec. 72. Section 23-3501, Reissue Revised Statutes of  
14 Nebraska, is amended to read:

15 23-3501. (1) The county board in any county in this  
16 state having thirty-six hundred inhabitants or more or in which the  
17 taxable value of the taxable property is twenty-eight million six  
18 hundred thousand dollars or more may issue and sell bonds of such  
19 county in such an amount as the county board may deem advisable for  
20 the construction or acquisition of (a) prior to January 1, 2002, an  
21 indigent hospital, a home for aged or infirm persons, a county  
22 community hospital, a mental health clinic, a clinic or facility to  
23 combat mental retardation, a public health center, a medical  
24 complex, multiunit housing, or a similar facility required to  
25 protect the health and welfare of the people and to purchase  
26 suitable equipment for the same and (b) beginning January 1, 2002,  
27 a facility subject to licensure under the Uniform Facility  
28 Licensing Act, a medical complex, multiunit housing, or a similar

1 facility required to protect the health and welfare of the people  
2 and to purchase suitable equipment for the same. Such bonds shall  
3 bear interest at a rate set by the county board.

4 (2) No bonds shall be issued until the question of the  
5 issuance of the bonds has been submitted to the voters of such  
6 county at a general election or a special election called for such  
7 purpose. The issuance of such bonds shall be approved by a  
8 majority vote of the electors voting on such proposition at any  
9 such election. Such election may be called either by resolution of  
10 the county board or upon a petition submitted to the county board  
11 calling for an election. Such petition shall be signed by the  
12 legal voters of the county equal in number to ten percent of the  
13 number of votes cast in the county for the office of Governor at  
14 the last general election.

15 Sec. 73. Section 23-3554, Reissue Revised Statutes of  
16 Nebraska, is amended to read:

17 23-3554. The board of directors of any hospital district  
18 may, on the terms and conditions set forth in sections 23-3554 to  
19 23-3572, issue the bonds of the district for the purpose of (1)  
20 purchasing a site for and erecting thereon a hospital, nursing home  
21 prior to January 1, 2002, residential care and treatment facility  
22 or assisted-living facility beginning January 1, 2002, or both any  
23 combination of such facilities, or for such purchase or erection,  
24 and furnishing and equipping the same, in such district, (2)  
25 purchasing an existing building or buildings and related furniture  
26 and equipment, including the site or sites upon which such building  
27 or buildings are located, for use as a hospital, nursing home prior  
28 to January 1, 2002, residential care and treatment facility or

1 assisted-living facility beginning January 1, 2002, or both any  
2 combination of such facilities, and to furnish and equip them in  
3 such district, (3) retiring registered warrants, and (4) paying for  
4 additions to or repairs for a hospital, nursing home prior to  
5 January 1, 2002, residential care and treatment facility or  
6 assisted-living facility beginning January 1, 2002, or both any  
7 combination of such facilities.

8           Sec. 74.     Section 23-3594, Reissue Revised Statutes of  
9 Nebraska, is amended to read:

10           23-3594. Each hospital authority shall have and exercise  
11 the following powers:

12           (1) To have perpetual succession as a body politic and  
13 corporate, except that any county board having declared a hospital  
14 authority to be a public corporation and body politic of this state  
15 shall, upon a showing duly made and with appropriate notice given  
16 to the Secretary of State, but not sooner than upon expiration of a  
17 period of two years from and after the date upon which the record  
18 relating to formation of such hospital authority was filed with the  
19 Secretary of State pursuant to section 23-3587, enter an order  
20 dissolving any hospital authority which does not then have under  
21 construction, own, lease as lessee or as lessor, or operate a  
22 hospital;

23           (2) To have and use a corporate seal and alter it at  
24 pleasure;

25           (3) To sue and be sued in all courts and places and in  
26 all actions and proceedings whatever;

27           (4) To purchase, receive, have, take, hold, lease as  
28 lessee, use, and enjoy property of every kind and description

1 within the limits of the authority and to control, dispose of, sell  
2 for a nominal or other consideration, convey, and encumber the same  
3 and create a leasehold interest in the same, as lessor, with any  
4 nonprofit person, firm, partnership, limited liability company,  
5 association, or corporation, other than a county, city, or village  
6 in this state, for the benefit of the authority;

7 (5) To administer any trust declared or created for  
8 hospitals of the authority and to receive by gift, devise, or  
9 bequest and hold, in trust or otherwise, property situated in this  
10 state or elsewhere and, if not otherwise provided, dispose of the  
11 same for the benefit of such hospitals;

12 (6) To employ legal counsel to advise the board of  
13 trustees in all matters pertaining to the business of the authority  
14 and to perform such functions with respect to the legal affairs of  
15 the authority as the board may direct;

16 (7) To employ such technical experts and such officers,  
17 agents, and employees, permanent and temporary, as it may require  
18 and to determine their qualifications, duties, and compensation,  
19 such technical experts, officers, agents, and employees to hold  
20 their offices or positions at the pleasure of the board;

21 (8) To delegate to one or more of its agents or employees  
22 such powers and duties as it deems proper;

23 (9) To do any and all things which an individual might do  
24 which are necessary for and to the advantage of a hospital;

25 (10) To purchase, construct, establish, or otherwise  
26 acquire and to improve, alter, maintain, and operate one or more  
27 hospitals situated within the territorial limits of the authority.  
28 The term hospital as used in the Hospital Authorities Act shall

1 mean and include, except as used in section 23-3597, any structure  
2 or structures suitable for use as a hospital, nursing home, clinic,  
3 or other health care facility, a facility which provides health  
4 care licensed under the Uniform Facility Licensing Act, laboratory,  
5 laundry, nurses' or interns' residences and dormitories,  
6 administration buildings, research facilities, and maintenance,  
7 storage, or utility facilities and other structures or facilities  
8 reasonably related thereto or required or useful for the operation  
9 thereof, including parking and other facilities or structures  
10 essential or convenient for the orderly operation thereof and shall  
11 also include furniture, instruments, equipment, and machinery and  
12 other similar items necessary or convenient for the operations  
13 thereof, and any hospital authority which has established or  
14 acquired a hospital may also purchase, construct, or otherwise  
15 acquire and improve, alter, maintain, and operate all types of  
16 ancillary care facilities, including rehabilitation, recreational,  
17 and research facilities for children, addicted persons, disabled  
18 individuals, and elderly persons, including both residential and  
19 outpatient care and ancillary facilities for physicians,  
20 technicians, educators, psychologists, social scientists,  
21 scientists, nutritionists, administrators, interns, residents,  
22 nurses, students preparing to engage in the health service field,  
23 and other health care related personnel;

24 (11) To enter into contracts and other agreements for the  
25 purchase, construction, establishment, acquisition, management,  
26 operation, and maintenance of any hospital or any part thereof upon  
27 such terms and conditions and for such periods of time as its board  
28 of trustees may determine;

1           (12) To do any and all other acts and things necessary to  
2 carry out the Hospital Authorities Act, including the power to  
3 borrow money on its bonds, notes, debentures, or other evidences of  
4 indebtedness and to secure the same by pledges of its revenue in  
5 the manner and to the extent provided in the act and to fund or  
6 refund the same; and

7           (13) To acquire, maintain, and operate ambulances or an  
8 emergency medical service within and without the authority.

9           Sec. 75. Section 23-3597, Reissue Revised Statutes of  
10 Nebraska, is amended to read:

11           23-3597. Prior to constructing any structure which is to  
12 be utilized as a hospital, ~~or~~ as a nursing home prior to January 1,  
13 2002, or beginning January 1, 2002, as a residential care and  
14 treatment facility or assisted-living facility licensed under the  
15 Uniform Facility Licensing Act, as opposed to structures related  
16 thereto, the question of constructing such structure shall be  
17 submitted to the appropriate local or area health planning agency  
18 for its consideration and review if there has been created,  
19 pursuant to state or federal law, such a local or area health  
20 planning agency having jurisdiction within the area in which the  
21 proposed structure is to be constructed. Such local or area health  
22 planning agency shall within sixty days render its findings and  
23 recommendations, if any, and shall be deemed to have approved  
24 construction of the proposed structure if its findings and  
25 recommendations have not been rendered within such period of sixty  
26 days. The provisions of this section shall not apply to the  
27 purchase or other acquisition by an authority of any interest in  
28 any existing structure which is to be utilized as a hospital if

1 such structure has been in existence for more than one year.

2 Sec. 76. Section 28-326, Revised Statutes Supplement,  
3 1998, is amended to read:

4 28-326. For purposes of sections 28-325 to 28-345,  
5 unless the context otherwise requires:

6 (1) Abortion means the use or prescription of any  
7 instrument, medicine, drug, or other substance or device  
8 intentionally to terminate the pregnancy of a woman known to be  
9 pregnant with an intention other than to increase the probability  
10 of a live birth, to preserve the life or health of the child after  
11 live birth, or to remove a dead unborn child, and which causes the  
12 premature termination of the pregnancy;

13 (2) Hospital means those institutions licensed by the  
14 Department of Health and Human Services Regulation and Licensure  
15 pursuant to sections 71-2017 to 71-2029 prior to January 1, 2002,  
16 and beginning January 1, 2002, a facility licensed as a hospital  
17 under the Uniform Facility Licensing Act;

18 (3) Physician means any person licensed to practice  
19 medicine in this state as provided in sections 71-102 to 71-110;

20 (4) Pregnant means that condition of a woman who has  
21 unborn human life within her as the result of conception;

22 (5) Conception means the fecundation of the ovum by the  
23 spermatozoa;

24 (6) Viability means that stage of human development when  
25 the unborn child is potentially able to live more than merely  
26 momentarily outside the womb of the mother by natural or artificial  
27 means;

28 (7) Emergency situation means that condition which, on

1 the basis of the physician's good faith clinical judgment, so  
2 complicates the medical condition of a pregnant woman as to  
3 necessitate the immediate abortion of her pregnancy to avert her  
4 death or for which a delay will create serious risk of substantial  
5 impairment of a major bodily function;

6 (8) Probable gestational age of the unborn child means  
7 what will with reasonable probability, in the judgment of the  
8 physician, be the gestational age of the unborn child at the time  
9 the abortion is planned to be performed; and

10 (9) Partial-birth abortion means an abortion procedure in  
11 which the person performing the abortion partially delivers  
12 vaginally a living unborn child before killing the unborn child and  
13 completing the delivery. For purposes of this subdivision, the  
14 term partially delivers vaginally a living unborn child before  
15 killing the unborn child means deliberately and intentionally  
16 delivering into the vagina a living unborn child, or a substantial  
17 portion thereof, for the purpose of performing a procedure that the  
18 person performing such procedure knows will kill the unborn child  
19 and does kill the unborn child.

20 Sec. 77. Section 28-372, Revised Statutes Supplement,  
21 1998, is amended to read:

22 28-372. (1) When any physician, psychologist, physician  
23 assistant, nurse, nursing assistant, other medical, developmental  
24 disability, or mental health professional, law enforcement  
25 personnel, caregiver or employee of a caregiver, operator or  
26 employee of a sheltered workshop, owner, operator, or employee of  
27 any facility licensed by the Department of Health and Human  
28 Services Regulation and Licensure prior to January 1, 2002, and

1 beginning January 1, 2002, any facility licensed under the Uniform  
2 Facility Licensing Act, or human services professional or  
3 paraprofessional not including a member of the clergy has  
4 reasonable cause to believe that a vulnerable adult has been  
5 subjected to abuse or observes such adult being subjected to  
6 conditions or circumstances which reasonably would result in abuse,  
7 he or she shall report the incident or cause a report to be made to  
8 the appropriate law enforcement agency or to the department. Any  
9 other person may report abuse if such person has reasonable cause  
10 to believe that a vulnerable adult has been subjected to abuse or  
11 observes such adult being subjected to conditions or circumstances  
12 which reasonably would result in abuse.

13 (2) Such report may be made by telephone, with the caller  
14 giving his or her name and address, and, if requested by the  
15 department, shall be followed by a written report within  
16 forty-eight hours. To the extent available the report shall  
17 contain: (a) The name, address, and age of the vulnerable adult;  
18 (b) the address of the caregiver or caregivers of the vulnerable  
19 adult; (c) the nature and extent of the alleged abuse or the  
20 conditions and circumstances which would reasonably be expected to  
21 result in such abuse; (d) any evidence of previous abuse including  
22 the nature and extent of the abuse; and (e) any other information  
23 which in the opinion of the person making the report may be helpful  
24 in establishing the cause of the alleged abuse and the identity of  
25 the perpetrator or perpetrators.

26 (3) Any law enforcement agency receiving a report of  
27 abuse shall notify the department no later than the next working  
28 day by telephone or mail.

1           (4) A report of abuse made to the department which was  
2 not previously made to or by a law enforcement agency shall be  
3 communicated to the appropriate law enforcement agency by the  
4 department no later than the next working day by telephone or mail.

5           (5) The department shall establish a statewide toll-free  
6 number to be used by any person any hour of the day or night and  
7 any day of the week to make reports of abuse.

8           Sec. 78. Section 29-3703, Reissue Revised Statutes of  
9 Nebraska, is amended to read:

10           29-3703. (1) The court which tried a person who is found  
11 not responsible by reason of insanity shall annually and may, upon  
12 its own motion or upon motion of the person or the prosecuting  
13 attorney, review the records of such person and conduct an  
14 evidentiary hearing on the status of the person. The court may,  
15 upon its own motion or upon a motion by the person or the  
16 prosecuting attorney, order an independent psychiatric or  
17 psychological evaluation of the person. The court shall consider  
18 the results of the evaluation at the evidentiary hearing. When the  
19 independent evaluation is conducted pursuant to a motion by the  
20 court or the prosecuting attorney, the cost of such independent  
21 evaluation shall be the expense of the county. When the evaluation  
22 is conducted pursuant to a motion by the person and if the person  
23 is not indigent, the cost of the evaluation shall be borne by the  
24 person.

25           (2) If as a result of such hearing the court finds that  
26 such person is no longer dangerous to himself, herself, or others  
27 by reason of mental illness or defect and will not be so dangerous  
28 in the foreseeable future, the court shall order such person

1 unconditionally released from court-ordered treatment. If the  
2 court does not so find, the court shall order that such person  
3 participate in an appropriate treatment program specifying  
4 conditions of liberty and monitoring consistent with the treatment  
5 needs of the person and the safety of the public. The treatment  
6 program may involve any public or private facility or program which  
7 offers treatment for mental illness and may include an inpatient,  
8 residential, day, or outpatient setting. The court shall place the  
9 person in the least restrictive available treatment program that is  
10 consistent with the treatment needs of the person and the safety of  
11 the public.

12 (3) If the person has been treated in a regional center  
13 or other appropriate facility and is ordered placed in a less  
14 restrictive treatment program, the regional center or other  
15 appropriate facility shall develop an individual discharge plan  
16 consistent with the order of the court and shall provide the less  
17 restrictive treatment program a copy of the discharge plan and all  
18 relevant treatment information.

19 (4) Upon motion of the prosecuting attorney or upon its  
20 own motion, but at least annually, the court shall hold a hearing  
21 to determine whether the person is complying with the conditions  
22 set by the court. Upon an initial showing of probable cause by  
23 affidavit or sworn testimony that the person is not complying with  
24 the court-ordered conditions, the court may issue a warrant  
25 directing the sheriff or any peace officer to take the person into  
26 custody and place him or her into a ~~mental health center~~, regional  
27 center, or other appropriate facility with available space where he  
28 or she shall be held pending the hearing. When a person has been

1 taken into custody pursuant to this subsection, the hearing shall  
2 be held within ten days. Following the hearing, the court shall  
3 determine whether placement in the current treatment program should  
4 be continued or ceased and whether the conditions of the placement  
5 should be continued or modified.

6 (5) Any treatment program to which a person is committed  
7 on July 16, 1994, under this section or section 29-3702 shall  
8 submit reports to the trial court and the prosecuting attorney  
9 documenting the treatment progress of that person at least  
10 annually. Additionally, if the person fails to comply with any  
11 condition specified by the court, the court and the prosecuting  
12 attorney shall be notified forthwith.

13 Sec. 79. Section 30-2624, Reissue Revised Statutes of  
14 Nebraska, is amended to read:

15 30-2624. A visitor shall be trained in law, nursing,  
16 social work, mental health, mental retardation, gerontology, or  
17 developmental disabilities and shall be an officer, employee, or  
18 special appointee of the court with no personal interest in the  
19 proceedings.

20 Any qualified person may be appointed visitor of a  
21 proposed ward, except that it shall be unlawful for any owner, part  
22 owner, manager, administrator, or employee, or any spouse of an  
23 owner, part owner, manager, administrator, or employee of a nursing  
24 home, room and board home, convalescent home, group care home, or  
25 institution providing residential care to any person physically or  
26 mentally handicapped, infirm, or aged prior to January 1, 2002, and  
27 beginning January 1, 2002, of an assisted-living facility or  
28 residential care and treatment facility licensed under the Uniform

1 Facility Licensing Act providing residential care to any person  
2 physically or mentally handicapped, infirm, or aged to be appointed  
3 visitor of any such person residing, being under care, receiving  
4 treatment, or being housed in any such ~~home or institution~~ facility  
5 within the State of Nebraska.

6           The court shall select the visitor who has the expertise  
7 to most appropriately evaluate the needs of the person who is  
8 allegedly incapacitated.

9           The court shall maintain a current list of persons  
10 trained in or having demonstrated expertise in the areas of mental  
11 health, mental retardation, drug abuse, alcoholism, gerontology,  
12 nursing, and social work, for the purpose of appointing a suitable  
13 visitor.

14           Sec. 80. Section 30-2627, Revised Statutes Supplement,  
15 1998, is amended to read:

16           30-2627.     (a) Any competent person or a suitable  
17 institution may be appointed guardian of a person alleged to be  
18 incapacitated, except that it shall be unlawful for any agency  
19 providing residential care in an institution or community-based  
20 program, or any owner, part owner, manager, administrator,  
21 employee, or spouse of an owner, part owner, manager,  
22 administrator, or employee of any nursing home, room and board  
23 home, assisted-living facility, or institution engaged in the care,  
24 treatment, or housing of any person physically or mentally  
25 handicapped, infirm, or aged prior to January 1, 2002, and  
26 beginning January 1, 2002, of any assisted-living facility or  
27 residential care and treatment facility licensed under the Uniform  
28 Facility Licensing Act engaged in the care, treatment, or housing

1 of any person physically or mentally handicapped, infirm, or aged  
2 to be appointed guardian of any such person residing, being under  
3 care, receiving treatment, or being housed in any such ~~home,~~  
4 facility, ~~or institution~~ within the State of Nebraska. Nothing in  
5 this subsection shall prevent the spouse, adult child, parent, or  
6 other relative of the person alleged to be incapacitated from being  
7 appointed guardian or prevent the guardian officer for one of the  
8 Nebraska veterans homes as provided in section 80-327 from being  
9 appointed guardian or conservator for the person alleged to be  
10 incapacitated. It shall be unlawful for any county attorney or  
11 deputy county attorney appointed as guardian for a person alleged  
12 to be incapacitated to circumvent his or her duties or the rights  
13 of the ward pursuant to the Nebraska Mental Health Commitment Act  
14 by consenting to inpatient or outpatient psychiatric treatment over  
15 the objection of the ward.

16 (b) Persons who are not disqualified under subsection (a)  
17 of this section and who exhibit the ability to exercise the powers  
18 to be assigned by the court have priority for appointment as  
19 guardian in the following order:

20 (1) A person nominated most recently by one of the  
21 following methods:

22 (i) A person nominated by the incapacitated person in a  
23 power of attorney or a durable power of attorney;

24 (ii) A person acting under a power of attorney or durable  
25 power of attorney; or

26 (iii) A person nominated by an attorney in fact who is  
27 given power to nominate in a power of attorney or a durable power  
28 of attorney executed by the incapacitated person;

1 (2) The spouse of the incapacitated person;

2 (3) An adult child of the incapacitated person;

3 (4) A parent of the incapacitated person, including a  
4 person nominated by will or other writing signed by a deceased  
5 parent;

6 (5) Any relative of the incapacitated person with whom he  
7 or she has resided for more than six months prior to the filing of  
8 the petition;

9 (6) A person nominated by the person who is caring for  
10 him or her or paying benefits to him or her.

11 (c) When appointing a guardian, the court shall take into  
12 consideration the expressed wishes of the allegedly incapacitated  
13 person. The court, acting in the best interest of the  
14 incapacitated person, may pass over a person having priority and  
15 appoint a person having lower priority or no priority. With  
16 respect to persons having equal priority, the court shall select  
17 the person it deems best qualified to serve.

18 (d) In its order of appointment, unless waived by the  
19 court, the court shall require any person appointed as guardian to  
20 successfully complete within three months of such appointment a  
21 training program approved by the State Court Administrator. If the  
22 person appointed as guardian does not complete the training  
23 program, the court shall issue an order to show cause why such  
24 person should not be removed as guardian.

25 (e) The court may require a guardian to furnish a bond in  
26 an amount and conditioned in accordance with the provisions of  
27 sections 30-2640 and 30-2641.

28 Sec. 81. Section 30-2639, Revised Statutes Supplement,

1 1998, is amended to read:

2           30-2639.     (a) The court may appoint an individual, or a  
3 corporation with general power to serve as trustee, as conservator  
4 of the estate of a protected person, except that it shall be  
5 unlawful for any agency providing residential care in an  
6 institution or community-based program or any owner, part owner,  
7 manager, administrator, employee, or spouse of an owner, part  
8 owner, manager, administrator, or employee of any nursing home,  
9 room and board home, assisted-living facility, or institution  
10 engaged in the care, treatment, or housing of any person physically  
11 or mentally handicapped, infirm, or aged prior to January 1, 2002,  
12 and beginning January 1, 2002, of any assisted-living facility or  
13 residential care and treatment facility licensed under the Uniform  
14 Facility Licensing Act engaged in the care, treatment, or housing  
15 of any person physically or mentally handicapped, infirm, or aged  
16 to be appointed conservator of any such person residing, being  
17 under care, receiving treatment, or being housed in any such ~~home,~~  
18 ~~facility, or institution~~ within the State of Nebraska. Nothing in  
19 this subsection shall prevent the spouse, adult child, parent, or  
20 other relative of the person in need of protection from being  
21 appointed conservator.

22           (b) Persons who are not disqualified under subsection (a)  
23 of this section and who exhibit the ability to exercise the powers  
24 to be assigned by the court have priority for appointment as  
25 conservator in the following order:

26           (1) A person nominated most recently by one of the  
27 following methods:

28           (i) A person nominated by the protected person in a power

1 of attorney or durable power of attorney;

2 (ii) A person acting under a power of attorney or durable  
3 power of attorney; or

4 (iii) A person nominated by an attorney in fact who is  
5 given power to nominate in a power of attorney or a durable power  
6 of attorney executed by the protected person;

7 (2) A conservator, guardian of property, or other like  
8 fiduciary appointed or recognized by the appropriate court of any  
9 other jurisdiction in which the protected person resides;

10 (3) An individual or corporation nominated by the  
11 protected person if he or she is fourteen or more years of age and  
12 has, in the opinion of the court, sufficient mental capacity to  
13 make an intelligent choice;

14 (4) The spouse of the protected person;

15 (5) An adult child of the protected person;

16 (6) A parent of the protected person or a person  
17 nominated by the will of a deceased parent;

18 (7) Any relative of the protected person with whom he or  
19 she has resided for more than six months prior to the filing of the  
20 petition;

21 (8) A person nominated by the person who is caring for  
22 him or her or paying benefits to him or her.

23 (c) When appointing a conservator, the court shall take  
24 into consideration the expressed wishes of the person to be  
25 protected. A person having priority listed in subdivision (2),  
26 (4), (5), (6), or (7) of subsection (b) of this section may  
27 nominate in writing a person to serve in his or her stead. With  
28 respect to persons having equal priority, the court shall select

1 the person it deems best qualified of those willing to serve. The  
2 court, acting in the best interest of the protected person, may  
3 pass over a person having priority and appoint a person having  
4 lower priority or no priority.

5 (d) In its order of appointment, unless waived by the  
6 court, the court shall require any person appointed as conservator  
7 to successfully complete within three months of such appointment a  
8 training program approved by the State Court Administrator. If the  
9 person appointed as conservator does not complete the training  
10 program, the court shall issue an order to show cause why such  
11 person should not be removed as conservator.

12 Sec. 82. Section 30-3402, Reissue Revised Statutes of  
13 Nebraska, is amended to read:

14 30-3402. For purposes of sections 30-3401 to 30-3432:

15 (1) Adult shall mean any person who is nineteen years of  
16 age or older or who is or has been married;

17 (2) Attending physician shall mean the physician,  
18 selected by or assigned to a principal, who has primary  
19 responsibility for the care and treatment of such principal;

20 (3) Attorney in fact shall mean an adult properly  
21 designated and authorized under sections 30-3401 to 30-3432 to make  
22 health care decisions for a principal pursuant to a power of  
23 attorney for health care and shall include a successor attorney in  
24 fact;

25 (4) Health care shall mean any treatment, procedure, or  
26 intervention to diagnose, cure, care for, or treat the effects of  
27 disease, injury, and degenerative conditions;

28 (5) Health care decision shall include consent, refusal

1 of consent, or withdrawal of consent to health care. Health care  
2 decision shall not include (a) the withdrawal or withholding of  
3 routine care necessary to maintain patient comfort, (b) the  
4 withdrawal or withholding of the usual and typical provision of  
5 nutrition and hydration, or (c) the withdrawal or withholding of  
6 life-sustaining procedures or of artificially administered  
7 nutrition or hydration, except as provided by sections 30-3401 to  
8 30-3432;

9 (6) Health care provider shall mean an individual or  
10 facility licensed, certified, or otherwise authorized or permitted  
11 by law to administer health care in the ordinary course of business  
12 or professional practice and shall include all facilities defined  
13 in section 71-2017.01 prior to January 1, 2002, and beginning  
14 January 1, 2002, all facilities providing health care or treatment  
15 licensed under the Uniform Facility Licensing Act;

16 (7) Incapable shall mean the inability to understand and  
17 appreciate the nature and consequences of health care decisions,  
18 including the benefits of, risks of, and alternatives to any  
19 proposed health care or the inability to communicate in any manner  
20 an informed health care decision;

21 (8) Life-sustaining procedure shall mean any medical  
22 procedure, treatment, or intervention that (a) uses mechanical or  
23 other artificial means to sustain, restore, or supplant a  
24 spontaneous vital function and (b) when applied to a person  
25 suffering from a terminal condition or who is in a persistent  
26 vegetative state, serves only to prolong the dying process.  
27 Life-sustaining procedure shall not include routine care necessary  
28 to maintain patient comfort or the usual and typical provision of

1 nutrition and hydration;

2 (9) Persistent vegetative state shall mean a medical  
3 condition that, to a reasonable degree of medical certainty as  
4 determined in accordance with currently accepted medical standards,  
5 is characterized by a total and irreversible loss of consciousness  
6 and capacity for cognitive interaction with the environment and no  
7 reasonable hope of improvement;

8 (10) Power of attorney for health care shall mean a power  
9 of attorney executed in accordance with sections 30-3401 to 30-3432  
10 which authorizes a designated attorney in fact to make health care  
11 decisions for the principal when the principal is incapable;

12 (11) Principal shall mean an adult who, when competent,  
13 confers upon another adult a power of attorney for health care;

14 (12) Reasonably available shall mean that a person can be  
15 contacted with reasonable efforts by an attending physician or  
16 another person acting on behalf of the attending physician;

17 (13) Terminal condition shall mean an incurable and  
18 irreversible medical condition caused by injury, disease, or  
19 physical illness which, to a reasonable degree of medical  
20 certainty, will result in death regardless of the continued  
21 application of medical treatment including life-sustaining  
22 procedures; and

23 (14) Usual and typical provision of nutrition and  
24 hydration shall mean delivery of food and fluids orally, including  
25 by cup, eating utensil, bottle, or drinking straw.

26 Sec. 83. Section 32-944, Reissue Revised Statutes of  
27 Nebraska, is amended to read:

28 32-944. The election commissioner or county clerk may

1 train registered voters to act on behalf of the election  
2 commissioner or county clerk in administering the absentee ballot  
3 to residents or patients of nursing homes or hospitals prior to  
4 January 1, 2002, who have requested absentee ballots and beginning  
5 January 1, 2002, to recipients of treatment or care in a facility  
6 licensed under the Uniform Facility Licensing Act who have  
7 requested absentee ballots. Absentee ballots shall be administered  
8 by two registered voters who are not affiliated with the same  
9 political party. The election commissioner or county clerk shall  
10 adopt procedures to carry out this section.

11 Sec. 84. Section 37-1254.06, Reissue Revised Statutes of  
12 Nebraska, is amended to read:

13 37-1254.06. (1) Any physician, registered nurse, other  
14 trained person employed by a licensed institution or facility  
15 defined in section 71-2017.01, prior to January 1, 2002, and  
16 beginning January 1, 2002, by a facility licensed under the Uniform  
17 Facility Licensing Act or by a clinical laboratory certified  
18 pursuant to ~~the Nebraska Clinical Laboratories Certification Act,~~  
19 the federal Clinical Laboratory Improvement Act of 1967, as  
20 amended, or Title XVIII or XIX of the federal Social Security Act,  
21 as amended, to withdraw human blood for scientific or medical  
22 purposes, or a hospital shall be an agent of the State of Nebraska  
23 when performing the act of withdrawing blood at the request of a  
24 peace officer pursuant to section 37-1254.02. The state shall be  
25 liable in damages for any illegal or negligent acts or omissions of  
26 such agents in performing the act of withdrawing blood. The agent  
27 shall not be individually liable in damages or otherwise for any  
28 act done or omitted in performing the act of withdrawing blood at

1 the request of a peace officer pursuant to such section except for  
2 acts of willful, wanton, or gross negligence of the agent or of  
3 persons employed by such agent.

4 (2) Any person listed in subsection (1) of this section  
5 withdrawing a blood specimen for purposes of section 37-1254.02  
6 shall, upon request, furnish to any law enforcement agency or the  
7 person being tested a certificate stating that such specimen was  
8 taken in a medically acceptable manner. The certificate shall be  
9 signed under oath before a notary public and shall be admissible in  
10 any proceeding as evidence of the statements contained in the  
11 certificate. The form of the certificate shall be prescribed by  
12 the Department of Health and Human Services Regulation and  
13 Licensure and such forms shall be made available to the persons  
14 listed in subsection (1) of this section.

15 Sec. 85. Section 43-245, Reissue Revised Statutes of  
16 Nebraska, is amended to read:

17 43-245. For purposes of the Nebraska Juvenile Code,  
18 unless the context otherwise requires:

19 (1) Age of majority means nineteen years of age;

20 (2) Approved center means a center that has applied for  
21 and received approval from the Director of the Office of Dispute  
22 Resolution under section 25-2909;

23 (3) Cost or costs means (a) the sum or equivalent  
24 expended, paid, or charged for goods or services, or expenses  
25 incurred, or (b) the contracted or negotiated price;

26 (4) Juvenile means any person under the age of eighteen;

27 (5) Juvenile court means the separate juvenile court  
28 where it has been established pursuant to sections 43-2,111 to

1 43-2,127 and the county court sitting as a juvenile court in all  
2 other counties. Nothing in the Nebraska Juvenile Code shall be  
3 construed to deprive the district courts of their habeas corpus,  
4 common-law, or chancery jurisdiction or the county courts and  
5 district courts of jurisdiction of domestic relations matters as  
6 defined in section 25-2740;

7 (6) Juvenile detention facility has the same meaning as  
8 in section 83-4,125;

9 (7) Mediator for juvenile offender and victim mediation  
10 means a person who (a) has completed at least thirty hours of  
11 training in conflict resolution techniques, neutrality, agreement  
12 writing, and ethics set forth in section 25-2913, (b) has an  
13 additional eight hours of juvenile offender and victim mediation  
14 training, and (c) meets the apprenticeship requirements set forth  
15 in section 25-2913;

16 (8) Mental health facility means (a) prior to January 1,  
17 2002, a mental health center as defined in section 83-1006 or a  
18 government, private, or state hospital which treats mental illness  
19 and (b) beginning January 1, 2002, a facility which treats mental  
20 illness licensed under the Uniform Facility Licensing Act;

21 (9) Nonoffender means a juvenile who is subject to the  
22 jurisdiction of the juvenile court for reasons other than legally  
23 prohibited conduct, including, but not limited to, juveniles  
24 described in subdivision (3)(a) of section 43-247;

25 (10) Parent means one or both parents or a stepparent  
26 when such stepparent is married to the custodial parent as of the  
27 filing of the petition;

28 (11) Parties means the juvenile as described in section

1 43-247 and his or her parent, guardian, or custodian;

2 (12) Except in proceedings under the Nebraska Indian  
3 Child Welfare Act, relative means father, mother, grandfather,  
4 grandmother, brother, sister, stepfather, stepmother, stepbrother,  
5 stepsister, uncle, aunt, first cousin, nephew, or niece;

6 (13) Status offender means a juvenile who has been  
7 charged with or adjudicated for conduct which would not be a crime  
8 if committed by an adult, including, but not limited to, juveniles  
9 charged under subdivision (3)(b) of section 43-247 and sections  
10 53-180.01 and 53-180.02; and

11 (14) Traffic offense means any nonfelonious act in  
12 violation of a law or ordinance regulating vehicular or pedestrian  
13 travel, whether designated a misdemeanor or a traffic infraction.

14 Sec. 86. Section 44-526, Reissue Revised Statutes of  
15 Nebraska, is amended to read:

16 44-526. For purposes of the Standardized Health Claim  
17 Form Act:

18 (1) Ambulatory surgical facility ~~shall mean~~ means (a)  
19 prior to January 1, 2002, a facility, not a part of a hospital,  
20 which provides surgical treatment to patients not requiring  
21 hospitalization and which is licensed as a health clinic as defined  
22 by section 71-2017.01 but shall not include the offices of private  
23 physicians or dentists whether for individual or group practice and  
24 (b) beginning January 1, 2002, a facility which provides surgical  
25 treatment to patients not requiring hospitalization licensed as an  
26 ambulatory facility under the Uniform Facility Licensing Act;

27 (2) Health care ~~shall mean~~ means any treatment,  
28 procedure, or intervention to diagnose, cure, care for, or treat

1 the effects of disease or injury or congenital or degenerative  
2 condition;

3 (3) Health care practitioner ~~shall mean~~ means an  
4 individual or group of individuals in the form of a partnership,  
5 limited liability company, or corporation licensed, certified, or  
6 otherwise authorized or permitted by law to administer health care  
7 in the course of professional practice and ~~shall include~~ includes  
8 the health care professions and occupations which are regulated in  
9 Chapter 71;

10 (4) Hospital ~~shall mean~~ means prior to January 1, 2002, a  
11 hospital as defined by section 71-2017.01 and beginning January 1,  
12 2002, as defined by section 12 of this act, except state hospitals  
13 administered by the Department of Health and Human Services;

14 (5) Institutional care providers ~~shall mean~~ means prior  
15 to January 1, 2002, all facilities licensed or otherwise authorized  
16 or permitted by law to administer health care in the ordinary  
17 course of business and ~~shall include~~ includes all facilities  
18 defined in section 71-2017.01 and beginning January 1, 2002, all  
19 facilities providing health care or treatment licensed under the  
20 Uniform Facility Licensing Act;

21 (6) Issuer ~~shall mean~~ means an insurance company,  
22 fraternal benefit society, health maintenance organization,  
23 third-party administrator, or other entity reimbursing the costs of  
24 health care expenses;

25 (7) Medicaid ~~shall mean~~ means the medical assistance  
26 program pursuant to sections 68-1018 to 68-1025;

27 (8) Medicare ~~shall mean~~ means Title XVIII of the federal  
28 Social Security Act, 42 U.S.C. 1395 et seq., as amended; and

1                   (9) Uniform claim form ~~shall mean~~ means the claim forms  
2 and electronic transfer procedures developed pursuant to section  
3 44-527.

4                   Sec. 87. Section 44-771, Reissue Revised Statutes of  
5 Nebraska, is amended to read:

6                   44-771. Hospital shall mean ~~an institution~~ a facility  
7 licensed as a hospital by the Department of Health and Human  
8 Services Regulation and Licensure. ~~and described in subdivision~~  
9 ~~(2) of section 71-2017.01.~~

10                  Sec. 88. Section 44-772, Reissue Revised Statutes of  
11 Nebraska, is amended to read:

12                  44-772. Substance abuse treatment center shall mean an  
13 institution licensed as a substance abuse treatment center by the  
14 Department of Health and Human Services Regulation and Licensure  
15 and described in section 71-2017.01 prior to January 1, 2002, and  
16 beginning January 1, 2002, a facility which provides substance  
17 abuse treatment licensed as a residential care and treatment  
18 facility under the Uniform Facility Licensing Act, which provides a  
19 program for the inpatient or outpatient treatment of alcoholism  
20 pursuant to a written treatment plan approved and monitored by a  
21 physician and which is affiliated with a hospital under a  
22 contractual agreement with an established system for patient  
23 referral.

24                  Sec. 89. Section 44-782, Reissue Revised Statutes of  
25 Nebraska, is amended to read:

26                  44-782. No insurance company, health maintenance  
27 organization, or other health insurance provider shall deny payment  
28 for treatment of mental or nervous disorders under a policy,

1 contract, certificate, or other evidence of coverage issued or  
 2 delivered in Nebraska on the basis that the hospital or state  
 3 institution licensed as a hospital by the Department of Health and  
 4 Human Services Regulation and Licensure ~~and described in~~  
 5 ~~subdivision (2) of section 71-2017.01~~ providing such treatment is  
 6 publicly funded and charges are reduced or no fee is charged  
 7 depending on the patient's ability to pay.

8           Sec. 90. Section 44-2806, Reissue Revised Statutes of  
 9 Nebraska, is amended to read:

10           44-2806. Hospital shall mean (1) prior to January 1,  
 11 2002, a public or private institution licensed pursuant to sections  
 12 71-2017 to 71-2029 and (2) beginning January 1, 2002, a facility  
 13 licensed as a hospital pursuant to the Uniform Facility Licensing  
 14 Act.

15           Sec. 91. Section 44-2827.01, Reissue Revised Statutes of  
 16 Nebraska, is amended to read:

17           44-2827.01. (1) Any ~~general acute~~ hospital which  
 18 provides general acute care or psychiatric or mental care as  
 19 defined in subdivision (3) of section 71-2017.01 or a psychiatric  
 20 or mental hospital as defined in subdivision (7) of such section  
 21 operated by the Board of Regents of the University of Nebraska or  
 22 any physician employed by the Board of Regents of the University of  
 23 Nebraska may, in addition to the methods of establishing financial  
 24 responsibility provided in section 44-2827, establish financial  
 25 responsibility by a risk-loss trust.

26           (2) In order to establish financial responsibility  
 27 through the use of a risk-loss trust, the risk-loss trust shall be  
 28 approved in writing by the director. Such approval shall expire on

1 the last day of April in each year and shall be renewed annually  
2 thereafter if the risk-loss trust continues to comply with the  
3 requirements of the Nebraska Hospital-Medical Liability Act and any  
4 rules and regulations adopted and promulgated thereunder.

5 (3) The director shall approve the use of a risk-loss  
6 trust to establish financial responsibility if he or she determines  
7 from a review of the plan of operation or feasibility study for the  
8 risk-loss trust that (a) the risk-loss trust will comply with all  
9 of the applicable requirements of the act, (b) the risk-loss trust  
10 has a financial plan which provides for adequate funding and  
11 adequate reserves to establish and maintain financial  
12 responsibility, and (c) the risk-loss trust has a plan of  
13 management designed to provide for its competent operation and  
14 management.

15 (4) Any risk-loss trust shall be established and  
16 maintained only on an occurrence basis, shall maintain reserves for  
17 payment of claims, and shall process and act upon claims in  
18 accordance with guidelines acceptable for Nebraska domestic  
19 insurance companies. The funds, or any part thereof, of any  
20 risk-loss trust may be invested as authorized under the Insurers  
21 Investment Act for any domestic property and casualty insurance  
22 company.

23 (5) Any risk-loss trust shall file with the director, on  
24 or before March 1 of each year, a financial statement under oath  
25 for the year ending December 31 immediately preceding which shall  
26 include an actuarial or loss reserve specialist's opinion. The  
27 trust shall annually be audited by an independent accountant, and  
28 such audit shall be filed with the director.

1           (6) The director may examine the business affairs,  
2 records, and assets of such risk-loss trust to assure that it will  
3 be able to establish and maintain financial responsibility. Any  
4 examination conducted by the director or his or her authorized  
5 representative shall be at the expense of the risk-loss trust.

6           (7) If the director finds after notice to the Board of  
7 Regents of the University of Nebraska and a hearing that the  
8 risk-loss trust is not maintaining financial responsibility, he or  
9 she may order the board to take such action as is necessary to  
10 establish financial responsibility and upon failure by the board to  
11 comply therewith may revoke approval of such trust.

12           (8) If any hospital or physician establishes financial  
13 responsibility as provided in subsection (1) of this section, the  
14 annual surcharge amount which shall be levied against the board  
15 pursuant to section 44-2829 shall be established annually by the  
16 director after giving consideration to the following factors:

17           (a) The surcharge rate for hospitals and physicians set  
18 by the director pursuant to such section;

19           (b) The average rates charged by insurers of Nebraska  
20 hospitals and physicians;

21           (c) Variations in coverage provisions, liability limits,  
22 or deductibles between insurance provided by private insurers and  
23 the coverage provided by the risk-loss trust; and

24           (d) The loss experience of the board.

25           (9) The director may adopt and promulgate reasonable  
26 rules and regulations necessary and proper to carry out this  
27 section.

28           Sec. 92. Section 44-5418, Reissue Revised Statutes of

1 Nebraska, is amended to read:

2 44-5418. For purposes of the Utilization Review Act:

3 (1) Adverse determination means a determination by a  
4 health carrier or its designee utilization review agent that an  
5 admission, availability of care, continued stay, or other health  
6 care service has been reviewed and, based upon the information  
7 provided, does not meet the health carrier's requirements for  
8 medical necessity, appropriateness, health care setting, level of  
9 care, or effectiveness, and the requested health care service is  
10 therefor denied, reduced, or terminated;

11 (2) Ambulatory review means utilization review of health  
12 care services performed or provided in an outpatient setting;

13 (3) Case management means a coordinated set of activities  
14 conducted for individual patient management of serious,  
15 complicated, protracted, or other health conditions;

16 (4) Certification means a determination by a health  
17 carrier or its designee utilization review agent that an admission,  
18 availability of care, continued stay, or other health care service  
19 has been reviewed and, based on the information provided, satisfies  
20 the health carrier's requirements for medical necessity,  
21 appropriateness, health care setting, level of care, and  
22 effectiveness;

23 (5) Clinical review criteria means the written screening  
24 procedures, decision abstracts, clinical protocols, and practice  
25 guidelines used by the health carrier to determine the necessity  
26 and appropriateness of health care services;

27 (6) Closed plan means a managed care plan that requires  
28 covered persons to use participating providers under the terms of

1 the managed care plan;

2 (7) Concurrent review means utilization review conducted  
3 during a patient's hospital stay or course of treatment;

4 (8) Covered person means a policyholder, subscriber,  
5 enrollee, or other individual participating in a health benefit  
6 plan;

7 (9) Department means the Department of Insurance;

8 (10) Director means the Director of Insurance;

9 (11) Discharge planning means the formal process for  
10 determining, prior to discharge from a facility, the coordination  
11 and management of the care that a patient receives following  
12 discharge from a facility;

13 (12) Emergency medical condition means a medical or  
14 behavioral condition, the onset of which is sudden, that manifests  
15 itself by symptoms of sufficient severity, including, but not  
16 limited to, severe pain, that a prudent layperson, possessing an  
17 average knowledge of medicine and health, could reasonably expect  
18 the absence of immediate medical attention to result in (a) placing  
19 the health of the person afflicted with such condition in serious  
20 jeopardy or, in the case of a behavioral condition, placing the  
21 health of such person or others in serious jeopardy, (b) serious  
22 impairment to such person's bodily functions, (c) serious  
23 impairment of any bodily organ or part of such person, or (d)  
24 serious disfigurement of such person;

25 (13) Emergency services means health care services  
26 necessary to screen and stabilize a covered person in connection  
27 with an emergency medical condition;

28 (14) Facility means an institution providing health care

1 services or a health care setting, including, but not limited to,  
2 hospitals and other licensed inpatient centers, ambulatory surgical  
3 or treatment centers, skilled nursing centers, residential  
4 treatment centers prior to January 1, 2002, and beginning January  
5 1, 2002, facilities providing health care or treatment licensed  
6 under the Uniform Facility Licensing Act; diagnostic, laboratory,  
7 and imaging centers; 7 and rehabilitation and other therapeutic  
8 health settings. Facility does not include physicians' offices;

9 (15) Health benefit plan means a policy, contract,  
10 certificate, or agreement entered into, offered, or issued by any  
11 person to provide, deliver, arrange for, pay for, or reimburse any  
12 of the costs of health care services. Health benefit plan does not  
13 include workers' compensation insurance coverage;

14 (16) Health care professional means a physician or other  
15 health care practitioner licensed, certified, or registered to  
16 perform specified health services consistent with state law;

17 (17) Health care provider or provider means a health care  
18 professional or a facility;

19 (18) Health care services or health services means  
20 services for the diagnosis, prevention, treatment, cure, or relief  
21 of a health condition, illness, injury, or disease;

22 (19) Health carrier means an entity that contracts,  
23 offers to contract, or enters into an agreement to provide,  
24 deliver, arrange for, pay for, or reimburse any of the costs of  
25 health care services, including a sickness and accident insurance  
26 company, a health maintenance organization, a prepaid limited  
27 health service organization, a prepaid dental service corporation,  
28 or any other entity providing a plan of health insurance, health

1 benefits, or health care services. Health carrier does not include  
2 a workers' compensation insurer, risk management pool, or  
3 self-insured employer who contracts for services to be provided  
4 through a managed care plan certified pursuant to section  
5 48-120.02;

6 (20) Managed care plan means a health benefit plan,  
7 including closed plans and open plans, that either requires a  
8 covered person to use or creates financial incentives by providing  
9 a more favorable deductible, coinsurance, or copayment level for a  
10 covered person to use health care providers managed, owned, under  
11 contract with, or employed by the health carrier;

12 (21) Network means the group of participating providers  
13 providing services to a managed care plan;

14 (22) Open plan means a managed care plan other than a  
15 closed plan that provides incentives, including financial  
16 incentives, for covered persons to use participating providers  
17 under the terms of the managed care plan;

18 (23) Participating provider means a provider who, under a  
19 contract with the health carrier or with its contractor or  
20 subcontractor, has agreed to provide health care services to  
21 covered persons with an expectation of receiving payment, other  
22 than coinsurance, copayments, or deductibles, directly or  
23 indirectly from the health carrier;

24 (24) Person means an individual, a corporation, a  
25 partnership, an association, a joint venture, a joint stock  
26 company, a trust, an unincorporated organization, any similar  
27 entity, or any combination of the foregoing;

28 (25) Prospective review means utilization review

1 conducted prior to an admission or a course of treatment;

2 (26) Retrospective review means utilization review of  
3 medical necessity that is conducted after health services have been  
4 provided to a patient, but does not include the review of a claim  
5 that is limited to an evaluation of reimbursement levels, veracity  
6 of documentation, accuracy of coding, or adjudication for payment;

7 (27) Second opinion means an opportunity or requirement  
8 to obtain a clinical evaluation by a provider other than the one  
9 originally making a recommendation for a proposed health service to  
10 assess the clinical necessity and appropriateness of the initial  
11 proposed health service;

12 (28) Significant beneficial interest means the ownership  
13 of any financial interest that is greater than the lesser of (a)  
14 five percent of the whole or (b) five thousand dollars;

15 (29) Stabilize means when, with respect to transfer to  
16 another facility, the examining physician at a hospital emergency  
17 department where an individual has sought treatment for an  
18 emergency medical condition has determined, within reasonable  
19 medical probability:

20 (a) With respect to an emergency medical condition, that  
21 no material deterioration of the condition is likely to result from  
22 or occur during a transfer of the individual from the facility; and

23 (b) The receiving facility has available space and  
24 qualified personnel for the treatment of the individual and has  
25 agreed to accept transfer of the individual and provide appropriate  
26 medical treatment;

27 (30) Utilization review means a set of formal techniques  
28 designed to monitor the use of, or evaluate the clinical necessity,

1 appropriateness, efficacy, or efficiency of, health care services,  
2 procedures, or facilities. Techniques may include ambulatory  
3 review, prospective review, second opinion, certification,  
4 concurrent review, case management, discharge planning, or  
5 retrospective review. Utilization review does not include elective  
6 requests for clarification of coverage; and

7 (31) Utilization review agent means any person, company,  
8 health carrier, organization, or other entity performing  
9 utilization review. The following shall not be considered  
10 utilization review agents:

11 (a) An agency of the federal government;

12 (b) An agent acting on behalf of the federal government  
13 or a federally qualified peer review organization or the State of  
14 Nebraska but only to the extent that the agent is providing  
15 services to the federal government or the State of Nebraska;

16 (c) An agency of the State of Nebraska;

17 (d) Internal quality assurance programs conducted by  
18 hospitals, home health agencies, preferred provider organizations,  
19 health maintenance organizations, other managed care entities,  
20 clinics, or private offices for purposes other than for allowing,  
21 denying, or making a recommendation on allowing or denying a  
22 covered person's claim for payment;

23 (e) Nebraska licensed pharmacists, pharmacies, or  
24 organizations thereof while engaged in the practice of pharmacy,  
25 including the dispensing of drugs, participating in drug  
26 utilization reviews, and monitoring of patient drug therapy;

27 (f) Any person performing utilization review of workers'  
28 compensation benefits but only to the extent that the person is

1 providing utilization review of workers' compensation benefits;

2 (g) Any individual or group employed or used by a  
3 utilization review agent certified under the Utilization Review Act  
4 when performing utilization review for or on behalf of such agent,  
5 including nurses and physicians; and

6 (h) An employee benefit plan or any person on behalf of  
7 an employee benefit plan to the extent that the activities of such  
8 plan or person are exempt from state regulation of the business of  
9 insurance pursuant to the federal Employee Retirement Income  
10 Security Act of 1974, as amended.

11 Sec. 93. Section 44-6827, Reissue Revised Statutes of  
12 Nebraska, is amended to read:

13 44-6827. For purposes of the Managed Care Emergency  
14 Services Act:

15 (1) Closed plan means a managed care plan that requires  
16 covered persons to use participating providers under the terms of  
17 the managed care plan;

18 (2) Covered benefits means those health care services to  
19 which a covered person is entitled under the terms of a health  
20 benefit plan;

21 (3) Covered person means a policyholder, subscriber,  
22 enrollee, or other individual participating in a health benefit  
23 plan;

24 (4) Director means the Director of Insurance;

25 (5) Emergency medical condition means a medical or  
26 behavioral condition, the onset of which is sudden, that manifests  
27 itself by symptoms of sufficient severity, including, but not  
28 limited to, severe pain, that a prudent layperson, possessing an

1 average knowledge of medicine and health, could reasonably expect  
2 the absence of immediate medical attention to result in (a) placing  
3 the health of the person afflicted with such condition in serious  
4 jeopardy or, in the case of a behavioral condition, placing the  
5 health of such persons or others in serious jeopardy, (b) serious  
6 impairment to such person's bodily functions, (c) serious  
7 impairment of any bodily organ or part of such person, or (d)  
8 serious disfigurement of such person;

9 (6) Emergency services means health care services  
10 necessary to screen and stabilize a covered person in connection  
11 with an emergency medical condition;

12 (7) Facility means an institution providing health care  
13 services or a health care setting, including, but not limited to,  
14 hospitals and other licensed inpatient centers, ambulatory surgical  
15 or treatment centers, skilled nursing centers, residential  
16 treatment centers prior to January 1, 2002, and beginning January  
17 1, 2002, facilities providing health care or treatment licensed  
18 under the Uniform Facility Licensing Act; diagnostic, laboratory,  
19 and imaging centers; ~~7~~ and rehabilitation and other therapeutic  
20 health settings. ~~Facilities~~ Facility does not include physicians'  
21 offices;

22 (8) Health benefit plan means a policy, contract,  
23 certificate, or agreement entered into, offered, or issued by any  
24 person to provide, deliver, arrange for, pay for, or reimburse the  
25 costs of health care services. Health benefit plan does not  
26 include workers' compensation insurance coverage;

27 (9) Health care professional means a physician or other  
28 health care practitioner licensed, certified, or registered to

1 perform specified health care services consistent with state law;

2 (10) Health care provider means a health care  
3 professional or a facility;

4 (11) Health care services means services for the  
5 diagnosis, prevention, treatment, cure, or relief of a health  
6 condition, illness, injury, or disease;

7 (12) Health carrier means an entity that contracts,  
8 offers to contract, or enters into an agreement to provide,  
9 deliver, arrange for, pay for, or reimburse any of the costs of  
10 health care services, including a sickness and accident insurance  
11 company, a health maintenance organization, a prepaid limited  
12 health service organization, a prepaid dental service corporation,  
13 or any other entity providing a plan of health insurance, health  
14 benefits, or health care services. Health carrier does not include  
15 a workers' compensation insurer, risk management pool, or  
16 self-insured employer who contracts for services to be provided  
17 through a managed care plan certified pursuant to section  
18 48-120.02;

19 (13) Managed care plan means a health benefit plan,  
20 including closed plans and open plans, that either requires a  
21 covered person to use or creates financial incentives by providing  
22 a more favorable deductible, coinsurance, or copayment level for a  
23 covered person to use health care providers managed, owned, under  
24 contract with, or employed by the health carrier;

25 (14) Network means the group of participating providers  
26 providing services to a managed care plan;

27 (15) Open plan means a managed care plan other than a  
28 closed plan that provides incentives, including financial

1 incentives, for covered persons to use participating providers  
2 under the terms of the managed care plan;

3 (16) Participating provider means a provider who, under a  
4 contract with the health carrier or with its contractor or  
5 subcontractor, has agreed to provide health care services to  
6 covered persons with an expectation of receiving payment, other  
7 than coinsurance, copayments, or deductibles, directly or  
8 indirectly from the health carrier;

9 (17) Person means an individual, a corporation, a  
10 partnership, an association, a joint venture, joint stock company,  
11 a trust, an unincorporated organization, any similar entity, or any  
12 combination of the foregoing; and

13 (18) Stabilize means when, with respect to transfer to  
14 another facility, the examining physician at a hospital emergency  
15 department where an individual has sought treatment for an  
16 emergency medical condition has determined, within reasonable  
17 medical probability:

18 (a) With respect to an emergency medical condition, that  
19 no material deterioration of the condition is likely to result from  
20 or occur during a transfer of the individual from the facility; and

21 (b) The receiving facility has available space and  
22 qualified personnel for the treatment of the individual and has  
23 agreed to accept transfer of the individual and provide appropriate  
24 medical treatment.

25 Sec. 94. Section 44-7003, Reissue Revised Statutes of  
26 Nebraska, is amended to read:

27 44-7003. For purposes of the Health Care Professional  
28 Credentialing Verification Act:

1           (1) Closed plan means a managed care plan that requires a  
2 covered person to use participating providers under the terms of  
3 the managed care plan;

4           (2) Covered person means a policyholder, subscriber,  
5 enrollee, or other individual participating in a health benefit  
6 plan;

7           (3) Credentialing verification means the process of  
8 obtaining and verifying information about a health care  
9 professional, and evaluating that health care professional, when  
10 that health care professional applies to become a participating  
11 provider in a managed care plan offered by a health carrier;

12           (4) Director means the Director of Insurance;

13           (5) Facility means an institution providing health care  
14 services or a health care setting, including, but not limited to,  
15 hospitals and other licensed inpatient centers, ambulatory surgical  
16 or treatment centers, skilled nursing centers, residential  
17 treatment centers prior to January 1, 2002, and beginning January  
18 1, 2002, facilities providing health care or treatment licensed  
19 under the Uniform Facility Licensing Act; diagnostic, laboratory,  
20 and imaging centers; 7 and rehabilitation and other therapeutic  
21 health settings. Facility does not include physicians' offices;

22           (6) Health benefit plan means a policy, contract,  
23 certificate, or agreement entered into, offered, or issued by any  
24 person to provide, deliver, arrange for, pay for, or reimburse any  
25 of the costs of health care services. Health benefit plan does not  
26 include workers' compensation insurance coverage;

27           (7) Health care professional means a physician or other  
28 health care practitioner licensed, certified, or registered to

1 perform specified health services consistent with state law;

2 (8) Health care provider or provider means a health care  
3 professional or a facility;

4 (9) Health care services or health services means  
5 services for the diagnosis, prevention, treatment, cure, or relief  
6 of a health condition, illness, injury, or disease;

7 (10) Health carrier means an entity that contracts,  
8 offers to contract, or enters into an agreement to provide,  
9 deliver, arrange for, pay for, or reimburse any of the costs of  
10 health care services, including a sickness and accident insurance  
11 company, a health maintenance organization, a prepaid limited  
12 health service organization, a prepaid dental service corporation,  
13 or any other entity providing a plan of health insurance, health  
14 benefits, or health care services. Health carrier does not include  
15 a workers' compensation insurer, risk management pool, or  
16 self-insured employer who contracts for services to be provided  
17 through a managed care plan certified pursuant to section  
18 48-120.02;

19 (11) Managed care plan means a health benefit plan,  
20 including closed plans and open plans, that either requires a  
21 covered person to use or creates financial incentives by providing  
22 a more favorable deductible, coinsurance, or copayment level for a  
23 covered person to use health care providers managed, owned, under  
24 contract with, or employed by the health carrier;

25 (12) Open plan means a managed care plan other than a  
26 closed plan that provides incentives, including financial  
27 incentives, for covered persons to use participating providers  
28 under the terms of the managed care plan;

1           (13) Participating provider means a provider who, under a  
2 contract with the health carrier or with its contractor or  
3 subcontractor, has agreed to provide health care services to  
4 covered persons with an expectation of receiving payment, other  
5 than coinsurance, copayments, or deductibles, directly or  
6 indirectly from the health carrier;

7           (14) Person means an individual, a corporation, a  
8 partnership, an association, a joint venture, a joint stock  
9 company, a trust, an unincorporated organization, any similar  
10 entity, or any combination of the foregoing;

11           (15) Primary verification means verification by the  
12 health carrier of a health care professional's credentials based  
13 upon evidence obtained from the issuing source of the credential;  
14 and

15           (16) Secondary verification means verification by the  
16 health carrier of a health care professional's credentials based  
17 upon evidence obtained by means other than direct contact with the  
18 issuing source of the credential, such as copies of certificates  
19 provided by the applying health care professional.

20           Sec. 95. Section 44-7103, Reissue Revised Statutes of  
21 Nebraska, is amended to read:

22           44-7103. For purposes of the Managed Care Plan Network  
23 Adequacy Act:

24           (1) Closed plan means a managed care plan that requires a  
25 covered person to use participating providers under the terms of  
26 the managed care plan;

27           (2) Covered benefits or benefits means those health care  
28 services to which a covered person is entitled under the terms of a

1 health benefit plan;

2 (3) Covered person means a policyholder, subscriber,  
3 enrollee, or other individual participating in a health benefit  
4 plan;

5 (4) Director means the Director of Insurance;

6 (5) Emergency medical condition means a medical or  
7 behavioral condition, the onset of which is sudden, that manifests  
8 itself by symptoms of sufficient severity, including, but not  
9 limited to, severe pain, that a prudent layperson, possessing an  
10 average knowledge of medicine and health, could reasonably expect  
11 the absence of immediate medical attention to result in (a) placing  
12 the health of the person afflicted with such condition in serious  
13 jeopardy or, in the case of a behavioral condition, placing the  
14 health of such persons or others in serious jeopardy, (b) serious  
15 impairment to such person's bodily functions, (c) serious  
16 impairment of any bodily organ or part of such person, or (d)  
17 serious disfigurement of such person;

18 (6) Emergency services means health care services  
19 necessary to screen and stabilize a covered person in connection  
20 with an emergency medical condition;

21 (7) Facility means an institution providing health care  
22 services or a health care setting, including, but not limited to,  
23 hospitals and other licensed inpatient centers, ambulatory surgical  
24 or treatment centers, skilled nursing centers, residential  
25 treatment centers prior to January 1, 2002, and beginning January  
26 1, 2002, facilities providing health care or treatment licensed  
27 under the Uniform Facility Licensing Act; diagnostic, laboratory,  
28 and imaging centers; 7 and rehabilitation and other therapeutic

1 health settings. Facility does not include physicians' offices;

2 (8) Health benefit plan means a policy, contract,  
3 certificate, or agreement entered into, offered, or issued by any  
4 person to provide, deliver, arrange for, pay for, or reimburse any  
5 of the costs of health care services. Health benefit plan does not  
6 include workers' compensation insurance coverage;

7 (9) Health care professional means a physician or other  
8 health care practitioner licensed, certified, or registered to  
9 perform specified health services consistent with state law;

10 (10) Health care provider or provider means a health care  
11 professional or a facility;

12 (11) Health care services or health services means  
13 services for the diagnosis, prevention, treatment, cure, or relief  
14 of a health condition, illness, injury, or disease;

15 (12) Health carrier means an entity that contracts,  
16 offers to contract, or enters into an agreement to provide,  
17 deliver, arrange for, pay for, or reimburse any of the costs of  
18 health care services, including a sickness and accident insurance  
19 company, a health maintenance organization, a prepaid limited  
20 health service organization, a prepaid dental service corporation,  
21 or any other entity providing a plan of health insurance, health  
22 benefits, or health care services. Health carrier does not include  
23 a workers' compensation insurer, risk management pool, or  
24 self-insured employer who contracts for services to be provided  
25 through a managed care plan certified pursuant to section  
26 48-120.02;

27 (13) Intermediary means a person authorized to negotiate  
28 and execute provider contracts with health carriers on behalf of

1 health care providers or on behalf of a network;

2 (14) Managed care plan means a health benefit plan,  
3 including closed plans and open plans, that either requires a  
4 covered person to use or creates financial incentives by providing  
5 a more favorable deductible, coinsurance, or copayment level for a  
6 covered person to use health care providers managed, owned, under  
7 contract with, or employed by the health carrier;

8 (15) Network means the group of participating providers  
9 providing services to a managed care plan;

10 (16) Open plan means a managed care plan other than a  
11 closed plan that provides incentives, including financial  
12 incentives, for covered persons to use participating providers  
13 under the terms of the managed care plan;

14 (17) Participating provider means a provider who, under a  
15 contract with the health carrier or with its contractor or  
16 subcontractor, has agreed to provide health care services to  
17 covered persons with an expectation of receiving payment, other  
18 than coinsurance, copayments, or deductibles, directly or  
19 indirectly from the health carrier;

20 (18) Person means an individual, a corporation, a  
21 partnership, an association, a joint venture, a joint stock  
22 company, a trust, an unincorporated organization, any similar  
23 entity, or any combination of the foregoing;

24 (19) Primary care professional means a participating  
25 health care professional designated by the health carrier to  
26 supervise, coordinate, or provide initial care or continuing care  
27 to a covered person and who may be required by the health carrier  
28 to initiate a referral for specialty care and maintain supervision

1 of health care services rendered to the covered person; and

2 (20) Stabilize means when, with respect to transfer to  
3 another facility, the examining physician at a hospital emergency  
4 department where an individual has sought treatment for an  
5 emergency medical condition has determined, within reasonable  
6 medical probability:

7 (a) With respect to an emergency medical condition, that  
8 no material deterioration of the condition is likely to result from  
9 or occur during a transfer of the individual from the facility; and

10 (b) The receiving facility has available space and  
11 qualified personnel for the treatment of the individual and has  
12 agreed to accept transfer of the individual and provide appropriate  
13 medical treatment.

14 Sec. 96. Section 44-7203, Reissue Revised Statutes of  
15 Nebraska, is amended to read:

16 44-7203. For purposes of the Quality Assessment and  
17 Improvement Act:

18 (1) Closed plan means a managed care plan that requires a  
19 covered person to use participating providers under the terms of  
20 the managed care plan;

21 (2) Consumer means someone in the general public who may  
22 or may not be a covered person or a purchaser of health care,  
23 including employers;

24 (3) Covered person means a policyholder, subscriber,  
25 enrollee, or other individual participating in a health benefit  
26 plan;

27 (4) Department means the Department of Insurance;

28 (5) Director means the Director of Insurance;

1           (6) Facility means an institution providing health care  
2 services or a health care setting, including, but not limited to,  
3 hospitals and other licensed inpatient centers, ambulatory surgical  
4 or treatment centers, skilled nursing centers, residential  
5 treatment centers prior to January 1, 2002, and beginning January  
6 1, 2002, facilities providing health care or treatment licensed  
7 under the Uniform Facility Licensing Act; diagnostic, laboratory,  
8 and imaging centers; 7 and rehabilitation and other therapeutic  
9 health settings. Facility does not include physicians' offices;

10           (7) Health benefit plan means a policy, contract,  
11 certificate, or agreement entered into, offered, or issued by any  
12 person to provide, deliver, arrange for, pay for, or reimburse any  
13 of the costs of health care services. Health benefit plan does not  
14 include workers' compensation insurance coverage;

15           (8) Health care professional means a physician or other  
16 health care practitioner licensed, certified, or registered to  
17 perform specified health services consistent with state law;

18           (9) Health care provider or provider means a health care  
19 professional or a facility;

20           (10) Health care services or health services means  
21 services for the diagnosis, prevention, treatment, cure, or relief  
22 of a health condition, illness, injury, or disease;

23           (11) Health carrier means an entity that contracts,  
24 offers to contract, or enters into an agreement to provide,  
25 deliver, arrange for, pay for, or reimburse any of the costs of  
26 health care services, including a sickness and accident insurance  
27 company, a health maintenance organization, a prepaid limited  
28 health service organization, a prepaid dental service corporation,

1 or any other entity providing a plan of health insurance, health  
2 benefits, or health care services. Health carrier does not include  
3 a workers' compensation insurer, risk management pool, or  
4 self-insured employer who contracts for services to be provided  
5 through a managed care plan certified pursuant to section  
6 48-120.02;

7 (12) Managed care plan means a health benefit plan,  
8 including closed plans and open plans, that either requires a  
9 covered person to use or creates financial incentives by providing  
10 a more favorable deductible, coinsurance, or copayment level for a  
11 covered person to use health care providers managed, owned, under  
12 contract with, or employed by the health carrier;

13 (13) Open plan means a managed care plan other than a  
14 closed plan that provides incentives, including financial  
15 incentives, for covered persons to use participating providers  
16 under the terms of the managed care plan;

17 (14) Participating provider means a provider who, under a  
18 contract with the health carrier or with its contractor or  
19 subcontractor, has agreed to provide health care services to  
20 covered persons with an expectation of receiving payment, other  
21 than coinsurance, copayments, or deductibles, directly or  
22 indirectly from the health carrier;

23 (15) Person means an individual, a corporation, a  
24 partnership, an association, a joint venture, a joint stock  
25 company, a trust, an unincorporated organization, any similar  
26 entity, or any combination of the foregoing;

27 (16) Quality assessment means the measurement and  
28 evaluation of the quality and outcomes of medical care provided to

1 individuals, groups, or populations; and

2 (17) Quality improvement means the effort to improve the  
3 processes and outcomes related to the provision of care within the  
4 health benefit plan.

5 Sec. 97. Section 44-7303, Reissue Revised Statutes of  
6 Nebraska, is amended to read:

7 44-7303. For purposes of the Health Carrier Grievance  
8 Procedure Act:

9 (1) Adverse determination means a determination by a  
10 health carrier or its designee utilization review agent that an  
11 admission, availability of care, continued stay, or other health  
12 care service has been reviewed and, based upon the information  
13 provided, does not meet the health carrier's requirements for  
14 medical necessity, appropriateness, health care setting, level of  
15 care, or effectiveness, and the requested health care service is  
16 therefor denied, reduced, or terminated;

17 (2) Ambulatory review means utilization review of health  
18 care services performed or provided in an outpatient setting;

19 (3) Case management means a coordinated set of activities  
20 conducted for individual patient management of serious,  
21 complicated, protracted, or other health conditions;

22 (4) Certification means a determination by a health  
23 carrier or its designee utilization review agent that an admission,  
24 availability of care, continued stay, or other health care service  
25 has been reviewed and, based on the information provided, satisfies  
26 the health carrier's requirements for medical necessity,  
27 appropriateness, health care setting, level of care, and  
28 effectiveness;

1           (5) Clinical peer means a physician or other health care  
2 professional who holds a nonrestricted license in a state of the  
3 United States and in the same or similar specialty as typically  
4 manages the medical condition, procedure, or treatment under  
5 review;

6           (6) Clinical review criteria means the written screening  
7 procedures, decision abstracts, clinical protocols, and practice  
8 guidelines used by the health carrier to determine the necessity  
9 and appropriateness of health care services;

10           (7) Closed plan means a managed care plan that requires a  
11 covered person to use participating providers under the terms of  
12 the managed care plan;

13           (8) Concurrent review means utilization review conducted  
14 during a patient's hospital stay or course of treatment;

15           (9) Covered person means a policyholder, subscriber,  
16 enrollee, or other individual participating in a health benefit  
17 plan;

18           (10) Director means the Director of Insurance;

19           (11) Discharge planning means the formal process for  
20 determining, prior to discharge from a facility, the coordination  
21 and management of the care that a patient receives following  
22 discharge from a facility;

23           (12) Emergency medical condition means a medical or  
24 behavioral condition, the onset of which is sudden, that manifests  
25 itself by symptoms of sufficient severity, including, but not  
26 limited to, severe pain, that a prudent layperson, possessing an  
27 average knowledge of medicine and health, could reasonably expect  
28 the absence of immediate medical attention to result in (a) placing

1 the health of the person afflicted with such condition in serious  
2 jeopardy or, in the case of a behavioral condition, placing the  
3 health of such persons or others in serious jeopardy, (b) serious  
4 impairment to such person's bodily functions, (c) serious  
5 impairment of any bodily organ or part of such person, or (d)  
6 serious disfigurement of such person;

7 (13) Emergency services means health care services  
8 necessary to screen and stabilize a covered person in connection  
9 with an emergency medical condition;

10 (14) Facility means an institution providing health care  
11 services or a health care setting, including, but not limited to,  
12 hospitals and other licensed inpatient centers, ambulatory surgical  
13 or treatment centers, skilled nursing centers, residential  
14 treatment centers prior to January 1, 2002, and beginning January  
15 1, 2002, facilities providing health care or treatment licensed  
16 under the Uniform Facility Licensing Act; diagnostic, laboratory,  
17 and imaging centers; 7 and rehabilitation and other therapeutic  
18 health settings. Facility does not include physicians' offices;

19 (15) Grievance means a written complaint submitted in  
20 accordance with the health carrier's formal grievance procedure by  
21 or on behalf of a covered person regarding any aspect of the  
22 managed care plan, relative to the covered person, such as:

23 (a) Availability, delivery, or quality of health care  
24 services, including a complaint regarding an adverse determination  
25 made pursuant to utilization review;

26 (b) Claims payment, handling, or reimbursement for health  
27 care services; or

28 (c) Matters pertaining to the contractual relationship

1 between a covered person and a health carrier;

2 (16) Health benefit plan means a policy, contract,  
3 certificate, or agreement entered into, offered, or issued by any  
4 person to provide, deliver, arrange for, pay for, or reimburse any  
5 of the costs of health care services. Health benefit plan does not  
6 include workers' compensation insurance coverage;

7 (17) Health care professional means a physician or other  
8 health care practitioner licensed, certified, or registered to  
9 perform specified health services consistent with state law;

10 (18) Health care provider or provider means a health care  
11 professional or a facility;

12 (19) Health care services or health services means  
13 services for the diagnosis, prevention, treatment, cure, or relief  
14 of a health condition, illness, injury, or disease;

15 (20) Health carrier means an entity that contracts,  
16 offers to contract, or enters into an agreement to provide,  
17 deliver, arrange for, pay for, or reimburse any of the costs of  
18 health care services, including a sickness and accident insurance  
19 company, a health maintenance organization, a prepaid limited  
20 health service organization, a prepaid dental service corporation,  
21 or any other entity providing a plan of health insurance, health  
22 benefits, or health care services. Health carrier does not include  
23 a workers' compensation insurer, risk management pool, or  
24 self-insured employer who contracts for services to be provided  
25 through a managed care plan certified pursuant to section  
26 48-120.02;

27 (21) Managed care plan means a health benefit plan,  
28 including closed plans and open plans, that either requires a

1 covered person to use or creates financial incentives by providing  
2 a more favorable deductible, coinsurance, or copayment level for a  
3 covered person to use health care providers managed, owned, under  
4 contract with, or employed by the health carrier;

5 (22) Network means the group of participating providers  
6 providing services to a managed care plan;

7 (23) Open plan means a managed care plan other than a  
8 closed plan that provides incentives, including financial  
9 incentives, for covered persons to use participating providers  
10 under the terms of the managed care plan;

11 (24) Participating provider means a provider who, under a  
12 contract with the health carrier or with its contractor or  
13 subcontractor, has agreed to provide health care services to  
14 covered persons with an expectation of receiving payment, other  
15 than coinsurance, copayments, or deductibles, directly or  
16 indirectly from the health carrier;

17 (25) Person means an individual, a corporation, a  
18 partnership, an association, a joint venture, a joint stock  
19 company, a trust, an unincorporated organization, any similar  
20 entity, or any combination of the foregoing;

21 (26) Prospective review means utilization review  
22 conducted prior to an admission or a course of treatment;

23 (27) Retrospective review means a review of medical  
24 necessity conducted after services have been provided to a patient,  
25 but does not include the review of a claim that is limited to an  
26 evaluation of reimbursement levels, veracity of documentation,  
27 accuracy of coding, or adjudication for payment;

28 (28) Second opinion means an opportunity or requirement

1 to obtain a clinical evaluation by a provider other than the one  
2 originally making a recommendation for a proposed health service to  
3 assess the clinical necessity and appropriateness of the initial  
4 proposed health service;

5 (29) Stabilize means when, with respect to transfer to  
6 another facility, the examining physician at a hospital emergency  
7 department where an individual has sought treatment for an  
8 emergency medical condition has determined, within reasonable  
9 medical probability:

10 (a) With respect to an emergency medical condition, that  
11 no material deterioration of the condition is likely to result from  
12 or occur during a transfer of the individual from the facility; and

13 (b) The receiving facility has available space and  
14 qualified personnel for the treatment of the individual and has  
15 agreed to accept transfer of the individual and provide appropriate  
16 medical treatment;

17 (30) Utilization review means a set of formal techniques  
18 designed to monitor the use of, or evaluate the clinical necessity,  
19 appropriateness, efficacy, or efficiency of health care services,  
20 procedures, providers, or facilities. Techniques may include  
21 ambulatory review, prospective review, second opinion,  
22 certification, concurrent review, case management, discharge  
23 planning, or retrospective review. Utilization review does not  
24 include elective requests for clarification of coverage; and

25 (31) Written means transmission of correspondence by  
26 mail, facsimile, or electronic medium.

27 Sec. 98. Section 58-212, Reissue Revised Statutes of  
28 Nebraska, is amended to read:

1           58-212. Hospital or nursing home shall mean (1) prior to  
2 January 1, 2002, any private nonprofit hospital, nonprofit nursing  
3 home, corporation, association, or institution, (2) prior to  
4 January 1, 2002, any public hospital, public nursing home, or  
5 institution authorized by law to provide or operate health  
6 facilities in this state, ~~and~~ (3) beginning January 1, 2002, a  
7 private nonprofit or public facility licensed as a hospital or  
8 residential care and treatment facility under the Uniform Facility  
9 Licensing Act, and (4) any cooperative hospital service  
10 organization which is described in section 501(c) of the Internal  
11 Revenue Code or any similar nonprofit corporation, whether or not  
12 such corporation is exempt from federal income taxation pursuant to  
13 section 501(e) of the Internal Revenue Code.

14           Sec. 99. Section 60-4,164.01, Reissue Revised Statutes  
15 of Nebraska, is amended to read:

16           60-4,164.01. (1) Any physician, registered nurse, other  
17 trained person employed by a licensed institution or facility  
18 defined in section 71-2017.01, prior to January 1, 2002, and  
19 beginning January 1, 2002, by a facility licensed under the Uniform  
20 Facility Licensing Act or by a clinical laboratory certified  
21 pursuant to the Nebraska Clinical Laboratories Certification Act,  
22 the federal Clinical Laboratory Improvement Act of 1967, as  
23 amended, or Title XVIII or XIX of the federal Social Security Act,  
24 as amended, to withdraw human blood for scientific or medical  
25 purposes, or a hospital shall be an agent of the State of Nebraska  
26 when performing the act of withdrawing blood at the request of a  
27 peace officer pursuant to section 60-4,164. The state shall be  
28 liable in damages for any illegal or negligent acts or omissions of

1 such agents in performing the act of withdrawing blood. The agent  
2 shall not be individually liable in damages or otherwise for any  
3 act done or omitted in performing the act of withdrawing blood at  
4 the request of a peace officer pursuant to such section except for  
5 acts of willful, wanton, or gross negligence of the agent or of  
6 persons employed by such agent.

7 (2) Any person listed in subsection (1) of this section  
8 withdrawing a blood specimen for purposes of section 60-4,164  
9 shall, upon request, furnish to any law enforcement agency or the  
10 person being tested a certificate stating that such specimen was  
11 taken in a medically acceptable manner. The certificate shall be  
12 signed under oath before a notary public and shall be admissible in  
13 any proceeding as evidence of the statements contained in the  
14 certificate. The form of the certificate shall be prescribed by  
15 the Department of Health and Human Services Regulation and  
16 Licensure and such forms shall be made available to the persons  
17 listed in subsection (1) of this section.

18 Sec. 100. Section 60-6,201, Reissue Revised Statutes of  
19 Nebraska, is amended to read:

20 60-6,201. (1) Any test made under section 60-6,197, if  
21 made in conformity with the requirements of this section, shall be  
22 competent evidence in any prosecution under a state statute or city  
23 or village ordinance involving operating a motor vehicle while  
24 under the influence of alcoholic liquor or drugs or involving  
25 driving or being in actual physical control of a motor vehicle when  
26 the concentration of alcohol in the blood or breath is in excess of  
27 allowable levels.

28 (2) Any test made under section 60-6,211.02, if made in

1 conformity with the requirements of this section, shall be  
2 competent evidence in any prosecution involving operating or being  
3 in actual physical control of a motor vehicle in violation of  
4 section 60-6,211.01.

5 (3) To be considered valid, tests of blood, breath, or  
6 urine made under section 60-6,197 or 60-6,211.02 shall be performed  
7 according to methods approved by the Department of Health and Human  
8 Services Regulation and Licensure and by an individual possessing a  
9 valid permit issued by such department for such purpose, except  
10 that a physician, registered nurse, or other trained person  
11 employed by a licensed institution or facility which is defined in  
12 section 71-2017.01 prior to January 1, 2002, and beginning January  
13 1, 2002, by a facility licensed under the Uniform Facility  
14 Licensing Act or by a clinical laboratory certified pursuant to the  
15 ~~Nebraska Clinical Laboratories Certification Act~~, the federal  
16 Clinical Laboratory Improvement Act of 1967, as amended, or Title  
17 XVIII or XIX of the federal Social Security Act to withdraw human  
18 blood for scientific or medical purposes, acting at the request of  
19 a peace officer, may withdraw blood for the purpose of a test to  
20 determine the alcohol concentration or the presence of drugs and no  
21 permit from the department shall be required for such person to  
22 withdraw blood pursuant to such an order. The department may  
23 approve satisfactory techniques or methods to perform such tests  
24 and may ascertain the qualifications and competence of individuals  
25 to perform such tests and issue permits which shall be subject to  
26 termination or revocation at the discretion of the department.

27 (4) A permit fee may be established by regulation by the  
28 department which shall not exceed the actual cost of processing the

1 initial permit. Such fee shall be charged annually to each  
2 permitholder. The fees shall be used to defray the cost of  
3 processing and issuing the permits and other expenses incurred by  
4 the department in carrying out this section. The fee shall be  
5 remitted to the State Treasurer for credit to the Department of  
6 Health and Human Services Regulation and Licensure Cash Fund as a  
7 laboratory service fee.

8 (5) Relevant evidence shall not be excluded in any  
9 prosecution under a state statute or city or village ordinance  
10 involving operating a motor vehicle while under the influence of  
11 alcoholic liquor or drugs or involving driving or being in actual  
12 physical control of a motor vehicle when the concentration of  
13 alcohol in the blood, breath, or urine is in excess of allowable  
14 levels on the ground that the evidence existed or was obtained  
15 outside of this state.

16 Sec. 101. Section 60-6,202, Reissue Revised Statutes of  
17 Nebraska, is amended to read:

18 60-6,202. (1) Any physician, registered nurse, other  
19 trained person employed by a licensed institution or facility  
20 defined in section 71-2017.01, prior to January 1, 2002, and  
21 beginning January 1, 2002, by a facility licensed under the Uniform  
22 Facility Licensing Act or by a clinical laboratory certified  
23 pursuant to the Nebraska Clinical Laboratories Certification Act,  
24 the federal Clinical Laboratory Improvement Act of 1967, as  
25 amended, or Title XVIII or XIX of the federal Social Security Act,  
26 as amended, to withdraw human blood for scientific or medical  
27 purposes, or a hospital shall be an agent of the State of Nebraska  
28 when performing the act of withdrawing blood at the request of a

1 peace officer pursuant to sections 60-6,197 and 60-6,211.02. The  
2 state shall be liable in damages for any illegal or negligent acts  
3 or omissions of such agents in performing the act of withdrawing  
4 blood. The agent shall not be individually liable in damages or  
5 otherwise for any act done or omitted in performing the act of  
6 withdrawing blood at the request of a peace officer pursuant to  
7 such sections except for acts of willful, wanton, or gross  
8 negligence of the agent or of persons employed by such agent.

9 (2) Any person listed in subsection (1) of this section  
10 withdrawing a blood specimen for purposes of section 60-6,197 or  
11 60-6,211.02 shall, upon request, furnish to any law enforcement  
12 agency or the person being tested a certificate stating that such  
13 specimen was taken in a medically acceptable manner. The  
14 certificate shall be signed under oath before a notary public and  
15 shall be admissible in any proceeding as evidence of the statements  
16 contained in the certificate. The form of the certificate shall be  
17 prescribed by the Department of Health and Human Services  
18 Regulation and Licensure and such forms shall be made available to  
19 the persons listed in subsection (1) of this section.

20 Sec. 102. Section 60-6,204, Reissue Revised Statutes of  
21 Nebraska, is amended to read:

22 60-6,204. Any person arrested for any offense involving  
23 the operation or actual physical control of a motor vehicle while  
24 under the influence of alcoholic liquor or drugs shall be required  
25 to submit to a chemical test or tests of his or her blood, breath,  
26 or urine as provided in section 60-6,197 without the preliminary  
27 breath test if the arresting peace officer does not have available  
28 the necessary equipment for administering a breath test or if the

1 person is unconscious or is otherwise in a condition rendering him  
2 or her incapable of testing by a preliminary breath test. Only a  
3 physician, registered nurse, or other trained person employed by a  
4 licensed institution or facility which is defined in section  
5 71-2017.01 prior to January 1, 2002, and beginning January 1, 2002,  
6 by a facility licensed under the Uniform Facility Licensing Act or  
7 by a clinical laboratory certified pursuant to ~~the Nebraska~~  
8 Clinical Laboratories Certification Act, the federal Clinical  
9 Laboratory Improvement Act of 1967, as amended, or Title XVIII or  
10 XIX of the federal Social Security Act, as amended, to withdraw  
11 human blood for scientific or medical purposes, acting at the  
12 request of a peace officer, may withdraw blood for the purpose of  
13 determining the concentration of alcohol or the presence of drugs,  
14 but this limitation shall not apply to the taking of a urine or  
15 breath specimen.

16 Sec. 103. Section 68-115, Reissue Revised Statutes of  
17 Nebraska, is amended to read:

18 68-115. (1) The term legal settlement for all public  
19 assistance programs shall be taken and considered to mean as  
20 follows:

21 Every person, except those hereinafter mentioned, who has  
22 resided one year continuously in any county, shall be deemed to  
23 have a legal settlement in such county.

24 Every person who has resided one year continuously within  
25 the state, but not in any one county shall have a legal settlement  
26 in the county in which he or she has resided six months  
27 continuously.

28 (2) The time during which a person has been an inmate of

1 any public or private charitable or penal institution, or has  
 2 received care at public expense in any type of care home, nursing  
 3 home, or board and room facility licensed as such and caring for  
 4 more than one patient or guest prior to January 1, 2002, and  
 5 beginning January 1, 2002, in any type of facility licensed under  
 6 the Uniform Facility Licensing Act, and each month during which he  
 7 or she has received relief from private charity or the poor fund of  
 8 any county shall be excluded in determining the time of residence  
 9 hereunder, as referred to in subsection (1) of this section.

10 (3) Every minor who is not emancipated and settled in his  
 11 or her own right shall have the same legal settlement as the parent  
 12 with whom he or she has resided.

13 (4) A legal settlement in this state shall be terminated  
 14 and lost by (a) acquiring a new one in another state or by (b)  
 15 voluntary and uninterrupted absence from this state for the period  
 16 of one year with intent to abandon residence in Nebraska.

17 Sec. 104. Section 68-1002, Reissue Revised Statutes of  
 18 Nebraska, is amended to read:

19 68-1002. In order to qualify for assistance to the aged,  
 20 blind, or disabled, an individual:

21 (1) Must be a bona fide resident of the State of  
 22 Nebraska, except that a resident of another state who enters the  
 23 State of Nebraska solely for the purpose of receiving care in a  
 24 home or facility licensed by the Department of Health and Human  
 25 Services Regulation and Licensure shall not be deemed to be a bona  
 26 fide resident of Nebraska while such care is being provided;

27 (2) ~~is not~~ Must not be receiving care or services as an  
 28 inmate of a public institution, except as a patient in a medical

1 institution, and if a patient in an institution for tuberculosis or  
2 mental diseases has attained the age of sixty-five years;

3 (3) ~~Has not~~ Must not have deprived himself or herself  
4 directly or indirectly of any property whatsoever for the purpose  
5 of qualifying for assistance to the aged, blind, or disabled;

6 (4) May receive care in a public or private institution  
7 only if such institution is subject to a state authority or  
8 authorities which shall be responsible for establishing and  
9 maintaining standards for such institutions and beginning January  
10 1, 2002, in a facility licensed under the Uniform Facility  
11 Licensing Act; and

12 (5) Must be in need of shelter, maintenance, or medical  
13 care.

14 Sec. 105. Section 68-1006.01, Revised Statutes  
15 Supplement, 1998, is amended to read:

16 68-1006.01. (1) The Department of Health and Human  
17 Services shall include in the standard of need for eligible aged,  
18 blind, and disabled persons at least forty dollars per month for a  
19 personal needs allowance if such persons reside in an alternative  
20 living arrangement.

21 (2) For purposes of this section, an alternative living  
22 arrangement shall include (a) board and room, (b) a licensed  
23 boarding home, (c) a licensed group home for children or  
24 child-caring agency, (d) prior to January 1, 2002, a certified  
25 adult family home, a licensed assisted-living facility, a licensed  
26 group home for children or child-caring agency, a licensed center  
27 for the developmentally disabled, and a long-term care facility,  
28 and (e) beginning January 1, 2002, an assisted-living facility, an

1 ambulatory facility providing child care, and a residential care  
 2 and treatment facility licensed under the Uniform Facility  
 3 Licensing Act.

4           Sec. 106. Section 68-1036.02, Reissue Revised Statutes  
 5 of Nebraska, is amended to read:

6           68-1036.02. (1) The estate of a decedent who has  
 7 received medical assistance benefits under the medical assistance  
 8 program established under section 68-1018 shall be indebted to the  
 9 Department of Health and Human Services Finance and Support for the  
 10 total amount paid for medical assistance on behalf of the decedent  
 11 if:

12           (a) The decedent was fifty-five years of age or older at  
 13 the time the medical assistance was provided; or

14           (b) The decedent resided in a medical institution and, at  
 15 the time of institutionalization or application for medical  
 16 assistance, whichever is later, the department determines that the  
 17 decedent could not have reasonably been expected to be discharged  
 18 and resume living at home. For purposes of this section, medical  
 19 institution ~~shall mean~~ means (i) prior to January 1, 2002, a  
 20 skilled nursing facility, intermediate care facility, intermediate  
 21 care facility for the mentally retarded, nursing facility, or  
 22 inpatient hospital and (ii) beginning January 1, 2002, a hospital  
 23 or residential care and treatment facility licensed under the  
 24 Uniform Facility Licensing Act.

25           (2) No debt to the department shall exist if the decedent  
 26 is survived (a) by a spouse or (b) by a child who either is under  
 27 twenty-one years of age or is blind or totally and permanently  
 28 disabled as defined by the Supplemental Security Income criteria.

1           (3) The debt shall include the total amount of medical  
2 assistance provided when the recipient was fifty-five years of age  
3 or older or during a period of institutionalization as described in  
4 subsection (1) of this section and shall not include interest.

5           (4) In any probate proceedings in which the department  
6 has filed a claim under this section, no additional evidence of  
7 foundation shall be required for the admission of the department's  
8 payment record supporting its claim if the payment record bears the  
9 seal of the department, is certified as a true copy, and bears the  
10 signature of an authorized representative of the department.

11           (5) The department may waive or compromise its claim, in  
12 whole or in part, if the department determines that enforcement of  
13 the claim would not be in the best interests of the state or would  
14 result in undue hardship.

15           (6) The department may adopt and promulgate rules and  
16 regulations to carry out this section.

17           Sec. 107. Section 68-1038, Revised Statutes Supplement,  
18 1998, is amended to read:

19           68-1038. For purposes of sections 68-1038 to 68-1043:

20           (1) Assets means property which is not exempt, under  
21 rules and regulations of the director, from consideration in  
22 determining eligibility for medical assistance;

23           (2) Community spouse monthly income allowance means the  
24 amount of income determined by the department in accordance with  
25 section 1924 of the federal Social Security Act, as amended, Public  
26 Law 100-360, 42 U.S.C. 1396r-5;

27           (3) Community spouse resource allowance means the amount  
28 of assets determined in accordance with section 1924 of the federal

1 Social Security Act, as amended, Public Law 100-360, 42 U.S.C.  
2 1396r-5. For purposes of 42 U.S.C. 1396r-5(f)(2)(A)(i), the amount  
3 specified by the state shall be twelve thousand dollars;

4 (4) Department means the Department of Health and Human  
5 Services;

6 (5) Director means the Director of Health and Human  
7 Services;

8 (6) Home and community-based services means services  
9 furnished under home and community-based waivers as defined in  
10 Title XIX of the federal Social Security Act, as amended, 42 U.S.C.  
11 1396;

12 (7) Medical assistance means assistance provided pursuant  
13 to the program established by section 68-1018;

14 (8) Qualified applicant means a person (a) who applies  
15 for medical assistance on or after July 9, 1988, (b) who (i) is  
16 under care prior to January 1, 2002, in a state-licensed hospital,  
17 skilled nursing facility, intermediate care facility, intermediate  
18 care facility for the mentally retarded, nursing facility,  
19 assisted-living facility, or center for the developmentally  
20 disabled, as such terms are defined in section 71-2017.01, or an  
21 adult family home certified by the department and beginning January  
22 1, 2002, in a hospital, assisted-living facility, or residential  
23 care and treatment facility licensed under the Uniform Facility  
24 Licensing Act or (ii) is receiving home and community-based  
25 services, and (c) whose spouse is not under such care or receiving  
26 such services and is not applying for or receiving medical  
27 assistance;

28 (9) Qualified recipient means a person (a) who has

1 applied for medical assistance before July 9, 1988, and is eligible  
2 for such assistance, (b) who is under care in a facility certified  
3 to receive medical assistance funds under sections 68-1018 to  
4 68-1036 or is receiving home and community-based services, and (c)  
5 whose spouse is not under such care or receiving such services and  
6 is not applying for or receiving medical assistance; and

7 (10) Spouse means the spouse of a qualified applicant or  
8 qualified recipient.

9 Sec. 108. Section 69-2507, Reissue Revised Statutes of  
10 Nebraska, is amended to read:

11 69-2507. ~~Except for plastic bottles and rigid plastic~~  
12 ~~containers used by the health care facilities defined in section~~  
13 ~~71-2017.01, the~~ The Plastic Container Coding Act shall apply to  
14 plastic bottles and rigid plastic containers manufactured or  
15 distributed on or after January 1, 1994. ~~The act shall apply to~~  
16 ~~plastic bottles and rigid plastic containers used by such health~~  
17 ~~care facilities on and after January 1, 1997.~~

18 Sec. 109. Section 71-168.02, Revised Statutes  
19 Supplement, 1998, is amended to read:

20 71-168.02. (1) A health care facility providing health  
21 care or treatment licensed under section 71-2017.01 prior to  
22 January 1, 2002, and beginning January 1, 2002, licensed under the  
23 Uniform Facility Licensing Act or a peer review organization or  
24 professional association of a health care profession regulated  
25 under the Advanced Registered Nurse Practitioner Act, the Emergency  
26 Medical Services Act, the Licensed Practical Nurse-Certified Act,  
27 the Nebraska Certified Nurse Midwifery Practice Act, the Nebraska  
28 Cosmetology Act, the Nurse Practice Act, the Occupational Therapy

1 Practice Act, the Uniform Controlled Substances Act, the Uniform  
2 Licensing Law, the Wholesale Drug Distributor Licensing Act, or  
3 sections 71-3702 to 71-3715, 71-4701 to 71-4719, or 71-6053 to  
4 71-6068 shall report to the department, on a form and in the manner  
5 specified by the department by rule and regulation, any facts known  
6 to them, including, but not limited to, the identity of the  
7 practitioner and patient, when the facility, organization, or  
8 association:

9 (a) Has made payment due to adverse judgment, settlement,  
10 or award of a professional liability claim against it or a  
11 licensee, certificate holder, or registrant, including settlements  
12 made prior to suit, arising out of the acts or omissions of the  
13 licensee, certificate holder, or registrant; or

14 (b) Takes action adversely affecting the privileges or  
15 membership of a licensee, certificate holder, or registrant in such  
16 facility, organization, or association due to alleged incompetence,  
17 professional negligence, unprofessional conduct, or physical,  
18 mental, or chemical impairment.

19 The report shall be made within thirty days after the  
20 date of the action or event.

21 (2) A report made to the department under this section  
22 shall be confidential and treated in the same manner as complaints  
23 and investigative files under subsection (7) of section 71-168.01.  
24 The facility, organization, association, or person making such  
25 report shall be completely immune from criminal or civil liability  
26 of any nature, whether direct or derivative, for filing a report or  
27 for disclosure of documents, records, or other information to the  
28 department under this section. The reports and information shall

1 be subject to the investigatory and enforcement provisions of the  
2 regulatory provisions listed in subsection (1) of this section.  
3 Nothing in this subsection shall be construed to require production  
4 of records protected by section 25-12,123, 71-2048, or 71-7903  
5 except as otherwise provided in any of such sections.

6 (3) For purposes of this section, the department shall  
7 accept reports made to it under the Nebraska Hospital-Medical  
8 Liability Act or in accordance with national practitioner data bank  
9 requirements of the federal Health Care Quality Improvement Act of  
10 1986, as amended, and may require a supplemental report to the  
11 extent such reports do not contain the information required by  
12 rules and regulations of the department.

13 Sec. 110. Section 71-185.01, Reissue Revised Statutes of  
14 Nebraska, is amended to read:

15 71-185.01. (1) For purposes of this section,  
16 practitioner's facility shall mean a facility in which a licensed  
17 dentist practices his or her profession, other than a facility  
18 licensed pursuant to Chapter 71, article 20, prior to January 1,  
19 2002, and beginning January 1, 2002, pursuant to the Uniform  
20 Facility Licensing Act.

21 (2) The Department of Health and Human Services  
22 Regulation and Licensure shall prescribe rules and regulations,  
23 duly adopted and promulgated and which are approved by the State  
24 Board of Health, for practitioners' facilities in order to insure  
25 that such facilities are safe and sanitary and use precautions  
26 necessary to prevent the creation and spread of infectious and  
27 contagious diseases. Based upon a formal complaint, the Department  
28 of Health and Human Services Regulation and Licensure or its

1 employees may inspect any practitioner's facility in this state to  
2 insure compliance with such regulations.

3 (3) Within thirty days after an inspection of a  
4 practitioner's facility which the Department of Health and Human  
5 Services Regulation and Licensure or its employees find to be in  
6 violation of its rules and regulations, the department shall notify  
7 the Board of Examiners in Dentistry of its findings in writing.  
8 The department shall file a petition for disciplinary action  
9 pursuant to section 71-150 if the violation of the rules and  
10 regulations is not corrected within thirty days after the licensee  
11 has received notice of such violation. The department shall send a  
12 written progress report of its inspection and actions taken to the  
13 Board of Examiners in Dentistry.

14 (4) It shall be considered unprofessional conduct for a  
15 licensee to practice in a facility that does not comply with the  
16 rules and regulations regarding sanitary practitioners' facilities.

17 Sec. 111. Section 71-1,103, Revised Statutes Supplement,  
18 1998, is amended to read:

19 71-1,103. The following classes of persons shall not be  
20 construed to be engaged in the unauthorized practice of medicine:

21 (1) Persons rendering gratuitous services in cases of  
22 emergency;

23 (2) Persons administering ordinary household remedies;

24 (3) The members of any church practicing its religious  
25 tenets, except that they shall not prescribe or administer drugs or  
26 medicines, perform surgical or physical operations, nor assume the  
27 title of or hold themselves out to be physicians or surgeons, and  
28 such members shall not be exempt from the quarantine laws of this

1 state;

2 (4) Students of medicine and surgery who are studying in  
3 an accredited school or college of medicine and who gratuitously  
4 prescribe for and treat disease under the supervision of a licensed  
5 physician;

6 (5) Physicians and surgeons of the United States Armed  
7 Forces or Public Health Service or United States Department of  
8 Veterans Affairs when acting in the line of such duty in this  
9 state;

10 (6) Physicians and surgeons who are graduates of an  
11 accredited school or college of medicine with the degree of Doctor  
12 of Medicine and licensed in another state when incidentally called  
13 into this state for consultation with a physician and surgeon  
14 licensed in this state;

15 (7) Physicians and surgeons who are graduates of an  
16 accredited school or college of medicine with the degree of Doctor  
17 of Medicine and who reside in a state bordering this state and who  
18 are duly licensed under the laws thereof to practice medicine and  
19 surgery but who do not open an office or maintain or appoint a  
20 place to meet patients or to receive calls within this state unless  
21 they are performing services described in subdivision (7) of  
22 section 71-1,102;

23 (8) Persons providing or instructing as to use of braces,  
24 prosthetic appliances, crutches, contact lenses, and other lenses  
25 and devices prescribed by a doctor of medicine licensed to practice  
26 while working under the direction of such physician;

27 (9) Dentists practicing their profession when licensed  
28 and practicing in accordance with sections 71-183 to 71-191;

1           (10) Optometrists practicing their profession when  
2 licensed and practicing under and in accordance with sections  
3 71-1,133 to 71-1,136;

4           (11) Osteopathic physicians practicing their profession  
5 if licensed and practicing under and in accordance with sections  
6 71-1,137 and 71-1,141;

7           (12) Chiropractors practicing their profession if  
8 licensed and practicing under sections 71-177 to 71-182;

9           (13) Podiatrists practicing their profession when  
10 licensed and practicing under and in accordance with sections  
11 71-173 to 71-176;

12           (14) Psychologists practicing their profession when  
13 licensed and practicing under and in accordance with sections  
14 71-1,206.01 to 71-1,206.31;

15           (15) Advanced registered nurse practitioners and  
16 certified registered nurse anesthetists practicing their profession  
17 when licensed and practicing under and in accordance with the  
18 Advanced Registered Nurse Practitioner Act;

19           (16) Any person licensed or certified under the laws of  
20 this state to practice a limited field of the healing art, not  
21 specifically named in this section, when confining themselves  
22 strictly to the field for which they are licensed or certified, not  
23 assuming the title of physician, surgeon, or physician and surgeon,  
24 and not professing or holding themselves out as qualified to  
25 prescribe drugs in any form or to perform operative surgery;

26           (17) Physicians and surgeons who are duly licensed to  
27 practice medicine and surgery in another state who have been  
28 recommended by the secretary of the board of examiners in the state

1 of licensure and who have been granted temporary practice rights by  
2 the Board of Examiners in Medicine and Surgery, with the approval  
3 of the Department of Health and Human Services Regulation and  
4 Licensure, for a period not to exceed three months in any  
5 twelve-month period;

6 (18) Persons obtaining blood specimens while working  
7 under an order of or protocols and procedures approved by a  
8 physician, registered nurse, or other independent health care  
9 practitioner licensed to practice by the state if the scope of  
10 practice of that practitioner permits the practitioner to obtain  
11 blood specimens; and

12 (19) Any other trained person employed prior to January  
13 1, 2002, by a licensed institution or facility which is defined in  
14 section 71-2017.01 and beginning January 1, 2002, by a facility  
15 licensed under the Uniform Facility Licensing Act or by a clinical  
16 laboratory certified pursuant to ~~the Nebraska Clinical Laboratories~~  
17 ~~Certification Act~~, the federal Clinical Laboratory Improvement Act  
18 of 1967, as amended, or Title XVIII or XIX of the federal Social  
19 Security Act to withdraw human blood for scientific or medical  
20 purposes.

21 Every act or practice falling within the practice of  
22 medicine and surgery as defined not specially excepted in this  
23 section shall constitute the practice of medicine and surgery and  
24 may be performed in this state only by those licensed by law to  
25 practice medicine in Nebraska.

26 Sec. 112. Section 71-1,142, Revised Statutes Supplement,  
27 1998, is amended to read:

28 71-1,142. For purposes of the Uniform Licensing Law,

1 unless the context otherwise requires:

2 (1) Practice of pharmacy shall mean (a) the  
3 interpretation and evaluation of prescription orders, (b) the  
4 compounding, dispensing, and labeling of drugs and devices, except  
5 labeling by a manufacturer, packer, or distributor of  
6 nonprescription drugs and commercially packaged legend drugs and  
7 devices, (c) the participation in drug selection, drug utilization  
8 review, drug source selection, and drug administration, (d) the  
9 proper and safe storage of drugs and devices and the maintenance of  
10 proper records therefor, (e) patient counseling, (f) the provision  
11 of pharmaceutical care, and (g) the offering or performing of those  
12 acts, services, operations, or transactions necessary in the  
13 conduct, operation, management, and control of pharmacy. The  
14 active practice of pharmacy shall mean the performance of the  
15 functions set out in this subdivision by a pharmacist as his or her  
16 principal or ordinary occupation;

17 (2) Administration shall mean the direct application of a  
18 drug or device by injection, inhalation, ingestion, or other means  
19 to the body of a patient;

20 (3) Board of pharmacy or board shall mean the Board of  
21 Examiners in Pharmacy;

22 (4) Caregiver shall mean any person acting as an agent on  
23 behalf of a patient or any person aiding and assisting a patient;

24 (5) Compounding shall mean the preparation, mixing, or  
25 assembling of a drug or device (a) as the result of a  
26 practitioner's prescription order or initiative occurring in the  
27 course of professional practice based upon the relationship between  
28 the practitioner, patient, and pharmacist or (b) for the purpose

1 of, or incident to, research, teaching, or chemical analysis and  
2 not for sale or dispensing. Compounding shall include the  
3 preparation of drugs or devices in anticipation of prescription  
4 orders based upon routine, regularly observed prescribing patterns;

5 (6) Deliver or delivery shall mean the actual,  
6 constructive, or attempted transfer of a drug or device from one  
7 person to another, whether or not for consideration;

8 (7) Department shall mean the Department of Health and  
9 Human Services Regulation and Licensure;

10 (8) Device shall mean an instrument, apparatus,  
11 implement, machine, contrivance, implant, in vitro reagent, or  
12 other similar or related article, including any component part or  
13 accessory, which is prescribed by a medical practitioner and  
14 dispensed by a pharmacist or other person authorized by law to do  
15 so;

16 (9) Dialysis drug or device distributor shall mean a  
17 manufacturer or wholesaler who provides dialysis drugs, solutions,  
18 supplies, or devices, to persons with chronic kidney failure for  
19 self-administration at the person's home or specified address, upon  
20 the order of a medical practitioner;

21 (10) Dialysis drug or device distributor worker shall  
22 mean a person working for a dialysis drug or device distributor  
23 operating with a drug dispensing permit who has completed the  
24 approved training and has demonstrated proficiency to perform the  
25 task or tasks of assembling, labeling, or delivering a patient  
26 order;

27 (11) Dispense or dispensing shall mean the preparation  
28 and delivery of a drug or device pursuant to a lawful order of a

1 medical practitioner in a suitable container appropriately labeled  
2 for subsequent administration to or use by a patient or other  
3 individual entitled to receive the drug or device;

4 (12) Distribute shall mean the delivery of a drug or  
5 device other than by administering or dispensing;

6 (13) Drug dispensing permit shall mean a permit issued by  
7 the department upon the recommendation of the board to a public  
8 health clinic or a dialysis drug or device distributor which allows  
9 for the dispensing of drugs and devices in the formulary approved  
10 pursuant to section 71-1,147.48;

11 (14) Person shall mean an individual, corporation,  
12 partnership, limited liability company, association, or other legal  
13 entity;

14 (15) Labeling shall mean the process of preparing and  
15 affixing a label to any drug container or device container,  
16 exclusive of the labeling by a manufacturer, packer, or distributor  
17 of a nonprescription drug or commercially packaged legend drug or  
18 device. Any such label shall include all information required by  
19 federal and state law or regulation;

20 (16) Pharmaceutical care shall mean the provision of drug  
21 therapy for the purpose of achieving therapeutic outcomes that  
22 improve a patient's quality of life. Such outcomes shall include  
23 (a) the cure of disease, (b) the elimination or reduction of a  
24 patient's symptomatology, (c) the arrest or slowing of a disease  
25 process, or (d) the prevention of a disease or symptomatology.  
26 Pharmaceutical care shall include the process through which the  
27 pharmacist works in concert with the patient and his or her  
28 caregiver, physician, or other professionals in designing,

1 implementing, and monitoring a therapeutic plan that will produce  
2 specific therapeutic outcomes for the patient;

3 (17) Pharmacist shall mean any person who (a) is licensed  
4 by the State of Nebraska to practice pharmacy or (b) is primarily  
5 responsible for providing pharmaceutical care as defined in  
6 subdivision (16) of this section;

7 (18) Pharmacy shall mean (a) any establishment, place, or  
8 location advertised as a pharmacy, drug store, hospital pharmacy,  
9 dispensary, apothecary, or any combination of such titles or any  
10 establishment where the practice of pharmacy is carried on except  
11 as exempted in section 71-1,143 and (b) any establishment, place,  
12 or location used as a pick-up point or drop point, including  
13 kiosks, for prescriptions to be filled or where prescribed drugs or  
14 devices are made ready for delivery to the patient, but shall not  
15 include an emergency box located within an institution pursuant to  
16 the provisions of the Emergency Box Drug Act;

17 (19) Drugs, medicines, and medicinal substances shall  
18 mean (a) articles recognized in the official United States  
19 Pharmacopoeia, the Homeopathic Pharmacopoeia of the United States,  
20 the official National Formulary, or any supplement to any of them,  
21 (b) articles intended for use in the diagnosis, cure, mitigation,  
22 treatment, or prevention of diseases in humans or animals, (c)  
23 articles, except food, intended to affect the structure or any  
24 function of the body of a human or an animal, (d) articles intended  
25 for use as a component of any articles specified in subdivision  
26 (a), (b), or (c) of this subdivision, except any device or its  
27 components, parts, or accessories, and (e) prescription drugs as  
28 defined in subdivision (24) of this section;

1           (20) Medical practitioner shall mean any licensed  
2 physician, surgeon, podiatrist, dentist, or other person licensed  
3 to write prescriptions intended for treatment or prevention of  
4 disease or to affect body function in humans or animals;

5           (21) Patient counseling shall mean the verbal  
6 communication by a pharmacist, in a manner reflecting dignity and  
7 the right of the patient to a reasonable degree of privacy, of  
8 information to the patient or caregiver in order to improve  
9 therapeutic outcomes by maximizing proper use of prescribed drugs  
10 and devices and shall also include the duties set out in subsection  
11 (2) of section 71-1,147.35;

12           (22) Pharmacist in charge shall mean a pharmacist  
13 licensed by the State of Nebraska to practice pharmacy who has been  
14 designated on a pharmacy permit or designated by a public or  
15 private hospital licensed by the department as being responsible  
16 for the practice of pharmacy in the pharmacy for which such permit  
17 is issued or such hospital's inpatient pharmacy and who shall work  
18 within the physical confines of such pharmacy for a majority of the  
19 hours per week that the pharmacy is open for business averaged over  
20 a twelve-month period or thirty hours per week, whichever is less;

21           (23) Pharmacy intern shall mean (a) a student currently  
22 enrolled in an accredited college or school of pharmacy or (b) a  
23 graduate of an accredited college or school of pharmacy serving his  
24 or her internship, such internship to expire not later than fifteen  
25 months after the date of graduation or at the time of professional  
26 licensure, whichever comes first. Such pharmacy intern may  
27 compound and dispense drugs or devices and fill prescriptions only  
28 in the presence of and under the immediate personal supervision of

1 a licensed pharmacist. Such licensed pharmacist shall either be  
2 (i) the person to whom the pharmacy permit is issued or a person in  
3 the actual employ of the permittee or (ii) the pharmacist in charge  
4 designated by a public or private institution licensed as a  
5 hospital by the department which is not required to obtain a permit  
6 pursuant to section 71-1,147.01 or a person in the actual employ of  
7 such institution;

8 (24) Prescription drug or legend drug shall mean (a) a  
9 drug which under federal law is required, prior to being dispensed  
10 or delivered, to be labeled with either of the following  
11 statements: (i) Caution: Federal law prohibits dispensing without  
12 prescription; or (ii) Caution: Federal law restricts this drug to  
13 use by or on the order of a licensed veterinarian or (b) a drug  
14 which is required by any applicable federal or state law or  
15 regulation to be dispensed on prescription only or is restricted to  
16 use by medical practitioners only;

17 (25) Prescription order or prescription shall mean a  
18 lawful written or verbal order of a medical practitioner for a drug  
19 or device but shall not include an order for a drug or device which  
20 is dispensed for administration to a patient during the patient's  
21 stay in a hospital;

22 (26) Nonprescription drugs shall mean nonnarcotic  
23 medicines or drugs which may be sold without a prescription and  
24 which are prepackaged for use by the consumer and labeled in  
25 accordance with the requirements of the laws and regulations of  
26 this state and the federal government;

27 (27) Public health clinic worker shall mean a person in a  
28 public health clinic operating with a drug dispensing permit who

1 has completed the approved training and has demonstrated  
2 proficiency to perform the task of dispensing authorized refills of  
3 oral contraceptives;

4 (28) Public health clinic shall mean the department, any  
5 county, city-county, or multicounty health department, or any  
6 private not-for-profit family planning clinic licensed as a health  
7 clinic as defined in section 71-2017.01 prior to January 1, 2002,  
8 and beginning January 1, 2002, licensed as an ambulatory facility  
9 under the Uniform Facility Licensing Act;

10 (29) Supervision shall mean the immediate personal  
11 guidance and direction by the licensed pharmacist on duty in the  
12 facility of the performance by supportive pharmacy personnel of  
13 authorized activities or functions subject to verification by such  
14 pharmacist, except that when supportive pharmacy personnel perform  
15 authorized activities or functions to assist a pharmacist on duty  
16 in the facility when the prescribed drugs or devices will be  
17 administered by a licensed staff member or consultant or by a  
18 licensed physician assistant to prior to January 1, 2002, patients  
19 or residents of a health care facility licensed pursuant to  
20 sections 71-2017 to 71-2029 and beginning January 1, 2002, patients  
21 or residents of a facility providing health care or treatment  
22 licensed under the Uniform Facility Licensing Act, the activities  
23 or functions of such supportive pharmacy personnel shall only be  
24 subject to verification by a pharmacist on duty in the facility;

25 (30) Supportive pharmacy personnel shall mean individuals  
26 at least eighteen years of age who are high school graduates or  
27 officially recognized by the State Department of Education as  
28 possessing the equivalent degree of education, who have never been

1 convicted of any drug-related misdemeanor or felony, and who, under  
2 the written control procedures and guidelines of an employing  
3 pharmacy and who have received onsite training pursuant to  
4 subsection (4) of section 71-1,147.33, may perform those functions  
5 which do not require the exercise of professional judgment in  
6 assisting a pharmacist in connection with the preparation,  
7 compounding, dispensing, and distribution of drugs or devices under  
8 the supervision of a licensed pharmacist on duty in the facility,  
9 when such functions are subject to verification. The ratio of  
10 supportive pharmacy personnel allowed to assist one pharmacist in  
11 the preparation, compounding, dispensing, and distribution of drugs  
12 or devices shall not exceed one-to-one, except that a two-to-one  
13 ratio may apply to supportive pharmacy personnel assisting a  
14 pharmacist in circumstances when the prescribed drugs or devices  
15 will be administered by a licensed staff member or consultant or by  
16 a licensed physician assistant to patients of a hospital licensed  
17 pursuant to sections 71-2017 to 71-2029 prior to January 1, 2002,  
18 and beginning January 1, 2002, pursuant to the Uniform Facility  
19 Licensing Act. Under no circumstances shall the ratio exceed two  
20 supportive pharmacy personnel to one supervising pharmacist;

21 (31) Verification shall mean the confirmation by the  
22 supervising pharmacist of the accuracy and completeness of the  
23 acts, tasks, or functions undertaken by supportive pharmacy  
24 personnel to assist the pharmacist in the practice of pharmacy.  
25 Verification by the supervising pharmacist shall be documented  
26 prior to the time when the drug or device is dispensed; and

27 (32) Written control procedures and guidelines shall mean  
28 the document prepared by an employing pharmacy and approved by the

1 board which specifies the manner in which the qualifications of  
2 supportive pharmacy personnel employed by the pharmacy are  
3 determined, the manner in which the training of such personnel is  
4 conducted and their basic level of competency is confirmed, the  
5 manner in which supervision is provided, the manner in which the  
6 functions of supportive pharmacy personnel are verified, and a  
7 protocol governing the use of supportive pharmacy personnel and the  
8 functions which they may perform.

9           Sec. 113.       Section 71-1,147.08,   Revised Statutes  
10 Supplement, 1998, is amended to read:

11           71-1,147.08. (1) Except as otherwise provided in section  
12 71-1,147.01, a person desiring to open a new pharmacy shall file an  
13 application for a permit not less than thirty days prior to the  
14 contemplated opening date. Before a permit may be granted for the  
15 operation of a new pharmacy, an inspection shall be made by a duly  
16 qualified representative of the board to determine whether all of  
17 the requirements for such a permit have been fulfilled. If all of  
18 the requirements have been fulfilled, the department shall issue a  
19 permit for the operation of the new pharmacy. The fee for such  
20 permit, to accompany the application, shall be two hundred dollars.

21           (2) Any person desiring to open a new pharmacy who is not  
22 required to obtain a permit under section 71-1,147.01 shall file an  
23 application for initial inspection at least thirty days prior to  
24 the contemplated opening date. Upon satisfactory completion of the  
25 inspection the department shall issue the pharmacy an initial  
26 inspection certificate. The pharmacy shall post such certificate  
27 in a conspicuous place within view of the public. The fee for such  
28 certificates issued on the basis of an inspection shall be two

1 hundred dollars. Within six months after May 10, 1983, the  
2 department shall issue an initial certificate to each pharmacy  
3 existing on May 10, 1983, which was initially inspected prior to  
4 such date and which was not required to obtain a permit pursuant to  
5 section 71-1,147.01.

6 (3) Any public or private hospital pharmacy which does  
7 not display an initial inspection certificate issued pursuant to  
8 subsection (2) of this section shall be subject to a six-month  
9 suspension of the license of the public or private hospital.

10 (4) The department shall, except as provided in  
11 subsection (5) of this section, inspect each pharmacy in the state  
12 at least once every year. The department shall have primary  
13 authority to inspect pharmacies of public and private hospitals  
14 licensed by the department and shall coordinate routine inspections  
15 of pharmacies in hospitals licensed by the department. The board  
16 or its representatives shall immediately report any suspected  
17 violation of the minimum pharmacy standard to the department which  
18 shall take remedial action. Such violation, if proved, shall be  
19 grounds for denial, suspension, or revocation of the license of the  
20 hospital under section 71-2023 prior to January 1, 2002, and  
21 beginning January 1, 2002, under the Uniform Facility Licensing  
22 Act.

23 (5) The department may, upon recommendation by the board,  
24 accept the inspection of a hospital pharmacy conducted by the Joint  
25 Commission on the Accreditation of Hospitals in lieu of the  
26 inspection required pursuant to subsection (4) of this section if  
27 the Director of Regulation and Licensure determines that the  
28 commission standards are equal to or more stringent than the

1 standards of the department.

2 (6) The department shall charge an annual inspection fee  
3 for each pharmacy inspected pursuant to subsection (4) or (5) of  
4 this section which does not possess a permit issued pursuant to  
5 section 71-1,147.07. Such fee shall be one hundred dollars and  
6 shall be paid into the Nebraska Pharmaceutical Fund.

7 Sec. 114. Section 71-1,147.09, Reissue Revised Statutes  
8 of Nebraska, is amended to read:

9 71-1,147.09. To protect the health, safety, and welfare  
10 of the public, to ensure to the greatest extent possible the  
11 accurate, efficient, and safe practice of pharmacy, to ensure that  
12 prescribed drugs and devices conform to the orders authorizing  
13 their dispensing or administration, and to implement sections  
14 28-1437 to 28-1439.01, 71-1,142 to 71-1,147.33, 71-2401 to 71-2405,  
15 and 71-2501 to 71-2512, the Mail Service Prescription Drug Act, the  
16 Nebraska Drug Product Selection Act, and the Uniform Controlled  
17 Substances Act, the department, upon the recommendation of the  
18 board, shall adopt and promulgate rules and regulations:

19 (1) For the enforcement of sections 71-1,142 to  
20 71-1,147.38;

21 (2) To establish minimum requirements regarding adequate  
22 facilities for the safe storage of narcotic drugs and other drugs  
23 requiring refrigeration or other special storage;

24 (3) For equipment, facilities, and utilities for the  
25 prescription department;

26 (4) To establish minimum standards governing sanitation,  
27 orderliness, cleanliness, library requirements, ventilation, and  
28 prescription and other record keeping;

1           (5) To establish minimum standards governing the  
2 definition and application of computers or other electronic record  
3 systems in pharmacy;

4           (6) To establish minimum standards for the practice of  
5 nuclear pharmacy;

6           (7) To establish minimum standards for the dispensing of  
7 drugs or devices in unit-dose and modified unit-dose containers;

8           (8) To establish minimum standards for compounding,  
9 dispensing, and administering sterile products;

10           (9) To establish minimum standards governing the  
11 inspection of pharmacies to demonstrate compliance with sections  
12 28-1437 to 28-1439.01, 71-1,142 to 71-1,147.38, 71-2401 to 71-2405,  
13 and 71-2501 to 71-2512, the Nebraska Drug Product Selection Act,  
14 and the Uniform Controlled Substances Act and such rules and  
15 regulations as are adopted and promulgated by the department  
16 pursuant to such sections and acts. Such standards shall include,  
17 but not be limited to: (a) Criteria for successful completion of an  
18 opening inspection; (b) criteria for successful completion of an  
19 annual inspection; and (c) criteria for the issuance of a written  
20 warning notice listing specific violations to which the permittee  
21 shall respond in writing to the department, by the date stated on  
22 the warning notice, stating that the violations listed in the  
23 warning notice have been corrected;

24           (10) To establish minimum standards governing patient  
25 counseling, patient information, and communications to a patient;

26           (11) To establish minimum standards for the terms and  
27 provisions of the written control procedures and guidelines  
28 required by subsection (4) of section 71-1,147.33 as they relate to

1 the qualifications, onsite training, functions, and supervision of  
2 supportive pharmacy personnel;

3 (12) To establish standards and guidelines for the  
4 identification of supportive pharmacy personnel as such while they  
5 are performing duties in a pharmacy; and

6 (13) To establish minimum standards and guidelines for  
7 the documentation of the verification of the acts, tasks, or  
8 functions of supportive pharmacy personnel.

9 The minimum standards and requirements for the practice  
10 of pharmacy and for public or private hospital pharmacies licensed  
11 by the department shall be consistent with the minimum requirements  
12 and standards established by the department under sections 71-2017  
13 to 71-2029 prior to January 1, 2002, and beginning January 1, 2002,  
14 under the Uniform Facility Licensing Act.

15 Sec. 115. Section 71-1,147.10, Reissue Revised Statutes  
16 of Nebraska, is amended to read:

17 71-1,147.10. (1) The department shall deny an  
18 application for a permit to conduct a pharmacy, revoke or suspend a  
19 permit to conduct a pharmacy, refuse renewal of a permit to conduct  
20 a pharmacy, deny an application for a license to operate a  
21 hospital, revoke or suspend the license of a hospital, or refuse  
22 renewal of a hospital license on any of the following grounds:

23 (a) Conviction of any crime involving moral turpitude;

24 (b) Obtaining a pharmacy permit or an inspection  
25 certificate by false representation or fraud;

26 (c) Operating a pharmacy or hospital pharmacy without a  
27 licensed pharmacist responsible for the practice of pharmacy;

28 (d) The compounding and dispensing of drugs or devices or

1 the filling of a prescription by a person other than a licensed  
2 pharmacist or by an intern in pharmacy, without the presence of and  
3 the immediate personal supervision of a licensed pharmacist except  
4 as provided in sections 71-1,147.33 and 71-1,147.53;

5 (e) A conviction of a violation of sections 71-1,142 to  
6 71-1,147.61 or of a felony or, if a natural person, the revocation  
7 or suspension of a license to practice pharmacy in this state;

8 (f) Unprofessional conduct which shall include, but not  
9 be limited to:

10 (i) Misrepresentation or fraud in the conduct of a  
11 pharmacy or hospital pharmacy;

12 (ii) Aiding or abetting an unlicensed person to practice  
13 pharmacy;

14 (iii) The dispensing over the counter without a  
15 prescription of a drug or device which under state or federal law  
16 or regulation is prohibited from being dispensed without a  
17 prescription or the renewal of such a prescription without the  
18 authorization of the prescriber;

19 (iv) The dispensing of a different drug or device in  
20 place of the drug or device ordered or prescribed without the  
21 express permission of the person ordering or prescribing the same;

22 (v) Any fraudulent act in drug product selection whereby  
23 the purchaser is charged for the prescribed brand rather than the  
24 selected product which is deemed to be chemically and  
25 therapeutically equivalent;

26 (vi) Failure to account for significant, substantial  
27 shortages or overages of controlled substances; or

28 (vii) Use of supportive pharmacy personnel in violation

1 of section 71-1,147.33;

2 (g) Violation of the rules and regulations governing the  
3 practice of pharmacy as adopted and promulgated under authority of  
4 section 71-1,147.09 by the department; and

5 (h) Suggesting, soliciting, ordering, assisting, or  
6 abetting a pharmacist in the commission of any of the offenses set  
7 forth in sections 71-147 and 71-148.

8 (2) Nothing contained in this section shall be construed  
9 to prohibit any hospital licensed by the department from  
10 establishing rules and regulations regarding the method by which  
11 medical staff members shall agree to order or prescribe drugs or  
12 devices for patients of such hospitals.

13 (3) If the department determines to deny, revoke,  
14 suspend, or refuse renewal of the license of a hospital pursuant to  
15 this section, prior to January 1, 2002, the procedures for such  
16 action in sections 71-2023 to 71-2029 shall be followed and  
17 beginning January 1, 2002, the procedures for such action in the  
18 Uniform Facility Licensing Act shall be followed.

19 (4) If the department determines to deny an application  
20 for a permit to or to revoke, suspend, or refuse renewal of a  
21 permit to conduct a pharmacy, it shall send to the applicant or  
22 permittee, by certified mail, a notice setting forth the particular  
23 reasons for the determination. The denial, suspension, revocation,  
24 or refusal of renewal shall become final thirty days after the  
25 mailing of the notice unless the applicant or permittee, within  
26 such thirty-day period, requests a hearing in writing. The  
27 applicant or permittee shall be given a fair hearing before the  
28 department and may present such evidence as may be proper. On the

1 basis of such evidence the determination involved shall be affirmed  
2 or set aside, and a copy of such decision setting forth the finding  
3 of facts and the particular reasons upon which it is based shall be  
4 sent by certified mail to the applicant or permittee. The decision  
5 shall become final thirty days after a copy of such decision is  
6 mailed unless the applicant or permittee within such thirty-day  
7 period appeals the decision pursuant to section 71-1,147.12. The  
8 procedure governing hearings authorized by this section shall be in  
9 accordance with rules and regulations adopted and promulgated by  
10 the department. A full and complete record shall be kept of all  
11 proceedings. Witnesses may be subpoenaed by either party and shall  
12 be allowed a fee at a rate prescribed by the rules and regulations  
13 adopted and promulgated by the department.

14 (5) The proceeding shall be summary in its nature and  
15 triable as an equity action. Affidavits may be received in  
16 evidence in the discretion of the Director of Regulation and  
17 Licensure. The department shall have the power to administer  
18 oaths, to subpoena witnesses and compel their attendance, and to  
19 issue subpoenas duces tecum and require the production of books,  
20 accounts, and documents in the same manner and to the same extent  
21 as the district courts of the state. Depositions may be used by  
22 either party. Upon the completion of any hearing, the director  
23 shall have the authority through entry of an order to exercise in  
24 his or her discretion any or all of the following powers:

- 25 (a) Issue a censure or reprimand against the permittee;  
26 (b) Suspend judgment;  
27 (c) Place the permittee on probation;  
28 (d) Place a limitation or limitations on the permit and

1 upon the right of the permittee to operate a pharmacy to the  
2 extent, scope, or type of operation for such time and under such  
3 conditions as the director finds necessary and proper. The  
4 director shall consult with the board in all instances prior to  
5 issuing an order of limitation;

6 (e) Impose a civil penalty not to exceed ten thousand  
7 dollars;

8 (f) Enter an order of suspension of the permit;

9 (g) Enter an order of revocation of the permit; and

10 (h) Dismiss the action.

11 (6) The permittee shall not operate a pharmacy after a  
12 permit is revoked or during the time for which the permit is  
13 suspended. If a permit is suspended, the suspension shall be for a  
14 definite period of time to be fixed by the director. Such permit  
15 shall be automatically reinstated upon the expiration of such  
16 period if the current renewal fees have been paid. If such permit  
17 is revoked, such revocation shall be permanent, except that at any  
18 time after the expiration of two years, application may be made for  
19 reinstatement of any permittee whose permit shall have been  
20 revoked. Such application shall be addressed to the director but  
21 may not be received or filed by him or her unless accompanied by a  
22 written recommendation of reinstatement by the board. The amount  
23 of the civil penalty, if any, shall be based on the severity of the  
24 violation. If any violation is a repeated or continuing violation,  
25 each violation or each day a violation continues shall constitute a  
26 separate violation for the purpose of computing the applicable  
27 civil penalty, if any. The department may adopt and promulgate the  
28 necessary rules and regulations concerning notice and hearing of

1 such application.

2 (7) Any civil penalty assessed and unpaid under this  
3 section shall constitute a debt to the State of Nebraska which may  
4 be collected in the manner of a lien foreclosure or sued for and  
5 recovered in a proper form of action in the name of the state in  
6 the district court of the county in which the violator resides or  
7 owns property. The department shall within thirty days after  
8 receipt remit any collected civil penalty to the State Treasurer  
9 for credit to the permanent school fund.

10 (8) The Attorney General, upon the recommendation of the  
11 board, shall initiate criminal proceedings pursuant to section  
12 71-167 against supportive pharmacy personnel or public health  
13 clinic workers who knowingly perform tasks or functions which  
14 require the expertise or professional judgment of a pharmacist.  
15 When appropriate, the Attorney General, upon the recommendation of  
16 the board, shall initiate corresponding criminal charges against  
17 pharmacists, pharmacy owners, or other persons who knowingly permit  
18 supportive pharmacy personnel or public health clinic workers to  
19 perform professional duties which require the expertise or  
20 professional judgment of a pharmacist.

21 Sec. 116. Section 71-1,147.15, Reissue Revised Statutes  
22 of Nebraska, is amended to read:

23 71-1,147.15. It shall be unlawful to distribute,  
24 dispense, or vend any drug by automatic or vending machine, except  
25 ~~+~~ ~~PROVIDED,~~ that this prohibition shall not apply to institutions  
26 duly licensed under the provisions of sections 71-2017 to 71-2029  
27 prior to January 1, 2002, and beginning January 1, 2002, this  
28 prohibition shall not apply to facilities licensed under the

1 Uniform Facility Licensing Act.

2           Sec. 117.       Section 71-1,147.35, Revised Statutes  
3 Supplement, 1998, is amended to read:

4           71-1,147.35. (1)(a) Prior to the dispensing or the  
5 delivery of each new or refill prescription to a patient or  
6 caregiver, a pharmacist shall in all care settings conduct a  
7 prospective drug utilization review. Such prospective drug  
8 utilization review shall involve monitoring the patient-specific  
9 medical history described in subdivision (b) of this subsection and  
10 available to the pharmacist at the practice site for:

- 11           (i) Therapeutic duplication;  
12           (ii) Drug-disease contraindications;  
13           (iii) Drug-drug interactions;  
14           (iv) Incorrect drug dosage or duration of drug treatment;  
15           (v) Drug-allergy interactions; and  
16           (vi) Clinical abuse or misuse.

17           (b) A pharmacist conducting a prospective drug  
18 utilization review shall ensure that a reasonable effort is made to  
19 obtain from the patient, his or her caregiver, or his or her  
20 physician and to record and maintain records of the following  
21 information to facilitate such review:

- 22           (i) The name, address, telephone number, date of birth,  
23 and gender of the patient;  
24           (ii) The patient's history of significant disease, known  
25 allergies, and drug reactions and a comprehensive list of relevant  
26 drugs and devices used by the patient; and  
27           (iii) Any comments of the pharmacist relevant to the  
28 patient's drug therapy.

1           (c) The assessment of data on drug use in any prospective  
2 drug utilization review shall be based on predetermined standards,  
3 approved by the department upon the recommendation of the board,  
4 and consistent with the following:

5           (i) Compendia which shall consist of the following:

6           (A) American Hospital Formulary Service Drug Information;

7           (B) United States Pharmacopeia-Dispensing Information;

8 and

9           (C) American Medical Association Drug Evaluations; and

10          (ii) The peer-reviewed medical literature.

11          (2)(a) Prior to the dispensing or delivery of each new or  
12 refill prescription, the pharmacist shall ensure that a verbal  
13 offer to counsel the patient or caregiver is made. The counseling  
14 of the patient or caregiver by the pharmacist shall be on elements  
15 which, in the exercise of the pharmacist's professional judgment,  
16 the pharmacist deems significant for the patient. Such elements  
17 may include, but need not be limited to, the following:

18           (i) The name and description of the prescribed drug;

19           (ii) The route of administration, dosage form, dosage,  
20 and duration of therapy;

21           (iii) Special directions and precautions for preparation,  
22 administration, and use by the patient;

23           (iv) Common side effects, adverse effects or  
24 interactions, and therapeutic contraindications that may be  
25 encountered, including avoidance and the action required if such  
26 effects, interactions, or contraindications occur;

27           (v) Techniques for self-monitoring drug therapy;

28           (vi) Proper storage;

1 (vii) Prescription refill information; and

2 (viii) Action to be taken in the event of a missed dose.

3 (b) The counseling provided for in subdivision (a) of  
4 this subsection shall be provided in person whenever practical or  
5 by the utilization of telephone service which is available at no  
6 cost to the patient or caregiver.

7 (c) Patient counseling shall be appropriate to the  
8 individual patient and shall be provided to the patient or  
9 caregiver.

10 (d) Written information may be provided to the patient or  
11 caregiver to supplement the counseling provided for in subdivision  
12 (a) of this subsection but shall not be used as a substitute for  
13 such counseling. If written information is provided, it shall also  
14 include all information found on the prescription label.

15 (e) Nothing in this subsection shall be construed to  
16 require a pharmacist to provide the counseling called for by  
17 subdivision (a) of this subsection when:

18 (i) The patient or caregiver refuses such counseling;

19 (ii) The pharmacist, in his or her professional judgment,  
20 determines that such counseling may be detrimental to the patient's  
21 care or to the relationship between the patient and his or her  
22 physician;

23 (iii) The patient is a patient or resident of a ~~health~~  
24 ~~care~~ facility licensed prior to January 1, 2002, pursuant to  
25 sections 71-2017 to 71-2029 and beginning January 1, 2002, pursuant  
26 to the Uniform Facility Licensing Act to whom prescribed drugs or  
27 devices are administered by a licensed or certified staff member or  
28 consultant or a certified physician's assistant; or

1           (iv) The medical practitioner duly authorized to  
2 prescribe drugs or devices specifies manually on the face of the  
3 written prescription or by telephonic communication on each  
4 prescription that there shall be no patient counseling unless he or  
5 she is contacted prior to such counseling. The pharmacist shall  
6 note "Contact Before Counseling" on the face of the prescription if  
7 such is communicated orally by the prescribing medical  
8 practitioner.

9           Sec. 118. Section 71-1,200, Reissue Revised Statutes of  
10 Nebraska, is amended to read:

11           71-1,200. Any insurer shall report to the department, on  
12 a form and in the manner specified by the department by rule and  
13 regulation, any facts known to the insurer, including, but not  
14 limited to, the identity of the practitioner and patient, when the  
15 insurer:

16           (1) Has reasonable grounds to believe that a practitioner  
17 has committed a violation of the regulatory provisions governing  
18 the profession of such practitioner;

19           (2) Has made payment due to an adverse judgment,  
20 settlement, or award resulting from a professional liability claim  
21 against the insurer, a health care facility ~~as defined~~ described in  
22 section 71-2017.01 prior to January 1, 2002, and beginning January  
23 1, 2002, a facility providing health care or treatment licensed  
24 under the Uniform Facility Licensing Act, or a practitioner,  
25 including settlements made prior to suit, arising out of the acts  
26 or omissions of the practitioner; or

27           (3) Takes an adverse action affecting the coverage  
28 provided by the insurer to a practitioner due to alleged

1 incompetence, negligence, unethical or unprofessional conduct, or  
2 physical, mental, or chemical impairment. For purposes of this  
3 section, adverse action shall not include raising a practitioner's  
4 rates for professional liability coverage unless it is based upon  
5 grounds that would be reportable and no prior report has been made  
6 to the department.

7 The report shall be made within thirty days after the  
8 date of the action or event. Nothing in this section or section  
9 71-1,199 shall be construed to require an insurer to report based  
10 on information gained due to the filing by a practitioner or on  
11 behalf of a practitioner of a claim for payment under his or her  
12 health insurance policy.

13 Sec. 119. Section 71-3,106, Reissue Revised Statutes of  
14 Nebraska, is amended to read:

15 71-3,106. Nothing in the Nebraska Cosmetology Act shall  
16 be construed to apply to or restrict the activities of the  
17 following:

18 (1) Any person holding a current license or certificate  
19 issued pursuant to Chapter 71 when engaged in the usual and  
20 customary practice of his or her profession or occupation;

21 (2) Any person engaging solely in ear piercing,  
22 tattooing, or other invasive beautification practices;

23 (3) Any person when engaged in domestic or charitable  
24 administration;

25 (4) Any person performing any of the practices of  
26 cosmetology solely for theatrical presentations or other  
27 entertainment functions;

28 (5) Any person practicing within the confines of a

1 hospital, nursing home, massage therapy establishment, funeral  
2 establishment, or other similar establishment or facility licensed  
3 or otherwise regulated by the department prior to January 1, 2002,  
4 and beginning January 1, 2002, within the confines of a facility  
5 licensed under the Uniform Facility Licensing Act, funeral  
6 establishment, or other similar facility or establishment licensed  
7 or otherwise regulated by the department, except that no unlicensed  
8 or unregistered person may accept compensation for such practice;

9 (6) Any person providing services during a bona fide  
10 emergency;

11 (7) Any retail or wholesale establishment or any person  
12 engaged in the sale of cosmetics or other beauty products when the  
13 products are applied by the customer or when the application of the  
14 products is in direct connection with the sale or attempted sale of  
15 such products at retail;

16 (8) Any person when engaged in nonvocational training;

17 (9) Any retail or wholesale establishment or any person  
18 engaged in the practice or teaching of manicuring; and

19 (10) A person demonstrating on behalf of a manufacturer  
20 or distributor any electrolysis equipment or supplies if such  
21 demonstration is performed without charge.

22 Sec. 120. Section 71-507, Revised Statutes Supplement,  
23 1998, is amended to read:

24 71-507. For purposes of sections 71-507 to 71-513:

25 (1) Alternate facility means a facility other than a  
26 health care facility that receives a patient transported to the  
27 facility by an emergency services provider;

28 (2) Department means the Department of Health and Human

1 Services Regulation and Licensure;

2 (3) Designated physician means the physician representing  
3 the emergency services provider as identified by name, address, and  
4 telephone number on the significant exposure report form. The  
5 designated physician shall serve as the contact for notification in  
6 the event an emergency services provider believes he or she has had  
7 significant exposure to an infectious disease or condition. Each  
8 emergency services provider shall designate a physician as provided  
9 in subsection (2) of section 71-509;

10 (4) Emergency services provider means an out-of-hospital  
11 emergency care provider certified pursuant to the Emergency Medical  
12 Services Act, a sheriff, a deputy sheriff, a police officer, a  
13 state highway patrol officer, a funeral director, and a  
14 firefighter;

15 (5) Funeral director means a person licensed under  
16 section 71-1302 or an employee of such a person with responsibility  
17 for transport or handling of a deceased human;

18 (6) Funeral establishment means a business licensed under  
19 section 71-1327;

20 (7) Health care facility (a) prior to January 1, 2002,  
21 has the meaning found in subdivisions (2), (10), (11), and (20) of  
22 section 71-2017.01, (b) beginning January 1, 2002, means a hospital  
23 or a residential care and treatment facility licensed under the  
24 Uniform Facility Licensing Act, or (c) means any facility that  
25 receives patients of emergencies who are transported to the  
26 facility by emergency services providers;

27 (8) Infectious disease or condition means hepatitis B,  
28 meningococcal meningitis, active pulmonary tuberculosis, human

1 immunodeficiency virus, diphtheria, plague, hemorrhagic fevers,  
2 rabies, and such other diseases as the department may by rule and  
3 regulation specify;

4 (9) Patient means an individual who is sick, injured,  
5 wounded, deceased, or otherwise helpless or incapacitated;

6 (10) Patient's attending physician means the physician  
7 having the primary responsibility for the patient as indicated on  
8 the records of a health care facility;

9 (11) Provider agency means any law enforcement agency,  
10 fire department, emergency medical service, funeral establishment,  
11 or other entity which employs or directs emergency services  
12 providers;

13 (12) Responsible person means an individual who has been  
14 designated by an alternate facility to carry out the facility's  
15 responsibilities under sections 71-507 to 71-513. A responsible  
16 person may be designated on a case-by-case basis;

17 (13) Significant exposure means a situation in which the  
18 body fluids, including blood, saliva, urine, respiratory  
19 secretions, or feces, of a patient have entered the body of an  
20 emergency services provider through a body opening including the  
21 mouth or nose, a mucous membrane, or a break in skin from cuts or  
22 abrasions, from a contaminated needlestick or scalpel, from  
23 intimate respiratory contact, or through any other situation when  
24 the patient's body fluids may have entered the emergency services  
25 provider's body or when an airborne pathogen may have been  
26 transmitted from the patient to the emergency services provider;  
27 and

28 (14) Significant exposure report form means the form used

1 by the emergency services provider to document information  
2 necessary for notification of significant exposure to an infectious  
3 disease or condition.

4 Sec. 121. Section 71-511, Revised Statutes Supplement,  
5 1998, is amended to read:

6 71-511. (1) Information concerning any patient or test  
7 results obtained under sections 71-507 to 71-513 shall be  
8 maintained as confidential by the health care facility or alternate  
9 facility that received or tested the patient, the designated  
10 physician, the patient's attending physician, the emergency  
11 services provider, and the provider agency except as provided by  
12 such sections, ~~and~~ sections 71-503.01 and 71-2017, and the Uniform  
13 Facility Licensing Act and the rules and regulations adopted and  
14 promulgated pursuant to such sections and act. Such information  
15 shall not be made public upon subpoena, search warrant, discovery  
16 proceedings, or otherwise except as provided by such sections.

17 (2) The information described in subsection (1) of this  
18 section may be released with the written consent of the patient or,  
19 if the patient is deceased or incapable of giving informed consent,  
20 with the written consent of his or her next of kin, legal guardian,  
21 or personal representative of his or her estate.

22 Sec. 122. Section 71-516.03, Revised Statutes  
23 Supplement, 1998, is amended to read:

24 71-516.03. For the purposes of the Alzheimer's Special  
25 Care Disclosure Act, Alzheimer's special care unit shall mean any  
26 nursing facility, ~~or~~ assisted-living facility, or residential care  
27 and treatment facility, licensed by the Department of Health and  
28 Human Services Regulation and Licensure, which secures, segregates,

1 or provides a special program or special unit for residents with a  
2 diagnosis of probable Alzheimer's disease, dementia, or a related  
3 disorder and which advertises, markets, or otherwise promotes the  
4 facility as providing specialized Alzheimer's disease, dementia, or  
5 related disorder care services.

6 Sec. 123. Section 71-533, Revised Statutes Supplement,  
7 1998, is amended to read:

8 71-533. For purposes of sections 71-533 to 71-538:

9 (1) Department means the Department of Health and Human  
10 Services Regulation and Licensure;

11 (2) Exposure-prone invasive procedure means a procedure  
12 which presents a recognized risk of percutaneous injury to a health  
13 care worker which is likely to result in the health care worker's  
14 blood contacting the patient's body cavity, subcutaneous tissues,  
15 or mucous membranes. Characteristics of exposure-prone invasive  
16 procedures include digital palpation of a needle tip in a body  
17 cavity or the simultaneous presence of the health care worker's  
18 fingers and a needle or other sharp instrument or object in a  
19 poorly visualized or highly confined anatomic site; and

20 (3) Health care worker means an individual who furnishes  
21 direct patient care:

22 (a) Under a license, certificate, or registration issued  
23 by this state;

24 (b) Under the auspices of a ~~health care~~ facility which  
25 provides health care or treatment licensed under sections 71-2017  
26 to 71-2029 prior to January 1, 2002, and beginning January 1, 2002,  
27 licensed under the Uniform Facility Licensing Act or an individual  
28 described in subdivision (3)(a) of this section; or

1 (c) In the course of a training or educational program.

2 Sec. 124. Section 71-1637, Revised Statutes Supplement,  
3 1998, is amended to read:

4 71-1637. (1) Any city by its mayor and council or by its  
5 commission, any village by its village board, any county by its  
6 board of supervisors or commissioners, or any township by its  
7 electors shall have power to employ a visiting community nurse, a  
8 home health nurse, or prior to January 1, 2002, a home health  
9 agency defined in subdivision (17) of section 71-2017.01 and  
10 beginning January 1, 2002, a residential care and treatment  
11 facility providing home health services licensed under the Uniform  
12 Facility Licensing Act and the rules and regulations adopted and  
13 promulgated pursuant to such section or act. Such nurses, ~~or~~ home  
14 health agency, or facility shall do and perform such duties as the  
15 city, village, county, or township, by their officials and  
16 electors, shall prescribe and direct. The city, village, county,  
17 or township shall have the power to levy a tax, not exceeding three  
18 and five-tenths cents on each one hundred dollars on the taxable  
19 valuation of the taxable property of such city, village, county, or  
20 township, for the purpose of paying the salary and expenses of such  
21 nurses, ~~or~~ home health agency, or facility. The levy shall be  
22 subject to sections 77-3442 and 77-3443. The city, village,  
23 county, or township shall have the power to constitute and empower  
24 such nurses, ~~or~~ home health agency, or facility with police power  
25 to carry out the order of such city, village, county, or township.

26 (2) The governing body of any city, village, county, or  
27 township may contract with any visiting nurses association, or any  
28 such licensed ~~hospital home health agency, or other licensed home~~

1 ~~health~~ agency or facility, including those operated by the  
 2 Department of Health and Human Services, to perform the duties  
 3 contemplated in subsection (1) of this section, subject to the  
 4 supervision of the governing body, and may pay the expense of such  
 5 contract out of the general funds of the city, village, county, or  
 6 township.

7 (3) Nothing in this section shall be construed to allow  
 8 any city, village, county, township, nurse, ~~or~~ home health agency,  
 9 or facility to (a) avoid the requirements of individual licensure,  
 10 (b) perform any service beyond the scope of practice of licensure  
 11 or beyond the limits of licensure prescribed by subdivision (17) of  
 12 section 71-2017.01 prior to January 1, 2002, and beginning January  
 13 1, 2002, prescribed by the Uniform Facility Licensing Act, or (c)  
 14 violate any rule or regulation adopted and promulgated by the  
 15 Department of Health and Human Services, the Department of Health  
 16 and Human Services Regulation and Licensure, or the Department of  
 17 Health and Human Services Finance and Support.

18 Sec. 125. Section 71-1638, Revised Statutes Supplement,  
 19 1998, is amended to read:

20 71-1638. Whenever petitions signed by twenty-five  
 21 percent of the electors of a city, county, or village shall be  
 22 presented to the city council or board of supervisors,  
 23 commissioners, or trustees praying for the submission of the  
 24 question of making a levy to provide for salary and expenses of a  
 25 visiting community nurse, a home health nurse, or prior to January  
 26 1, 2002, a home health agency, and beginning January 1, 2002, a  
 27 residential care and treatment facility providing home health  
 28 services and stating the amount of the levy and the period of years

1 in which the same shall be made, it shall be the duty of such  
2 council or board of supervisors, commissioners, or trustees to  
3 submit the question to a vote of the people at a regular or special  
4 election called for that purpose. If the question is submitted at  
5 a special election, three weeks' notice of such special election  
6 shall be given by publication in some newspaper of general  
7 circulation. Such notice shall be published three consecutive  
8 weeks if the election is in a city or village or, if in a village  
9 and no paper is published in such village, then the notice shall be  
10 posted in three of the most public places in the village. If a  
11 majority of the votes cast at such election on the question are in  
12 favor of the levy, then the regularly constituted authorities of  
13 the city, county, or village shall include the same in the estimate  
14 for expenses for each year during the period for which adopted,  
15 unless the same shall be revoked. The tax shall be levied and  
16 collected in the same manner as other taxes are levied and  
17 collected. The levy shall be subject to section 77-3443.

18 Sec. 126. Section 71-2002, Reissue Revised Statutes of  
19 Nebraska, is amended to read:

20 71-2002. ~~As used in sections 71-2001 to 71-2016~~ For  
21 purposes of the State Hospital Survey and Construction Act, unless  
22 the context otherwise requires:

23 (1) Director shall mean the Director of Regulation and  
24 Licensure;

25 (2) The federal act shall mean, but is not restricted to,  
26 Public Law 88-156, Public Law 88-164, Public Law 88-581, Public Law  
27 88-443, and other measures of similar intent which have been, or  
28 may in the future be, passed by the Congress of the United States;

1           (3) The Surgeon General shall mean the Surgeon General of  
2 the Public Health Service of the United States or such other  
3 federal office or agency responsible for the administration of the  
4 federal Hospital Survey and Construction Act, 42 U.S.C. 291 and  
5 amendments thereto;

6           (4) Hospital includes, but is not restricted to, (a)  
7 prior to January 1, 2002, facilities or parts of facilities, which  
8 provide space for public health centers, mental health clinics, and  
9 general, tuberculosis, mental, long-term care, and other types of  
10 hospitals, and related facilities, such as homes for the aged or  
11 infirm, laboratories, out-patient departments, nurses' home and  
12 educational facilities, and central service facilities operated in  
13 connection with hospitals, and (b) beginning January 1, 2002,  
14 facilities licensed as hospitals or residential care and treatment  
15 facilities under the Uniform Facility Licensing Act;

16           (5) Public health center shall mean a publicly owned  
17 facility for providing public health services, including related  
18 facilities such as (a) prior to January 1, 2002, laboratories, and  
19 clinics, (b) beginning January 1, 2002, ambulatory facilities  
20 licensed under the Uniform Facility Licensing Act, and (c)  
21 administrative offices operated in connection with public health  
22 centers; and

23           (6) Nonprofit hospital shall mean any hospital owned and  
24 operated by a corporation or association, no part of the net  
25 earnings of which inures, or may lawfully inure, to the benefit of  
26 any private shareholder or individual.

27           Sec. 127.           Section 71-2048.01, Revised Statutes  
28 Supplement, 1998, is amended to read:

1           71-2048.01. Any hospital required to be licensed prior  
2 to January 1, 2002, pursuant to section 71-2018 and beginning  
3 January 1, 2002, pursuant to the Uniform Facility Licensing Act  
4 shall not deny clinical privileges to physicians and surgeons,  
5 podiatrists, osteopathic physicians, osteopathic physicians and  
6 surgeons, licensed psychologists, or dentists solely by reason of  
7 the license held by the practitioner. Each such hospital shall  
8 establish reasonable standards and procedures to be applied when  
9 considering and acting upon an application for medical staff  
10 membership and privileges. Once an application is determined to be  
11 complete by the hospital and is verified in accordance with such  
12 standards and procedures, the hospital shall notify the applicant  
13 of its initial recommendation regarding membership and privileges  
14 within one hundred twenty days.

15           Sec. 128. Section 71-2049, Reissue Revised Statutes of  
16 Nebraska, is amended to read:

17           71-2049. Except for state hospitals administered by the  
18 Department of Health and Human Services, prior to January 1, 2002,  
19 each hospital and each ambulatory surgical center, as such terms  
20 are defined in section 71-2017.01 and beginning January 1, 2002,  
21 each hospital and each ambulatory facility licensed under the  
22 Uniform Facility Licensing Act, shall, upon written request of a  
23 patient or third-party payor on behalf of a patient, include in  
24 such patient's or payor's bill an itemized list of all expenses  
25 such patient incurred during his or her stay at such hospital, ~~or~~  
26 ambulatory surgical center, or ambulatory facility. Such expenses  
27 shall include, but not be limited to, the cost of (1) X-rays, (2)  
28 laboratory fees, (3) respiratory therapy services, (4) oxygen, (5)

1 pharmaceuticals, (6) take-home drugs, (7) chargeable medical  
2 supplies, (8) central service supplies, (9) medical equipment, (10)  
3 room and board, and (11) all additional charges incurred by the  
4 patient. The right to request such information shall be clearly  
5 and conspicuously stated in each patient's or payor's bill. The  
6 patient or payor shall receive a copy of the itemized bill within  
7 fourteen days after the hospital, ~~or~~ ambulatory surgical center, or  
8 ambulatory facility receives the request. Such request shall be  
9 made by the patient or payor within twenty-eight days after the  
10 date of discharge.

11           Upon receipt of an itemized list, a patient or payor may  
12 request and the hospital, ~~or~~ ambulatory surgical center, or  
13 ambulatory facility shall provide an explanation of any or all  
14 expenses or services included on the itemized list. The patient or  
15 payor shall make a request for such explanation within twenty-eight  
16 days of receipt of an itemized list. The patient or payor shall  
17 receive the explanation within fourteen days after the hospital, ~~or~~  
18 ambulatory surgical center, or ambulatory facility receives the  
19 request.

20           Any person who violates this section shall be guilty of a  
21 Class IV misdemeanor.

22           Sec. 129. Section 71-2075, Reissue Revised Statutes of  
23 Nebraska, is amended to read:

24           71-2075. (1) Upon the written request of a prospective  
25 patient, his or her attending physician, or any authorized agent of  
26 the prospective patient, each hospital, except hospitals excluded  
27 under section 1886(d)(1)(B) of Public Law 98-21, the Social  
28 Security Act Amendments of 1983, and prior to January 1, 2002, each

1 ambulatory surgical center and beginning January 1, 2002, each  
2 ambulatory facility licensed under the Uniform Facility Licensing  
3 Act shall provide a written estimate of the average charges for  
4 health services related to a particular diagnostic condition or  
5 medical procedure if such services are provided by the hospital, ~~or~~  
6 center, or facility. Such written request shall include a written  
7 medical diagnosis made by a health care practitioner licensed to  
8 provide such diagnosis. The prospective patient or his or her  
9 agent may also provide to the hospital, ~~or~~ center, or facility the  
10 prospective patient's age and sex, any complications or  
11 co-morbidities of the prospective patient, other procedures  
12 required for the prospective patient, and other information which  
13 would allow the hospital, ~~or~~ center, or facility to provide a more  
14 accurate or detailed estimate. Such estimate shall be provided  
15 within seven working days from the date of submission of the  
16 written request and information necessary to prepare such an  
17 estimate.

18 (2) All hospitals, all and ambulatory surgical centers  
19 prior to January 1, 2002, and beginning January 1, 2002, all  
20 ambulatory facilities shall provide notice to the public that such  
21 hospital, ~~or~~ center, or facility will provide an estimate of  
22 charges for medical procedures or diagnostic conditions pursuant to  
23 subsection (1) of this section. Such public notice shall be  
24 provided either as a part of the advertising or promotional  
25 materials of the hospital, ~~or~~ center, or facility or by posting a  
26 notice in an obvious place within the public areas of the hospital,  
27 ~~or~~ center, or facility.

28 Sec. 130. Section 71-2076, Reissue Revised Statutes of

1 Nebraska, is amended to read:

2           71-2076.     (1) Effective January 1, 1986, each hospital,  
3 except hospitals excluded under section 1886(d)(1)(B) of Public Law  
4 98-21, the Social Security Act Amendments of 1983, and each  
5 ambulatory surgical center prior to January 1, 2002, and beginning  
6 January 1, 2002, each ambulatory facility licensed under the  
7 Uniform Facility Licensing Act shall identify the twenty most  
8 common diagnostic related groups for which services are provided by  
9 the hospital, ~~or~~ center, or facility. Such listing of diagnostic  
10 related groups shall be made available to consumers of health care,  
11 along with the range of average charges for treatment and the  
12 associated average length of stay for each diagnostic related group  
13 listed. Such listing shall be provided to any person upon request.  
14 The information included in the listing shall show the date  
15 prepared and shall be regularly updated every six months.

16           (2) Any hospital, ~~or~~ ambulatory surgical center, or  
17 ambulatory facility which provides services for fewer than twenty  
18 diagnostic related groups or performs an insufficient number of  
19 procedures to compute a statistically valid average shall provide a  
20 listing to the public of the most common diagnostic related groups  
21 provided by the hospital, ~~or~~ center, or facility and the average  
22 charges and length of stay for which a valid statistical average is  
23 available and shall disclose the circumstances for such limited  
24 available data.

25           Sec. 131. Section 71-2079, Reissue Revised Statutes of  
26 Nebraska, is amended to read:

27           71-2079. For purposes of sections 71-2078 to 71-2082:

28           (1) Hospital (a) prior to January 1, 2002, has ~~shall have~~

1 the meaning found in section 71-2017.01 and (b) beginning January  
 2 1, 2002, means a hospital licensed under the Uniform Facility  
 3 Licensing Act; and

4 (2) Hospital uniform billing form ~~shall mean~~ means the  
 5 Health Care Financing Administration claim form number 1450  
 6 mandated for the medicare program pursuant to sections 1814(a)(2)  
 7 and 1871 of the federal Social Security Act, as amended, developed  
 8 by the National Uniform Billing Committee and commonly referred to  
 9 as the uniform billing claim form number 92.

10 Sec. 132. Section 71-2084, Reissue Revised Statutes of  
 11 Nebraska, is amended to read:

12 71-2084. For purposes of sections 71-2084 to 71-2096:

13 (1) Department means the Department of Health and Human  
 14 Services Regulation and Licensure;

15 (2) Director means the Director of Regulation and  
 16 Licensure; and

17 (3) ~~Health care facility means an institution~~ Facility  
 18 means a facility subject to licensing under sections 71-2017 to  
 19 71-2029 prior to January 1, 2002, and beginning January 1, 2002,  
 20 under the Uniform Facility Licensing Act.

21 Sec. 133. Section 71-2085, Reissue Revised Statutes of  
 22 Nebraska, is amended to read:

23 71-2085. The department may petition the district court  
 24 for appointment of a receiver for a ~~health care~~ facility when any  
 25 of the following conditions exist:

26 (1) If the department determines that the health, safety,  
 27 or welfare of the ~~residents or patients~~ recipients of treatment or  
 28 care is in immediate danger;

1           (2) The ~~health care~~ facility is operating without a  
2 license;

3           (3) The department has suspended, revoked, or refused to  
4 renew the existing license of the ~~health care~~ facility;

5           (4) The ~~health care~~ facility is closing, or has informed  
6 the department that it intends to close, and adequate arrangements  
7 for the relocation of the ~~residents or patients~~ recipients of  
8 treatment or care of such ~~health care~~ facility have not been made  
9 at least thirty days prior to closure; or

10           (5) The department determines that an emergency exists,  
11 whether or not it has initiated revocation or nonrenewal  
12 procedures, and because of the unwillingness or inability of the  
13 licensee, owner, or operator to remedy the emergency, the  
14 department believes a receiver is necessary.

15           Sec. 134. Section 71-2086, Reissue Revised Statutes of  
16 Nebraska, is amended to read:

17           71-2086. (1) The department shall file the petition for  
18 the appointment of a receiver provided for in section 71-2085 in  
19 the district court of the county where the ~~health care~~ facility is  
20 located and shall request that a receiver be appointed for the  
21 ~~health care~~ facility.

22           (2) The court shall expeditiously hold a hearing on the  
23 petition within seven days after the filing of the petition. The  
24 director shall present evidence at the hearing in support of the  
25 petition. The licensee, owner, or operator may also present  
26 evidence, and both parties may subpoena witnesses. The court may  
27 appoint a temporary receiver for the ~~health care~~ facility ex parte  
28 if the director, by affidavit, states that an emergency exists

1 which presents an imminent danger of death or physical harm to the  
2 ~~residents or patients~~ recipients of treatment or care of the ~~health~~  
3 ~~care~~ facility. If a temporary receiver is appointed, notice of the  
4 petition and order shall be served on the licensee, owner,  
5 operator, or administrator of the ~~health care~~ facility within  
6 seventy-two hours after the entry of the order. The petition and  
7 order may be served by any method specified in section 25-505.01 or  
8 the court may permit substitute or constructive service as provided  
9 in section 25-517.02 when service cannot be made with reasonable  
10 diligence by any of the methods specified in section 25-505.01. A  
11 hearing on the petition and temporary order shall be held within  
12 seventy-two hours after notice has been served unless the licensee,  
13 owner, or operator consents to a later date. After the hearing the  
14 court may terminate, continue, or modify the temporary order. If  
15 the court determines that the department did not have probable  
16 cause to submit the affidavit in support of the appointment of the  
17 temporary receiver, the court shall have the jurisdiction to  
18 determine and award compensatory damages against the state to the  
19 owner or operator. If the licensee, owner, or operator informs the  
20 court at or before the time set for hearing that he or she does not  
21 object to the petition, the court shall waive the hearing and at  
22 once appoint a receiver for the ~~health care~~ facility.

23 (3) The purpose of a receivership created under this  
24 section is to safeguard the health, safety, and continuity of care  
25 of ~~residents and patients~~ recipients of treatment or care and to  
26 protect them from adverse health effects. A receiver shall not  
27 take any actions or assume any responsibilities inconsistent with  
28 this purpose. No person shall impede the operation of a

1 receivership created under this section. After the appointment of  
2 a receiver, there shall be an automatic stay of any action that  
3 would interfere with the functioning of the ~~health care~~ facility,  
4 including, but not limited to, cancellation of insurance policies  
5 executed by the licensee, owner, or operator, termination of  
6 utility services, attachments or setoffs of resident trust funds or  
7 working capital accounts, and repossession of equipment used in the  
8 ~~health care~~ facility. The stay shall not apply to any licensure,  
9 ~~certification~~, or injunctive action taken by the department.

10 Sec. 135. Section 71-2087, Reissue Revised Statutes of  
11 Nebraska, is amended to read:

12 71-2087. When a receiver is appointed under section  
13 71-2086, the licensee, owner, or operator shall be divested of  
14 possession and control of the ~~health care~~ facility in favor of the  
15 receiver. The appointment of the receiver shall not affect the  
16 rights of the owner or operator to defend against any claim, suit,  
17 or action against such owner or operator or the ~~health care~~  
18 facility, including, but not limited to, any licensure,  
19 ~~certification~~, or injunctive action taken by the department. A  
20 receiver shall:

21 (1) Take such action as is reasonably necessary to  
22 protect and conserve the assets or property of which the receiver  
23 takes possession or the proceeds of any transfer of the assets or  
24 property and may use them only in the performance of the powers and  
25 duties set forth in this section and section 71-2088 or by order of  
26 the court;

27 (2) Apply the current revenue and current assets of the  
28 ~~health care~~ facility to current operating expenses and to debts

1 incurred by the licensee, owner, or operator prior to the  
2 appointment of the receiver. The receiver may apply to the court  
3 for approval for payment of debts incurred prior to appointment if  
4 the debts appear extraordinary, of questionable validity, or  
5 unrelated to the normal and expected maintenance and operation of  
6 the ~~health care~~ facility or if the payment of the debts will  
7 interfere with the purposes of the receivership. The receiver  
8 shall give priority to expenditures for current, direct resident  
9 care, including nursing care, social services, dietary services,  
10 and housekeeping;

11 (3) Be responsible for the payment of taxes against the  
12 ~~health care~~ facility which become due during the receivership,  
13 including property taxes, sales and use taxes, withholding, taxes  
14 imposed pursuant to the Federal Insurance Contributions Act, and  
15 other payroll taxes, but not including state and federal taxes  
16 which are the liability of the owner or operator;

17 (4) Be entitled to and take possession of all property or  
18 assets of ~~residents or patients~~ recipients of treatment or care  
19 which are in the possession of the licensee, owner, operator, or  
20 administrator of the ~~health care~~ facility. The receiver shall  
21 preserve all property, assets, and records of ~~residents or patients~~  
22 the recipients of which the receiver takes possession and shall  
23 provide for the prompt transfer of the property, assets, and  
24 necessary and appropriate records to the alternative placement of  
25 any transferred or discharged ~~resident~~ recipient;

26 (5) Upon order of the court, provide for the orderly  
27 transfer of all ~~residents or patients~~ recipients of treatment or  
28 care in the ~~health care~~ facility to other suitable facilities if

1 correction of violations of federal and state laws and regulations  
2 is not possible or cannot be completed in a timely manner or there  
3 are reasonable grounds to believe the ~~health care~~ facility cannot  
4 be operated on a sound financial basis and in compliance with all  
5 applicable federal or state laws and regulations or make other  
6 provisions for the continued health, safety, and welfare of the  
7 ~~residents or patients~~ recipients of treatment or care;

8 (6) Perform regular accountings; and

9 (7) Make periodic reports to the court and the  
10 department.

11 Sec. 136. Section 71-2088, Reissue Revised Statutes of  
12 Nebraska, is amended to read:

13 71-2088. A receiver appointed under section 71-2086 may  
14 exercise those powers and shall perform those duties set out by the  
15 court. A receiver may:

16 (1) Assume the role of administrator and take control of  
17 day-to-day operations or name an administrator to conduct the  
18 day-to-day operations of the ~~health care~~ facility subject to the  
19 supervision and direction of the receiver;

20 (2) Remedy violations of federal and state laws and  
21 regulations governing the operation of the ~~health care~~ facility;

22 (3) Let contracts and hire agents and employees,  
23 including legal counsel, to carry out the powers and duties of the  
24 receiver; and

25 (4) Hire or discharge any employees including the  
26 administrator.

27 Sec. 137. Section 71-2089, Reissue Revised Statutes of  
28 Nebraska, is amended to read:

1           71-2089.     The receiver in its discretion may, but shall  
2 not be required to, defend any claim, suit, or action against the  
3 receiver or the ~~health care~~ facility arising out of conditions,  
4 actions, or circumstances occurring or continuing at the ~~health~~  
5 ~~care~~ facility after the appointment of the receiver. The receiver  
6 in its discretion may, but shall not be required to, defend any  
7 licensure, ~~certification~~, or injunctive action initiated by the  
8 department after its appointment. The receiver shall not appeal or  
9 continue the appeal of any licensure ~~or certification~~ action  
10 initiated by the department against the ~~health care~~ facility before  
11 the appointment of the receiver. The receiver shall cooperate with  
12 the owner or operator in any defense undertaken by the owner or  
13 operator against any claim, suit, or action against him or her or  
14 the ~~health care~~ facility, including, but not limited to, any  
15 licensure, ~~certification~~, or injunctive action taken by the  
16 department.

17           Sec. 138. Section 71-2090, Reissue Revised Statutes of  
18 Nebraska, is amended to read:

19           71-2090.     The department may inspect the ~~health care~~  
20 facility at any time during the receivership, and the receiver  
21 shall cooperate with the department in any such inspection. All  
22 records required by federal or state statutes and regulations shall  
23 be kept on the premises of the ~~health care~~ facility and shall be  
24 available for inspection and copying by any authorized employee of  
25 the department.

26           Sec. 139. Section 71-2091, Reissue Revised Statutes of  
27 Nebraska, is amended to read:

28           71-2091.     The receiver is responsible for the conduct of

1 the ~~health care~~ facility during the receivership. The department  
2 may apply to the court for an order terminating the appointment of  
3 a receiver and appointing a successor receiver when violations of  
4 federal or state laws or regulations occur during the receivership  
5 or for other appropriate reasons.

6 Sec. 140. Section 71-2092, Reissue Revised Statutes of  
7 Nebraska, is amended to read:

8 71-2092. (1) A receivership established under section  
9 71-2086 may be terminated by the district court which established  
10 it after a hearing upon an application for termination. The  
11 application may be filed:

12 (a) Jointly by the receiver and the current licensee of  
13 the ~~health care~~ facility which is in receivership, stating that the  
14 deficiencies in the operation, maintenance, or other circumstances  
15 which were the grounds for establishment of the receivership have  
16 been corrected and that there are reasonable grounds to believe  
17 that the ~~health care~~ facility will be operated in compliance with  
18 all applicable statutes and the rules and regulations adopted and  
19 promulgated pursuant thereto;

20 (b) By the current licensee of the ~~health care~~ facility,  
21 alleging that termination of the receivership is merited for the  
22 reasons set forth in subdivision (a) of this subsection, but that  
23 the receiver has declined to join in the petition for termination  
24 of the receivership;

25 (c) By the receiver, stating that all recipients of  
26 treatment or care ~~residents or patients~~ of the ~~health care~~ facility  
27 have been relocated elsewhere and that there are reasonable grounds  
28 to believe it will not be feasible to again operate the ~~health care~~

1 facility on a sound financial basis and in compliance with federal  
2 and state laws and regulations and asking that the court approve  
3 the surrender of the license of the ~~health care~~ facility to the  
4 department and the subsequent return of the control of the premises  
5 of the ~~health care~~ facility to the owner of the premises; or

6 (d) By the department (i) stating that the deficiencies  
7 in the operation, maintenance, or other circumstances which were  
8 the grounds for establishment of the receivership have been  
9 corrected and that there are reasonable grounds to believe that the  
10 ~~health care~~ facility will be operated in compliance with all  
11 applicable statutes and the rules and regulations adopted and  
12 promulgated pursuant thereto or (ii) stating that there are  
13 reasonable grounds to believe that the ~~health care~~ facility cannot  
14 be operated in compliance with federal or state law and regulations  
15 and asking that the court order the removal of the ~~residents or~~  
16 patients recipients of treatment or care to appropriate alternative  
17 placements, the closure of the facility, and the license, if any,  
18 surrendered to the department or that the ~~health care~~ facility be  
19 sold under reasonable terms approved by the court to a new owner  
20 approved for licensure by the department.

21 (2) If the receivership has not been terminated within  
22 twelve months after the appointment of the receiver, the court  
23 shall, after hearing, order either that the ~~health care~~ facility be  
24 closed after an orderly transfer of the ~~residents or patients~~  
25 recipients of treatment or care to appropriate alternative  
26 placements or that the ~~health care~~ facility be sold under  
27 reasonable terms approved by the court to a new owner approved for  
28 licensure by the department. The receivership period may be

1 extended as necessary to protect the health, safety, and welfare of  
2 the ~~residents or patients~~ recipients of treatment or care.

3 Sec. 141. Section 71-2093, Reissue Revised Statutes of  
4 Nebraska, is amended to read:

5 71-2093. The ~~health care~~ facility for which a receiver  
6 is appointed shall be responsible for payment of the expenses of a  
7 receivership established under section 71-2086 unless the court  
8 directs otherwise. The expenses include, but are not limited to:

9 (1) Compensation for the receiver and any related  
10 receivership expenses;

11 (2) Expenses incurred by the ~~health care~~ facility for the  
12 continuing care of the ~~residents or patients~~ recipients of  
13 treatment or care of the ~~health care~~ facility;

14 (3) Expenses incurred by the ~~health care~~ facility for the  
15 maintenance of buildings and grounds of the ~~health care~~ facility;  
16 and

17 (4) Expenses incurred by the ~~health care~~ facility in the  
18 ordinary course of business, such as employees' salaries and  
19 accounts payable.

20 Sec. 142. Section 71-2094, Reissue Revised Statutes of  
21 Nebraska, is amended to read:

22 71-2094. No person shall bring an action against a  
23 receiver appointed under section 71-2086 without first securing  
24 leave of the court. The receiver is liable in his or her personal  
25 capacity for intentional wrongdoing or gross negligence. In all  
26 other cases, the receiver is liable in his or her official capacity  
27 only, and any judgment rendered shall be satisfied out of the  
28 receivership assets. The receiver is not personally liable for the

1 expenses of the ~~health care~~ facility during the receivership. The  
2 receiver is an employee of the state only for the purpose of  
3 defending a claim filed against the receiver. The Attorney General  
4 shall defend or arrange for the defense of all suits filed against  
5 the receiver personally.

6 Sec. 143. Section 71-2095, Reissue Revised Statutes of  
7 Nebraska, is amended to read:

8 71-2095. Sections 71-2086 to 71-2094 shall not:

9 (1) Preclude the sale or lease of a ~~health care~~ facility  
10 as otherwise provided by law; or

11 (2) Affect the civil or criminal liability of the  
12 licensee, owner, or operator of the ~~health care~~ facility placed in  
13 receivership for any acts or omissions of the licensee, owner, or  
14 operator which occurred before the receiver was appointed.

15 Sec. 144. Section 71-2096, Reissue Revised Statutes of  
16 Nebraska, is amended to read:

17 71-2096. (1) Any person who prevents or interferes with  
18 or attempts to impede in any way any duly authorized representative  
19 of the department in the lawful enforcement of sections 71-2084 to  
20 71-2096 shall be guilty of a Class IV misdemeanor. For purposes of  
21 this subsection, lawful enforcement includes, but is not limited  
22 to, (a) contacting or interviewing any ~~resident or patient~~  
23 recipient of treatment or care of a ~~health care~~ facility in private  
24 at any reasonable hour and without advance notice, (b) examining  
25 any relevant books or records of a ~~health care~~ facility, or (c)  
26 preserving evidence of any violations of sections 71-2084 to  
27 71-2096.

28 (2) The county attorney of the county in which the ~~health~~

1 ~~care~~ facility is located or the Attorney General may be requested  
2 by the director to initiate prosecution.

3           Sec. 145. Section 71-2097, Revised Statutes Supplement,  
4 1998, is amended to read:

5           71-2097. For purposes of sections 71-2097 to 71-20,101:

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

8           (2) Federal regulations for participation in the medicaid  
9 program means the regulations found in 42 C.F.R. parts 442 and 483,  
10 as amended, for participation in the medicaid program under Title  
11 XIX of the federal Social Security Act, as amended; and

12           (3) Nursing facility means (a) prior to January 1, 2002,  
13 any nursing facility or intermediate care facility, as defined in  
14 section 71-2017.01, which receives federal and state funds under  
15 Title XIX of the federal Social Security Act, as amended, and (b)  
16 beginning January 1, 2002, any residential care and treatment  
17 facility subject to licensure under the Uniform Facility Licensing  
18 Act which receives federal and state funds under Title XIX of the  
19 federal Social Security Act, as amended.

20           Sec. 146. Section 71-20,103, Revised Statutes  
21 Supplement, 1998, is amended to read:

22           71-20,103. For purposes of the Nonprofit Hospital Sale  
23 Act:

24           (1) Department means the Department of Health and Human  
25 Services Regulation and Licensure;

26           (2) Hospital (a) prior to January 1, 2002, has the  
27 definition found in subdivision (3) of section 71-2017.01 and (b)  
28 beginning January 1, 2002, means a hospital subject to licensure

1 under the Uniform Facility Licensing Act;

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

17 (4) Person has the meaning found in section 71-5803.12.

18 Sec. 147. Section 71-20,112, Reissue Revised Statutes of  
19 Nebraska, is amended to read:

20 71-20,112. No license to operate a hospital may be  
21 issued or renewed by the department pursuant to Chapter 71, article  
22 20, ~~or any other state statute~~ prior to January 1, 2002, and  
23 beginning January 1, 2002, pursuant to the Uniform Facility  
24 Licensing Act, and a license which has been issued shall be subject  
25 to revocation or suspension, if:

26 (1) There is an acquisition of a hospital without first  
27 having received the approval of the department under the Nonprofit  
28 Hospital Sale Act;

1           (2) There is an acquisition of a hospital without the  
2 approval of the Attorney General, if the Attorney General  
3 determines to review the application under the act;

4           (3) There is an acquisition of a hospital and the  
5 Attorney General disapproves the acquisition and there is a  
6 judicial determination under the Uniform Declaratory Judgments Act  
7 that the acquisition is not in the public interest; or

8           (4) The hospital is not fulfilling its commitment under  
9 section 71-20,109 or is not following procedures of safeguards  
10 committed to under subdivision (3) of such section.

11           This section does not limit the right to a hearing ~~under~~  
12 ~~section 71-2023~~ or the right of appeal for a hospital from such  
13 decision as provided in Chapter 71, article 20, prior to January 1,  
14 2002, and beginning January 1, 2002, as provided in the Uniform  
15 Facility Licensing Act.

16           Sec. 148. Section 71-2411, Revised Statutes Supplement,  
17 1998, is amended to read:

18           71-2411. For purposes of the Emergency Box Drug Act:

19           (1) Authorized personnel ~~shall mean~~ means any medical  
20 doctor, doctor of osteopathy, registered nurse, licensed practical  
21 nurse, pharmacist, or physician's assistant;

22           (2) Department ~~shall mean~~ means the Department of Health  
23 and Human Services Regulation and Licensure;

24           (3) Drug ~~shall mean~~ means any prescription drug or legend  
25 drug defined under section 71-1,142, any nonprescription drug as  
26 defined under section 71-1,142, any controlled substance as defined  
27 under section 28-405, or any device as defined under section  
28 71-1,142;

1           (4) Emergency box drugs ~~shall mean~~ means drugs required  
2 to meet the immediate therapeutic needs of patients when the drugs  
3 are not available from any other authorized source in time to  
4 sufficiently prevent risk of harm to such patients by the delay  
5 resulting from obtaining such drugs from such other authorized  
6 source;

7           (5) Institution ~~shall mean~~ means (a) prior to January 1,  
8 2002, a skilled nursing facility, an intermediate care facility, an  
9 intermediate care facility for the mentally retarded, a mental  
10 health center, and a nursing facility, as such terms are defined  
11 under section 71-2017.01, and (b) beginning January 1, 2002, a  
12 residential care and treatment facility subject to licensure under  
13 the Uniform Facility Licensing Act;

14           (6) Institutional pharmacy ~~shall mean~~ means the physical  
15 portion of an institution engaged in the compounding, dispensing,  
16 and labeling of drugs which is operating pursuant to a permit  
17 issued by the Department of Health and Human Services Regulation  
18 and Licensure under section 71-1,147.03;

19           (7) Multiple dose vial ~~shall mean~~ means any bottle in  
20 which more than one dose of a liquid drug is stored or contained;  
21 and

22           (8) Supplying pharmacist ~~shall mean~~ means the pharmacist  
23 in charge of an institutional pharmacy or a pharmacist who provides  
24 emergency box drugs to an institution pursuant to the Emergency Box  
25 Drug Act. Supplying pharmacist ~~shall~~ does not include any agent or  
26 employee of the supplying pharmacist who is not a pharmacist.

27           Sec. 149. Section 71-2601, Revised Statutes Supplement,  
28 1998, is amended to read:

1                   71-2601. The State Board of Health shall consist of  
2                   seventeen members to be appointed by the Governor with the consent  
3                   of a majority of the members of the Legislature. Two members shall  
4                   be licensed to practice medicine and surgery in this state, one  
5                   member shall be licensed to practice dentistry in this state, one  
6                   member shall be licensed to practice optometry in this state, one  
7                   member shall be licensed to practice veterinary medicine in this  
8                   state, one member shall be licensed to practice pharmacy in this  
9                   state, two members shall be licensed to practice nursing in this  
10                  state, one member shall be licensed to practice osteopathic  
11                  medicine and surgery or as an osteopathic physician in this state,  
12                  one member shall be licensed to practice podiatry in this state,  
13                  one member shall be licensed to practice chiropractic in this  
14                  state, one member shall be licensed to practice physical therapy in  
15                  this state, one member shall be a professional engineer in this  
16                  state, one member shall be an administrator of a hospital in this  
17                  state which is licensed pursuant to sections 71-2017 to 71-2029  
18                  prior to January 1, 2002, and beginning January 1, 2002, licensed  
19                  pursuant to the Uniform Facility Licensing Act, one member shall be  
20                  a credentialed mental health professional, and two members shall be  
21                  laypersons who at all times are public-spirited citizens of  
22                  Nebraska interested in the health of the people of the State of  
23                  Nebraska and not less than twenty-one years of age. The Governor  
24                  shall also be an ex officio member of such board but shall be  
25                  permitted to vote on matters before the board only when necessary  
26                  to break a tie.

27                  Sec. 150. Section 71-3401, Reissue Revised Statutes of  
28                  Nebraska, is amended to read:

1           71-3401.     Any person, any hospital, sanitarium, or  
2 nursing home, rest home prior to January 1, 2002, and beginning  
3 January 1, 2002, any facility subject to licensure under the  
4 Uniform Facility Licensing Act, or any other organization may  
5 provide information, interviews, reports, statements, memoranda, or  
6 other data relating to the condition and treatment of any person to  
7 the Department of Health and Human Services Regulation and  
8 Licensure, the Nebraska Medical Association or any of its allied  
9 medical societies, the Nebraska Association of Hospitals and Health  
10 Systems, any inhospital staff committee, or any joint venture of  
11 such entities to be used in the course of any study for the purpose  
12 of reducing morbidity or mortality, and no liability of any kind or  
13 character for damages or other relief shall arise or be enforced  
14 against any person, facility, or organization by reason of having  
15 provided such information or material, by reason of having released  
16 or published the findings and conclusions of such groups to advance  
17 medical research and medical education, or by reason of having  
18 released or published generally a summary of such studies.

19           Sec. 151. Section 71-3608, Reissue Revised Statutes of  
20 Nebraska, is amended to read:

21           71-3608.     No person having communicable tuberculosis who  
22 in his or her home or elsewhere obeys the rules and regulations and  
23 orders of the Department of Health and Human Services for the  
24 control of tuberculosis or who voluntarily accepts hospitalization  
25 or treatment in a ~~health care~~ facility providing health care or  
26 treatment mentioned in subdivision (1) of section 71-2017 which is  
27 licensed and approved for such use by the Department of Health and  
28 Human Services Regulation and Licensure and obeys the rules and

1 regulations and orders of the Department of Health and Human  
2 Services for the control of communicable tuberculosis shall be  
3 committed under the provisions of sections 71-3601 to 71-3612.

4 Sec. 152. Section 71-3613, Reissue Revised Statutes of  
5 Nebraska, is amended to read:

6 71-3613. The Department of Health and Human Services  
7 shall have and may exercise the following powers and duties in its  
8 administration of sections 71-3601 to 71-3612:

9 (1) To contract with ~~qualified hospitals or other health~~  
10 ~~care facilities mentioned in subdivision (1) of section 71-2017~~  
11 which are licensed and approved for such use by the Department of  
12 Health and Human Services Regulation and Licensure for the purpose  
13 of caring for, maintaining, and treating patients committed under  
14 the provisions of sections 71-3601 to 71-3612, and for those other  
15 persons having communicable tuberculosis who voluntarily agree to  
16 and accept care and treatment in such a ~~health care~~ facility on  
17 either an inpatient or an outpatient basis;

18 (2) To inspect and supervise to the extent necessary the  
19 facilities, operations, and administration of those ~~health care~~  
20 facilities under contract to or otherwise receiving support from  
21 the Department of Health and Human Services for the purpose of  
22 providing care, treatment, or maintenance for persons infected with  
23 communicable tuberculosis;

24 (3) To provide visiting nursing services to those persons  
25 having communicable tuberculosis who are being treated on an  
26 outpatient basis;

27 (4) To adopt rules and regulations, and issue orders  
28 based thereon, relative to reports and statistics on tuberculosis

1 from counties and the care, treatment, and maintenance of persons  
2 having tuberculosis, especially of those in the communicable or  
3 contagious stage thereof; and

4 (5) To set standards by rule and regulation for the types  
5 and level of medical care and treatment to be used by those ~~health~~  
6 ~~care~~ facilities caring for tuberculous persons and to set standards  
7 by rule and regulation governing contracts mentioned in subdivision  
8 (1) of this section dealing with such matters as program standards,  
9 maximum and minimum costs and rates, administrative procedures to  
10 be followed and reports to be made, and arbitration by third  
11 parties, except that no such contract or contracts shall be longer  
12 than one year in duration or involve amounts in excess of the funds  
13 appropriated therefor.

14 Sec. 153. Section 71-5033, Reissue Revised Statutes of  
15 Nebraska, is amended to read:

16 71-5033. Mental health, drug abuse, and alcoholism  
17 programs, services, and facilities funded in whole or in part by  
18 the governing board shall submit their budget requests to the  
19 comptroller. The comptroller shall review such requests and attach  
20 his recommendations thereto and submit them to the governing board.  
21 Each private provider of services shall submit to the governing  
22 board a detail audit for all money received under the provisions of  
23 sections 71-5016 to 71-5040, 83-1009, and 83-1009.01, except that  
24 in the case of services provided by a hospital licensed under the  
25 provisions of section 71-2020 prior to January 1, 2002, and  
26 beginning January 1, 2002, licensed under the Uniform Facility  
27 Licensing Act, a copy of the hospital's most recently submitted  
28 annual Medicare Cost Report may be provided to the governing board

1 in lieu of the submission of a detail audit.

2 Sec. 154. Section 71-5803.01, Revised Statutes  
3 Supplement, 1998, is amended to read:

4 71-5803.01. Acute care bed means a bed in a hospital  
5 that is or will be licensed under Chapter 71, article 20, prior to  
6 January 1, 2002, and beginning January 1, 2002, licensed under the  
7 Uniform Facility Licensing Act for acute care services or a bed  
8 that is part of a hospital or unit of a hospital that is excluded  
9 from prospective payment system under Title XVIII of the federal  
10 Social Security Act, as amended, as a rehabilitation hospital or  
11 rehabilitation unit.

12 Sec. 155. Section 71-5803.02, Revised Statutes  
13 Supplement, 1998, is amended to read:

14 71-5803.02. Ambulatory surgical center (1) prior to  
15 January 1, 2002, has the same meaning as in section 71-2017.01 and  
16 (2) beginning January 1, 2002, means an ambulatory facility which  
17 provides surgical services subject to licensure under the Uniform  
18 Facility Licensing Act.

19 Sec. 156. Section 71-5803.05, Revised Statutes  
20 Supplement, 1998, is amended to read:

21 71-5803.05. Assisted-living facility (1) prior to  
22 January 1, 2002, has the same meaning as in section 71-2017.01 and  
23 (2) beginning January 1, 2002, means an assisted-living facility  
24 subject to licensure under the Uniform Facility Licensing Act.

25 Sec. 157. Section 71-5803.06, Revised Statutes  
26 Supplement, 1998, is amended to read:

27 71-5803.06. Health care facility means (1) prior to  
28 January 1, 2002, hospitals, skilled nursing facilities,

1 intermediate care facilities, and nursing facilities and (2)  
2 beginning January 1, 2002, a hospital or residential care and  
3 treatment facility subject to licensure under the Uniform Facility  
4 Licensing Act.

5 Sec. 158. Section 71-5803.08, Revised Statutes  
6 Supplement, 1998, is amended to read:

7 71-5803.08. Hospital (1) prior to January 1, 2002, has  
8 the same meaning as in section 71-2017.01 and (2) beginning January  
9 1, 2002, means a hospital subject to licensure under the Uniform  
10 Facility Licensing Act.

11 Sec. 159. Section 71-5803.10, Revised Statutes  
12 Supplement, 1998, is amended to read:

13 71-5803.10. (1) Long-term care bed means (a) prior to  
14 January 1, 2002, a bed that is or will be licensed under Chapter  
15 71, article 20, as a skilled nursing facility, intermediate care  
16 facility, nursing facility, or long-term care hospital bed and (b)  
17 beginning January 1, 2002, a bed in a residential care and  
18 treatment facility that is or will be licensed under the Uniform  
19 Facility Licensing Act.

20 (2) Long-term care beds do not include residential care  
21 beds, domiciliary beds, or swing beds. For purposes of this  
22 section swing beds means beds which may be used by a hospital for  
23 acute or long-term care in a facility located in an area which is  
24 not designated as urban by the United States Bureau of the Census  
25 and which has up to one hundred beds, excluding beds for newborns  
26 and intensive-care-type inpatient units.

27 Sec. 160. Section 71-5803.13, Revised Statutes  
28 Supplement, 1998, is amended to read:

1           71-5803.13. Rehabilitation bed means a bed that is or  
2 will be licensed under Chapter 71, article 20, in an inpatient  
3 facility prior to January 1, 2002, and beginning January 1, 2002, a  
4 bed in a hospital that is or will be licensed under the Uniform  
5 Facility Licensing Act which is operated for the primary purpose of  
6 assisting in the rehabilitation of disabled persons through an  
7 integrated program of medical and other services which are provided  
8 under professional supervision and that is part of a hospital or  
9 unit of a hospital that is excluded from the prospective payment  
10 system under Title XVIII of the federal Social Security Act as a  
11 rehabilitation hospital or rehabilitation unit.

12           Sec. 161. Section 71-5869, Revised Statutes Supplement,  
13 1998, is amended to read:

14           71-5869. (1) A license or permit which has been issued  
15 by the department pursuant to Chapter 71, article 20, ~~or any other~~  
16 ~~state statute~~ prior to January 1, 2002, and beginning January 1,  
17 2002, a license which has been issued by the department pursuant to  
18 the Uniform Facility Licensing Act to a health care facility which  
19 engaged in an activity identified as requiring a certificate of  
20 need under the Nebraska Health Care Certificate of Need Act without  
21 having first obtained a certificate of need or which engaged in an  
22 activity prohibited under the act is subject to revocation or  
23 suspension. Nothing contained in this section shall limit the  
24 rights of appeal of a health care facility from such decision as  
25 provided in Chapter 71, article 20, prior to January 1, 2002, and  
26 beginning January 1, 2002, as provided in the Uniform Facility  
27 Licensing Act.

28           (2) No license or permit may be issued or renewed by the

1 department pursuant to Chapter 71, article 20, ~~or any other state~~  
2 ~~statute~~, prior to January 1, 2002, and beginning January 1, 2002,  
3 no license may be issued or renewed by the department pursuant to  
4 the Uniform Facility Licensing Act nor may any type of approval be  
5 granted to any health care facility which engaged in an activity  
6 identified as requiring a certificate of need under the Nebraska  
7 Health Care Certificate of Need Act without having first obtained a  
8 certificate of need or which engaged in an activity prohibited  
9 under the act.

10 Sec. 162. Section 71-6053, Reissue Revised Statutes of  
11 Nebraska, is amended to read:

12 71-6053. For the purpose of sections 71-6053 to 71-6068,  
13 unless the context otherwise requires:

14 (1) Accredited institution ~~shall mean~~ means an  
15 institution of postsecondary education approved by the board;

16 (2) Active license ~~shall mean~~ means a license issued by  
17 the board to an administrator who meets the continuing education  
18 requirements of section 71-6060 and who submits the fee required by  
19 section 71-6061;

20 (3) Administrator or nursing home administrator ~~shall~~  
21 ~~mean~~ means any individual who meets the education and training  
22 requirements of section 71-6054 and is responsible for planning,  
23 organizing, directing, and controlling the operation of a home for  
24 the aged or infirm or nursing home or who in fact performs such  
25 functions, whether or not such functions are shared by one or more  
26 other persons. Notwithstanding this subdivision or any other  
27 provision of law, the administrator of a residential care and  
28 treatment facility operating as an intermediate care facility for

1 the mentally retarded may be either a licensed nursing home  
2 administrator or a qualified mental retardation professional;

3 (4) Administrator-in-training ~~shall mean~~ means a person  
4 who is undergoing training to become a nursing home administrator  
5 and is supervised in a home for the aged or infirm or nursing home  
6 by a certified preceptor;

7 (5) Board ~~shall mean~~ means the Board of Examiners in  
8 Nursing Home Administration;

9 (6) Certified preceptor ~~shall mean~~ means a person who is  
10 currently licensed by the State of Nebraska as a nursing home  
11 administrator, has three years of experience as a nursing home  
12 administrator, is currently practicing in a home for the aged or  
13 infirm or a nursing home, and is approved by the board to supervise  
14 an administrator-in-training;

15 (7) Department ~~shall mean~~ means the Department of Health  
16 and Human Services Regulation and Licensure;

17 (8) Home for the aged or infirm or nursing home ~~shall~~  
18 ~~mean~~ means any institution or facility licensed as such by the  
19 department pursuant to sections 71-2017 to 71-2029 prior to January  
20 1, 2002, and beginning January 1, 2002, any residential care and  
21 treatment facility licensed pursuant to the the Uniform Facility  
22 Licensing Act providing continuous nursing services other than a  
23 facility providing care or treatment in the home of the recipient  
24 of care or treatment, whether proprietary or nonprofit, including,  
25 but not limited to, homes for the aged or infirm owned or  
26 administered by the federal or state government or an agency or  
27 political subdivision thereof;

28 (9) Internship ~~shall mean~~ means that aspect of the

1 educational program of the associate degree in long-term care  
 2 administration which allows for practical experience in a home for  
 3 the aged or infirm or nursing home and occurs under the supervision  
 4 of a certified preceptor; and

5 (10) License ~~shall mean~~ means permission to engage in  
 6 nursing home administration which would otherwise be unlawful in  
 7 this state in the absence of such permission and which is granted  
 8 to individuals who meet prerequisites and qualifications that allow  
 9 them to perform nursing home administration tasks and use the title  
 10 nursing home administrator.

11 Sec. 163. Section 71-6601, Reissue Revised Statutes of  
 12 Nebraska, is amended to read:

13 71-6601. Sections 71-6601 to 71-6615 shall be known and  
 14 may be cited as the Home Health Aide Act.

15 It is the intent of the Legislature that quality health  
 16 care be provided to all citizens of the state who receive home  
 17 health aide services through a licensed home health agency. A  
 18 method of accomplishing quality health care is to ensure adequate  
 19 training of unlicensed personnel who provide home health aide  
 20 services by establishing minimum standards for training,  
 21 evaluation, and supervision. The purpose of ~~sections 71-6601 to~~  
 22 ~~71-6615 the act~~ is to establish requirements for the provision of  
 23 home health aide services.

24 Sec. 164. Section 71-6602, Revised Statutes Supplement,  
 25 1998, is amended to read:

26 71-6602. As used in sections 71-6601 to 71-6615 For  
 27 purposes of the Home Health Aide Act, unless the context otherwise  
 28 requires:

1           (1) Activities of daily living ~~shall mean~~ means  
2 assistance with ambulation, toileting, feeding, and similar  
3 activities;

4           (2) Basic therapeutic care ~~shall mean~~ means basic health  
5 care procedures, including, but not limited to, measuring vital  
6 signs, applying hot and cold applications and nonsterile dressings,  
7 and assisting with, but not administering, internal and external  
8 medications which are normally self-administered. Basic  
9 therapeutic care ~~shall~~ does not include health care procedures  
10 which require the exercise of nursing or medical judgment;

11           (3) Department ~~shall mean~~ means the Department of Health  
12 and Human Services Regulation and Licensure;

13           (4) Home health agency ~~shall mean~~ means (a) prior to  
14 January 1, 2002, a home health agency as defined in section  
15 71-2017.01 and (b) beginning January 1, 2002, a residential care  
16 and treatment facility which provides home health services subject  
17 to licensure under the Uniform Facility Licensing Act;

18           (5) Home health aide ~~shall mean~~ means a person who is  
19 employed by a home health agency to provide personal care,  
20 assistance with the activities of daily living, and basic  
21 therapeutic care to patients of the home health agency;

22           (6) Personal care ~~shall mean~~ means bathing, hair care,  
23 nail care, shaving, dressing, oral care, and similar activities;

24           (7) Supervised practical training ~~shall mean~~ means  
25 training in a laboratory or other setting in which the trainee  
26 demonstrates knowledge while performing tasks on an individual  
27 under the direct supervision of a registered nurse or licensed  
28 practical nurse; and

1           (8) Vital signs ~~shall mean~~ means temperature, pulse,  
2 respiration, and blood pressure.

3           Sec. 165. Section 71-6603, Reissue Revised Statutes of  
4 Nebraska, is amended to read:

5           71-6603. ~~On and after September 6, 1991, no~~ No person  
6 shall act as a home health aide unless such person:

7           (1) Is at least eighteen years of age;

8           (2) Is of good moral character;

9           (3) Has not been convicted of a crime under the laws of  
10 this state or another jurisdiction, the penalty for which is  
11 imprisonment for a period of more than one year and which is  
12 rationally related to the person's fitness or capacity to act as a  
13 home health aide;

14           (4) Is able to speak and understand the English language  
15 or the language of the home health agency patient and the home  
16 health agency staff member who acts as the home health aide's  
17 supervisor;

18           (5) Meets one of the following qualifications:

19           (a) Has successfully completed a home health aide  
20 training course which meets the standards described in section  
21 71-6608.01;

22           (b) Is a graduate of a practical or professional school  
23 of nursing;

24           (c) Has been employed by a licensed home health agency as  
25 a home health aide II prior to September 6, 1991;

26           (d) Has successfully completed a course in a practical or  
27 professional school of nursing which included practical clinical  
28 experience in fundamental nursing skills and has completed a

1 competency evaluation as described in section 71-6608.02;

2 (e) Has successfully completed a basic course of training  
3 approved by the department for nursing assistants as required by  
4 section 43 of this act ~~71-6039~~ and has completed a competency  
5 evaluation as described in section 71-6608.02;

6 (f) Has been employed by a licensed home health agency as  
7 a home health aide I prior to September 6, 1991, and has completed  
8 a competency evaluation as described in section 71-6608.02; or

9 (g) Has met the qualifications equal to one of those  
10 contained in subdivisions (a) through (f) of this subdivision in  
11 another state or territory of the United States; and

12 (6) Has provided to the employing licensed home health  
13 agency proof of meeting the requirements of this section.

14 Sec. 166. Section 71-6606, Reissue Revised Statutes of  
15 Nebraska, is amended to read:

16 71-6606. ~~After January 1, 1989, home~~ Home health  
17 agencies shall employ only home health aides qualified to provide  
18 home health care pursuant to ~~sections 71-6601 to 71-6615~~ the Home  
19 Health Aide Act. The department shall prescribe procedures for  
20 verification by home health agencies of successful completion of  
21 the requirements of section 71-6603. Home health agencies shall  
22 provide direction and supervision of home health aides. Home  
23 health agencies shall provide or make available to their home  
24 health aides four one-hour inservice programs per year on subjects  
25 relevant to home health care and shall verify such programs in a  
26 manner and method prescribed by the department.

27 Sec. 167. Section 71-6609, Reissue Revised Statutes of  
28 Nebraska, is amended to read:

1           71-6609. The department shall adopt and promulgate rules  
2 and regulations to implement and administer ~~sections 71-6601 to~~  
3 ~~71-6615~~ the Home Health Aide Act which may include, but shall not  
4 be limited to, supervision of home health aides, training courses,  
5 determinations of curricula, examination methods and scores,  
6 instructor qualifications, reporting requirements, inservice  
7 programs, and such other rules and regulations as are necessary for  
8 the efficient administration of ~~such sections~~ the act and for the  
9 protection of the public health.

10           Sec. 168. Section 71-6721, Revised Statutes Supplement,  
11 1998, is amended to read:

12           71-6721. For purposes of the Medication Aide Act:

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

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

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

1 individual;

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

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

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

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

15 (8) Facility means (a) prior to January 1, 2002, an  
16 entity defined in section 71-2017.01, (b) beginning January 1,  
17 2002, a facility licensed under the Uniform Facility Licensing Act,  
18 or (c) an entity or person certified by the Department of Health  
19 and Human Services Regulation and Licensure or the Department of  
20 Health and Human Services Finance and Support to provide home and  
21 community-based services;

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

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

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

1           (12) Intermediate care facility for the mentally retarded  
2 (a) prior to January 1, 2002, has the definition found in section  
3 71-2017.01 and (b) beginning January 1, 2002, means a residential  
4 care and treatment facility licensed under the Uniform Facility  
5 Licensing Act which provides intermediate care for the mentally  
6 retarded;

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

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

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

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

18           (17) Nursing home means (a) prior to January 1, 2002, any  
19 facility or a distinct part of any facility that provides care as  
20 defined in subdivision (6), (10), (11), or (20) of section  
21 71-2017.01 and (b) beginning January 1, 2002, any residential care  
22 and treatment facility providing continuous nursing services  
23 licensed under the Uniform Facility Licensing Act;

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

26           (19) Provision of medication means the component of the  
27 administration of medication that includes giving or applying a  
28 dose of a medication to an individual and includes helping an

1 individual in giving or applying such medication to himself or  
2 herself;

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

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

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

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

13 Sec. 169. Section 71-6725, Revised Statutes Supplement,  
14 1998, is amended to read:

15 71-6725. (1) The minimum competencies for a medication  
16 aide, a person licensed to operate a child care facility or a staff  
17 member of a child care facility, or a staff member of a school  
18 shall include (a) maintaining confidentiality, (b) complying with a  
19 recipient's right to refuse to take medication, (c) maintaining  
20 hygiene and current accepted standards for infection control, (d)  
21 documenting accurately and completely, (e) providing medications  
22 according to the five rights, (f) having the ability to understand  
23 and follow instructions, (g) practicing safety in application of  
24 medication procedures, (h) complying with limitations and  
25 conditions under which a medication aide may provide medications,  
26 and (i) having an awareness of abuse and neglect reporting  
27 requirements and any other areas as shall be determined by rules or  
28 regulations.

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

12           (3) A medication aide (except one who is employed by a  
13 nursing home, intermediate care facility for the mentally retarded,  
14 or an assisted-living facility), a person licensed to operate a  
15 child care facility or a staff member of a child care facility, or  
16 a staff member of a school shall not be required to take a course.  
17 The medication aide shall be assessed to determine that the  
18 medication aide has the competencies listed in subsection (1) of  
19 this section.

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

1 standard for the examination shall be established in rules and  
2 regulations.

3 (5) A medication aide providing services in a nursing  
4 home or an intermediate care facility for the mentally retarded  
5 shall be required to have completed a forty-hour course on the  
6 competencies listed in subsection (1) of this section and  
7 competency standards established through rules and regulations as  
8 provided for in subsection (2) of this section. Competency  
9 assessment shall include passing an examination developed and  
10 administered by the department. Criteria for establishing a  
11 passing standard for the examination shall be established in rules  
12 and regulations. Before providing services in a nursing home or an  
13 intermediate care facility for the mentally retarded, a medication  
14 aide who has previously met the requirements of subsection (4) of  
15 this section shall be required to complete an additional  
16 twenty-hour course. This twenty-hour course, together with the  
17 twenty-hour course set forth in subsection (4) of this section  
18 shall be equivalent to the forty-hour course set forth in this  
19 subsection. Medication aides providing services in nursing homes  
20 or intermediate care facilities for the mentally retarded prior to  
21 January 1, 2002, and beginning January 1, 2002, providing services  
22 in residential care and treatment facilities providing continuous  
23 nursing services shall also meet the requirements set forth in  
24 section ~~71-6039~~ 43 of this act.

25 Sec. 170. Section 71-6735, Revised Statutes Supplement,  
26 1998, is amended to read:

27 71-6735. \* Prior to January 1, 2002, a facility shall be  
28 subject to discipline under the Nebraska Nursing Home Act or

1 sections 71-2017 to 71-2029 or other relevant statutes for  
2 violation of the Medication Aide Act or the rules and regulations.  
3 A school shall be subject to discipline under Chapter 79 for  
4 violation of the act or the applicable rules and regulations. A  
5 child care facility shall be subject to discipline under sections  
6 71-1908 to 71-1917 for violation of the act or the rules and  
7 regulations.

8 Sec. 171. Section 71-7102, Revised Statutes Supplement,  
9 1998, is amended to read:

10 71-7102. For purposes of the Critical Incident Stress  
11 Management Act:

12 (1) Committee means the Interagency Management Committee;

13 (2) Council means the Critical Incident Stress Management  
14 Council;

15 (3) Critical incident means a traumatic or crisis  
16 situation;

17 (4) Critical incident stress means a strong emotional,  
18 cognitive, or physical reaction which has the potential to  
19 interfere with normal functioning, including physical and emotional  
20 illness, loss of interest in the job, personality changes, marital  
21 discord, and loss of ability to function;

22 (5) Emergency service agency means any law enforcement  
23 agency, fire department, emergency medical service, dispatcher,  
24 rescue service, hospital as defined in section 71-2017.01 prior to  
25 January 1, 2002, and beginning January 1, 2002, hospital licensed  
26 under the Uniform Facility Licensing Act, or other entity which  
27 provides emergency response services;

28 (6) Emergency service personnel includes law enforcement

1 personnel, firefighters, emergency medical services personnel, and  
2 hospital personnel; and

3 (7) Program means the Critical Incident Stress Management  
4 Program.

5 Sec. 172. Section 71-7613, Revised Statutes Supplement,  
6 1998, is amended to read:

7 71-7613. (1) For purposes of this section:

8 (a) Alternatives to nursing facility care means those  
9 services included in the program of home and community-based waiver  
10 services for aged persons or adults or children with disabilities  
11 under the medical assistance program established pursuant to  
12 section 68-1018;

13 (b) Conversion means (i) the remodeling of existing space  
14 and, if necessary, the construction of additional space required to  
15 accommodate assisted-living facility services or other alternatives  
16 to nursing facility care or (ii) new construction of an  
17 assisted-living facility or other alternative to nursing facility  
18 care if existing nursing facility beds are no longer licensed and  
19 the Department of Health and Human Services Finance and Support  
20 determines that new construction is more cost effective than the  
21 conversion of existing space; and

22 (c) Nursing facility means (a) prior to January 1, 2002,  
23 a facility licensed as a nursing facility, a skilled nursing  
24 facility, or an intermediate care facility as such terms are  
25 defined in section 71-2017.01 or a long-term care hospital or a  
26 distinct part of a hospital, as such terms are defined in section  
27 71-2017.01, which is primarily devoted to providing the care and  
28 services enumerated in subdivision (10), (11), or (20) of section

1 71-2017.01, but does not include an intermediate care facility for  
2 the mentally retarded as defined in section 71-2017.01, and (b)  
3 beginning January 1, 2002, a residential care and treatment  
4 facility providing continuous nursing services licensed under the  
5 Uniform Facility Licensing Act.

6 (2) The Department of Health and Human Services Finance  
7 and Support, with the advice of the Policy Cabinet created in  
8 section 81-3009 and the Nursing Home Advisory Council, shall award  
9 grants or make guarantees of loans from the Nursing Facility  
10 Conversion Cash Fund for capital or one-time expenditures,  
11 including, but not limited to, startup and training expenses and  
12 operating losses for the first year, to any nursing facility which  
13 has been approved for at least three years as a provider under the  
14 medical assistance program established pursuant to section 68-1018  
15 to convert all or a portion of the facility licensed to provide  
16 such care to a licensed assisted-living facility or to other types  
17 of alternatives to nursing facility care.

18 (3) During each calendar year in which grants or loan  
19 guarantees are available under this section, the department, with  
20 the advice of the Policy Cabinet and the Nursing Home Advisory  
21 Council, shall award grants or make guarantees of loans first to  
22 governmental nursing facilities, second to nonprofit nursing  
23 facilities, and then to other nursing facilities. A  
24 nongovernmental nursing facility shall only be eligible for a grant  
25 or loan guarantee for conversion to assisted-living services if it  
26 is located in underserved areas as determined by the department and  
27 if no governmental nursing facility can or is willing to be  
28 converted. To be eligible for a grant or loan guarantee under this

1 section, the nongovernmental nursing facilities shall provide  
2 twenty percent of the total cost of any conversion. The department  
3 shall establish policies and procedures for certification of the  
4 required matching funds. The department shall annually establish a  
5 calendar for receiving and evaluating proposals and awarding grants  
6 or making loan guarantees.

7 (4) No grant or loan guarantee application shall be  
8 approved by the department unless (a) the applicant can demonstrate  
9 that (i) conversion of the nursing facility or portion of the  
10 facility to an assisted-living facility or other alternatives to  
11 nursing facility care will offer efficient and economical care to  
12 individuals requiring long-term care services in the area, (ii)  
13 assisted-living services or other alternatives to nursing facility  
14 care are unlikely to be available in the area for individuals  
15 eligible for services under the medical assistance program  
16 established pursuant to section 68-1018, and (iii) the resulting  
17 reduction in the availability of nursing facility services is not  
18 expected to cause undue hardship on those individuals requiring  
19 nursing facility services, and (b) the department can demonstrate  
20 that the conversion will result in a lower reimbursement rate under  
21 the medical assistance program established under section 68-1018  
22 from the State of Nebraska to the applicant. No grant shall be  
23 awarded or loan guarantee made unless the applicant agrees to  
24 maintain a minimum occupancy rate by individuals eligible for  
25 services under the medical assistance program established pursuant  
26 to section 68-1018 and, in the event the applicant or its successor  
27 in interest ceases to operate an assisted-living facility or other  
28 alternative to nursing facility care during the ten-year period

1 after the date the applicant began operation of its facility as an  
2 assisted-living facility or other alternative to nursing facility  
3 care, to refund to the Nursing Facility Conversion Cash Fund, on an  
4 amortized basis, the amount of the grant or loan guarantee. In  
5 addition to other remedies provided by law, the department may  
6 deduct the amount of any refund due from a recipient of grant or  
7 loan guarantee funds from any money owed by the department to such  
8 recipient or the recipient's successor in interest.

9 (5) The department shall adopt and promulgate rules and  
10 regulations which establish (a) an application process for grants  
11 or loan guarantees, (b) criteria for nursing facilities to receive  
12 funding, including, but not limited to, minimum occupancy rates,  
13 allowable costs, and refund methods, (c) criteria for the rates and  
14 amounts of funding, and (d) other procedures as the department  
15 deems necessary for the proper administration of this section.

16 (6) This section does not create an entitlement to any  
17 funds available for grants or loan guarantees under this section,  
18 and the department may award grants or make loan guarantees to the  
19 extent funds are available and, within its discretion, to the  
20 extent such applications are approved.

21 (7) Nongovernmental recipients of grants and loan  
22 guarantees under this section shall annually submit cost reports to  
23 the department regarding the conversion project for a period of ten  
24 years after the date the recipient began operation of its facility  
25 as an assisted-living facility or other alternative to nursing  
26 facility care. The department shall develop the cost report which  
27 shall include, but not be limited to, revenue, costs, loans  
28 undertaken by the facility, fixed assets of the facility, a balance

1 sheet, and a profit and loss statement.

2 (8) The department shall provide annual reports to the  
3 Governor and the Legislature concerning grants awarded or loan  
4 guarantees made under this section. Each report shall include the  
5 number of applicants and approved applicants, an overview of the  
6 various grants awarded or loan guarantees made, and detailed  
7 reports of the cost of each project funded by a grant or loan  
8 guarantee and information received under subsection (7) of this  
9 section.

10 (9) It is the intent of the Legislature to review  
11 projects which receive grants or loan guarantees under this section  
12 to ensure that the goal to provide alternatives to traditional  
13 long-term care services is being met and that an adequate number of  
14 nursing facility services remain to meet the needs of Nebraskans.  
15 After January 1, 2002, no money shall be allocated for conversion  
16 of nursing facilities to assisted-living facilities or other  
17 alternatives to nursing facility care under this section without  
18 reaffirmation of this program by the Legislature. Money allocated  
19 for the purpose of conversion before January 1, 2002, may be  
20 awarded to eligible applicants.

21 Sec. 173. Section 71-7702, Reissue Revised Statutes of  
22 Nebraska, is amended to read:

23 71-7702. For purposes of the Health Care  
24 Facility-Provider Cooperation Act:

25 (1) Community planning shall mean a plan which identifies  
26 (a) health-care-related resources, facilities, and services within  
27 the community, (b) the health care needs of the community, (c) gaps  
28 in services, (d) duplication of services, and (e) ways to meet

1 health care needs;

2 (2) Cooperative agreement shall mean an agreement among  
3 two or more health care facilities or other providers for the  
4 sharing, allocation, or referral of patients, personnel,  
5 instructional programs, equipment, support services and facilities,  
6 or medical, diagnostic, or laboratory facilities or procedures or  
7 other services traditionally offered or purchased by health care  
8 facilities or other providers;

9 (3) Department shall mean the Department of Health and  
10 Human Services Regulation and Licensure;

11 (4) Health care facility shall mean:

12 (a) Any facility providing health care or treatment  
13 required to be licensed under sections 71-2017 to 71-2029 prior to  
14 January 1, 2002, and beginning January 1, 2002, licensed under the  
15 Uniform Facility Licensing Act or, if in another state, licensed in  
16 such state; and

17 (b) Any parent of a health care facility, health care  
18 facility subsidiary, or health care facility affiliate that  
19 provides medical or medically related diagnostic and laboratory  
20 services or engages in ancillary activities supporting those  
21 services; and

22 (5) Provider shall mean any person licensed to provide  
23 health care services under Chapter 71 and engaged in the practice  
24 of medicine and surgery, osteopathic medicine, pharmacy, optometry,  
25 podiatry, physical therapy, or nursing.

26 Sec. 174. Section 71-7901, Revised Statutes Supplement,  
27 1998, is amended to read:

28 71-7901. (1) Any health clinic as defined in section

1 71-2017.01 prior to January 1, 2002, (2) beginning January 1, 2002,  
2 any ambulatory facility licensed under the Uniform Facility  
3 Licensing Act and operating as a health clinic, and (3) any other  
4 organization or association of health practitioners or providers  
5 licensed pursuant to Chapter 71 may cause a peer review committee  
6 to be formed and operated or may contract with an outside peer  
7 review committee for the purpose of reviewing, from time to time,  
8 the medical care provided by such health clinic, facility,  
9 organization, or association and for assisting individual  
10 practitioners or providers practicing in such clinics, facilities,  
11 organizations, or associations in maintaining and providing a high  
12 standard of medical care.

13 Sec. 175. Section 71-8219, Revised Statutes Supplement,  
14 1998, is amended to read:

15 71-8219. Hospital means (1) prior to January 1, 2002, a  
16 health care facility licensed pursuant to sections 71-2017 to  
17 71-2029, (2) beginning January 1, 2002, a facility licensed as a  
18 hospital under the Uniform Facility Licensing Act, or (3) a  
19 comparable health care facility operated by the federal government  
20 or located and licensed in another state.

21 Sec. 176. Section 76-1304, Reissue Revised Statutes of  
22 Nebraska, is amended to read:

23 76-1304. Unless the method of disposition is adopted for  
24 the purpose of evasion of the provisions of sections 76-1301 to  
25 76-1315, such provisions shall not apply to offers or dispositions  
26 of an interest in land by a purchaser of subdivided lands for his  
27 or her own account in a single or isolated transaction, nor shall  
28 such provisions apply to the following:

1           (1) Offers or dispositions of evidences of indebtedness  
2 secured by a mortgage or deed of trust of real estate;

3           (2) Offers or dispositions of securities or units of  
4 interest issued by a real estate investment trust regulated under  
5 any state or federal statute;

6           (3) The sale or lease of real estate under or pursuant to  
7 court order;

8           (4) The disposition in any manner whatsoever of any unit  
9 of public housing under the administrative jurisdiction of a local  
10 public housing authority;

11           (5) Offers or dispositions of securities currently  
12 registered with the Director of Banking and Finance and under the  
13 provisions of the Securities Act of Nebraska; and

14           (6) Homes for the aged or infirm or nursing homes  
15 licensed by the Department of Health and Human Services Regulation  
16 and Licensure pursuant to sections 71-2017 to 71-2029 prior to  
17 January 1, 2002, and beginning January 1, 2002, residential care  
18 and treatment facilities providing continuous nursing services  
19 licensed pursuant to the Uniform Facility Licensing Act.

20           Sec. 177. Section 77-2702.14, Reissue Revised Statutes  
21 of Nebraska, is amended to read:

22           77-2702.14. (1) Retailer shall mean:

23           (a) Any seller engaged in the business of making sales  
24 subject to tax under section 77-2703 or in the business of making  
25 sales subject to tax under section 77-2703 at auction of property  
26 owned by the person or others. Retailer shall mean, in the case of  
27 sales at auction when the person collecting the proceeds of the  
28 auction is not the auctioneer or an agent or employee of the

1 auctioneer, the person collecting the proceeds of the auction,  
2 other than the owner of the property, together with his or her  
3 principal, if any, and retailer shall not include the auctioneer in  
4 such case;

5 (b) Every person who has elected to be considered a  
6 retailer pursuant to subdivision (1) of section 77-2702.05; and

7 (c) Every person operating, organizing, or promoting a  
8 flea market, craft show, fair, or similar event.

9 (2) Retailer shall not mean:

10 (a) Any person who leases or rents films when an  
11 admission tax is charged under the Nebraska Revenue Act of 1967 or  
12 railroad rolling stock interchanged pursuant to the provisions of  
13 the federal Interstate Commerce Act;

14 (b) Any person engaged in the business of furnishing  
15 rooms in a facility licensed under the provisions of Chapter 71,  
16 article 20, prior to January 1, 2002, and beginning January 1,  
17 2002, licensed under the Uniform Facility Licensing Act in which  
18 rooms, lodgings, or accommodations are regularly furnished for a  
19 consideration or a facility operated by an educational institution  
20 established under Chapter 79 or Chapter 85 in which rooms are  
21 regularly used to house students for a consideration for periods in  
22 excess of thirty days; or

23 (c) Any person making sales at a flea market, craft show,  
24 fair, or similar event who does not have a sales tax permit and who  
25 has arranged to pay sales taxes collected to the person operating,  
26 organizing, or promoting such event.

27 Sec. 178. Section 77-2702.15, Reissue Revised Statutes  
28 of Nebraska, is amended to read:

1                   77-2702.15. Sale shall mean any transfer of title or  
2 possession or segregation in contemplation of transfer of title or  
3 possession, exchange, barter, lease, or rental, conditional or  
4 otherwise, in any manner or by any means, of property for a  
5 consideration. Sale shall include, but not be limited to:

6                   (1) The producing, fabricating, processing, printing, or  
7 imprinting of property for a consideration for consumers who  
8 furnish either directly or indirectly the materials used in the  
9 producing, fabricating, processing, printing, or imprinting;

10                  (2) The furnishing and distributing of property for a  
11 consideration by social clubs and fraternal organizations to their  
12 members or others;

13                  (3) The furnishing, preparing, or serving for a  
14 consideration of food, meals, or drinks;

15                  (4) A transaction whereby the possession of property is  
16 transferred but the seller retains the title as security for the  
17 payment of the price;

18                  (5) A transfer for a consideration of the title or  
19 possession of property which has been produced, fabricated, or  
20 printed to the special order of the customer; and

21                  (6) The renting or furnishing for periods of less than  
22 thirty days of any room or rooms, lodgings, or accommodations in  
23 any hotel, motel, inn, tourist camp, tourist cabin, or any other  
24 place, except a facility licensed under the provisions of Chapter  
25 71, article 20, prior to January 1, 2002, and beginning January 1,  
26 2002, licensed under the Uniform Facility Licensing Act in which  
27 rooms, lodgings, or accommodations are regularly furnished for a  
28 consideration or a facility operated by an educational institution

1 established under Chapter 79 or Chapter 85 in which rooms are  
2 regularly used to house students for a consideration for periods in  
3 excess of thirty days.

4           Sec. 179. Section 77-2704.12, Reissue Revised Statutes  
5 of Nebraska, is amended to read:

6           77-2704.12. (1) Sales and use taxes shall not be imposed  
7 on the gross receipts from the sale, lease, or rental of and the  
8 storage, use, or other consumption in this state of purchases by  
9 (a) any organization created exclusively for religious purposes,  
10 (b) any nonprofit organization providing services exclusively to  
11 the blind, (c) any private educational institution established  
12 under sections 79-1601 to 79-1607, (d) any private college or  
13 university established under sections 85-1101 to 85-1111, (e) prior  
14 to January 1, 2002, any hospital, health clinic when two or more  
15 hospitals or the parent corporations of the hospitals own or  
16 control the health clinic for the purpose of reducing the cost of  
17 health services or when the health clinic receives funds under the  
18 Urban Health Initiative Program or the Rural Health Initiative  
19 Program of the United States Public Health Service, skilled nursing  
20 facility, intermediate care facility, or nursing facility licensed  
21 under sections 71-2017 to 71-2029 and organized not for profit, (f)  
22 prior to January 1, 2002, any nonprofit organization providing  
23 services primarily for home health care purposes, (g) any licensed  
24 child-caring agency, or any licensed child placement agency, and  
25 (h) beginning January 1, 2002, any facility licensed under the  
26 Uniform Facility Licensing Act and organized not for profit.

27           (2) Any organization listed in subsection (1) of this  
28 section shall apply for an exemption on forms provided by the Tax

1 Commissioner. The application shall be approved and a numbered  
2 certificate of exemption received by the applicant organization in  
3 order to be exempt from the sales and use tax.

4 (3) The appointment of purchasing agents shall be  
5 recognized for the purpose of altering the status of the  
6 construction contractor as the ultimate consumer of property which  
7 is physically annexed to the structure and which subsequently  
8 belongs to the owner of the organization or institution. The  
9 appointment of purchasing agents shall be in writing and occur  
10 prior to having any property annexed to real estate in the  
11 construction, improvement, or repair. The contractor who has been  
12 appointed as a purchasing agent may apply for a refund of or use as  
13 a credit against a future use tax liability the tax paid on  
14 inventory items annexed to real estate in the construction,  
15 improvement, or repair of a project for a licensed not-for-profit  
16 institution.

17 (4) Any organization listed in subsection (1) of this  
18 section which enters into a contract of construction, improvement,  
19 or repair upon property annexed to real estate without first  
20 issuing a purchasing agent authorization to a contractor or  
21 repairperson prior to property being annexed to real estate in the  
22 project may apply to the Tax Commissioner for a refund of any sales  
23 and use tax paid by the contractor or repairperson on the property  
24 physically annexed to real estate in the construction, improvement,  
25 or repair.

26 (5) Any person purchasing, storing, using, or otherwise  
27 consuming property in the performance of any construction,  
28 improvement, or repair by or for any institution enumerated in

1 subsection (1) of this section which is licensed upon completion  
2 although not licensed at the time of construction or improvement,  
3 which property is annexed to real estate and which subsequently  
4 belongs to the owner of the institution, shall pay any applicable  
5 sales or use tax thereon. Upon becoming licensed and receiving a  
6 numbered certificate of exemption, the institution organized not  
7 for profit shall be entitled to a refund of the amount of taxes so  
8 paid in the performance of such construction, improvement, or  
9 repair and shall submit whatever evidence is required by the Tax  
10 Commissioner sufficient to establish the total sales and use tax  
11 paid upon the property physically annexed to real estate in the  
12 construction, improvement, or repair.

13           Sec. 180. Section 77-3504, Reissue Revised Statutes of  
14 Nebraska, is amended to read:

15           77-3504. Household income means the total federal  
16 adjusted gross income, as defined in the Internal Revenue Code,  
17 plus (1) any Nebraska adjustments increasing the total federal  
18 adjusted gross income, (2) any interest or dividends received by  
19 the owner regarding obligations of the State of Nebraska or any  
20 political subdivision, authority, commission, or instrumentality  
21 thereof to the extent excluded in the computation of gross income  
22 for federal income tax purposes, and (3) any social security or  
23 railroad retirement benefit to the extent excluded in the  
24 computation of gross income for federal income tax purposes, of the  
25 claimant and spouse, and any additional owners who are natural  
26 persons and who occupy the homestead, for the taxable year of the  
27 claimant immediately prior to the year for which the claim for  
28 exemption is made, less all medical expenses actually incurred and

1 paid by the claimant, his or her spouse, or any owner-occupant  
2 which are in excess of four percent of household income calculated  
3 prior to the deduction for medical expenses. For purposes of this  
4 section, medical expenses means the costs of health insurance  
5 premiums and the costs of goods and services purchased from a  
6 person licensed under Chapter 71, article 1 or 47, or a facility  
7 licensed pursuant to Chapter 71, article 20, prior to January 1,  
8 2002, and beginning January 1, 2002, licensed pursuant to the  
9 Uniform Facility Licensing Act, for purposes of restoring or  
10 maintaining health, including insulin and prescription medicine but  
11 not including nonprescription medicine.

12 Sec. 181. Section 81-2,245.01, Revised Statutes  
13 Supplement, 1998, is amended to read:

14 81-2,245.01. Food establishment shall mean an operation  
15 that stores, prepares, packages, serves, sells, vends, or otherwise  
16 provides food for human consumption. The term does not include:

17 (1) An establishment that offers only prepackaged foods  
18 that are not potentially hazardous;

19 (2) A produce stand that only offers whole, uncut fresh  
20 fruits and vegetables;

21 (3) A food processing plant;

22 (4) A salvage establishment;

23 (5) A private home where food is prepared or served for  
24 personal use, a small day care in the home, or a hunting lodge,  
25 guest ranch, or other operation where no more than ten paying  
26 guests eat meals in the home;

27 (6) A private home or other area where food that is not  
28 potentially hazardous is prepared for sale or service at a

1 religious, charitable, or fraternal organization's bake sale or  
2 similar function;

3 (7) The location where food prepared by a caterer is  
4 served so long as the caterer only minimally handles the food at  
5 the serving location; and

6 (8) Educational institutions, health care facilities, and  
7 nursing homes prior to January 1, 2002, and beginning January 1,  
8 2002, facilities licensed under the Uniform Facility Licensing Act,  
9 and governmental organizations which are inspected by a state  
10 agency or a political subdivision other than the regulatory  
11 authority for sanitation in the food preparation areas.

12 Sec. 182. Section 81-2,270, Revised Statutes Supplement,  
13 1998, is amended to read:

14 81-2,270. (1) No person shall operate: (a) A food  
15 establishment; (b) a food processing plant; or (c) a salvage  
16 operation, without a valid permit which sets forth the types of  
17 operation occurring within the establishment.

18 (2) Application for a permit shall be made to the  
19 director on forms prescribed and furnished by the department. Such  
20 application shall include the applicant's full name and mailing  
21 address, the names and addresses of any partners, members, or  
22 corporate officers, the name and address of the person authorized  
23 by the applicant to receive the notices and orders of the  
24 department as provided in the Nebraska Pure Food Act, whether the  
25 applicant is an individual, partnership, limited liability company,  
26 corporation, or other legal entity, the location and type of  
27 proposed establishment or operation, and the signature of the  
28 applicant. Application for a permit shall be made prior to the

1 operation of a food establishment, food processing plant, or  
2 salvage operation and shall be accompanied by an initial permit fee  
3 of fifty dollars and an initial inspection fee in the same amount  
4 as is annually required pursuant to subsection (3) of this section  
5 if inspections are required to be done by the department. If the  
6 food establishment, food processing plant, or salvage operation has  
7 been in operation prior to applying for a permit, the applicant  
8 shall pay an additional fee of fifty dollars.

9 (3) Payment of the initial permit fee, the initial  
10 inspection fee, and the fee for failing to apply for a permit prior  
11 to operation shall not preclude payment of the annual inspection  
12 fees due on August 1 of each year. Except as provided in  
13 subsections (6) through (9) of this section and subsection (1) of  
14 section 81-2,281, a permitholder shall pay annual inspection fees  
15 on or before August 1 of each year as follows:

16 (a) A convenience store, licensed beverage establishment,  
17 limited food service establishment, and temporary food  
18 establishment, fifty dollars plus twenty-five dollars for each  
19 separate and distinct food preparation area within the  
20 establishment other than the first such area;

21 (b) A mobile food unit, twenty-five dollars per food unit  
22 in addition to the inspection fee due for the commissary;

23 (c) A pushcart, ten dollars per pushcart in addition to  
24 the inspection fee due for the commissary;

25 (d) One to ten vending machines, ten dollars; eleven to  
26 twenty vending machines, twenty dollars; twenty-one to thirty  
27 vending machines, thirty dollars; thirty-one to forty vending  
28 machines, forty dollars; and over forty vending machines, fifty

1 dollars. This fee, based upon the number of vending machines, is  
2 in addition to the inspection fee due for the commissary; and

3 (e) A food processing plant, a salvage operation, and any  
4 other food establishment, including a commissary, seventy dollars  
5 plus twenty-five dollars for each separate and distinct food  
6 preparation area within the establishment other than the first such  
7 area.

8 (4) Whenever an establishment is engaged in more than one  
9 food handling activity listed under subsection (3) of this section,  
10 the inspection fee charged shall be based upon the primary activity  
11 conducted within the establishment as determined by the department.

12 (5) The department may impose a penalty for an inspection  
13 fee which is more than one month delinquent. The penalty may not  
14 exceed fifty percent of the fee for the first month of delinquency  
15 and one hundred percent of the fee for the second month of  
16 delinquency.

17 (6) An educational institution, health care facility,  
18 nursing home, a facility licensed under the Uniform Facility  
19 Licensing Act, or a governmental organization operating any type of  
20 food service establishment other than a mobile food unit or  
21 pushcart is exempt from the requirements in subsections (1) through  
22 (5) of this section.

23 (7) A person whose primary food-related business activity  
24 is determined by the department to be egg handling within the  
25 meaning of the Nebraska Graded Egg Act and who is validly licensed  
26 and paying fees pursuant to such act is exempt from the permit and  
27 inspection fee requirements of the Nebraska Pure Food Act.

28 (8) A person holding a permit or license and regulated

1 under the Nebraska Manufacturing Milk Act or the Nebraska  
2 Pasteurized Milk Law and an egg handler licensed and regulated  
3 under the Nebraska Graded Egg Act are exempt from the Nebraska Pure  
4 Food Act.

5 (9) A religious, charitable, or fraternal organization  
6 operating any type of temporary food establishment, mobile food  
7 unit, or pushcart is exempt from the requirements of subsections  
8 (1) through (5) of this section. Any such organization operating  
9 any nontemporary food establishment prior to July 1, 1985, is  
10 exempt from the requirements of subsection (2) of this section.

11 Sec. 183. Section 81-502, Revised Statutes Supplement,  
12 1998, is amended to read:

13 81-502. (1) It shall be the duty of the State Fire  
14 Marshal, under authority of the Governor:

15 (a) To enforce all laws of the state relating to the  
16 suppression of arson and investigation of the cause, origin, and  
17 circumstances of fires;

18 (b) To promote safety and reduce loss by fire;

19 (c) To make an investigation for fire safety of the  
20 premises and facilities of:

21 (i) Liquor establishments for which a license or renewal  
22 of a license is sought, upon request of the Nebraska Liquor Control  
23 Commission, pursuant to section 53-119.01;

24 (ii) Licensed foster care facilities or applicants for  
25 licenses for foster care facilities, upon request by the Department  
26 of Health and Human Services, pursuant to section 71-1903;

27 (iii) Licensed providers of programs or applicants for  
28 licenses to provide such programs, upon request of the Department

1 of Health and Human Services, pursuant to section 71-1913. The  
2 State Fire Marshal shall report the results of the investigation to  
3 the department within thirty days after receipt of the request from  
4 the department;

5 (iv) Licensed hospitals, skilled nursing facilities,  
6 intermediate care facilities, or other facilities or institutions  
7 which are mentioned in subdivision (1) of section 71-2017 or  
8 applicants for licenses for such facilities or institutions, upon  
9 request by the Department of Health and Human Services Regulation  
10 and Licensure, pursuant to section 71-2022 prior to January 1,  
11 2002, and beginning January 1, 2002, licensed hospitals or  
12 residential care and treatment facilities or applicants for  
13 licenses for such facilities, upon request by the department; and

14 (v) Mobile home parks for which a license or renewal of a  
15 license is sought, upon request of the Department of Health and  
16 Human Services Regulation and Licensure, pursuant to section  
17 71-4635; and

18 (d) After a careful study and investigation of relevant  
19 data, to adopt, promulgate, alter, and enforce, through inspections  
20 and code compliance, orders, rules, and regulations covering:

21 (i) The prevention of fires;

22 (ii) The storage, sale, and use of flammable liquids,  
23 combustibles, and fireworks;

24 (iii) Electric wiring and heating, protection equipment  
25 devices, materials, furnishings, and other safeguards within the  
26 structure necessary to promote safety and reduce loss by fire, and  
27 the means and adequacy of exits, in case of fire, in assembly,  
28 educational, institutional, residential, mercantile, office,

1 storage, and industrial-type occupancies as such structures are  
2 defined in the National Fire Protection Association, Pamphlet  
3 Number 101, and associated pamphlets, and all other buildings,  
4 structures, and enclosures in which numbers of persons congregate  
5 from time to time for any purpose whether privately or publicly  
6 owned;

7 (iv) Design, construction, location, installation, and  
8 operation of equipment for storing, handling, and utilization of  
9 liquefied petroleum gases, specifying the odorization of such gases  
10 and the degree thereof;

11 (v) Chemicals, prozylin plastics, X-ray nitrocellulose  
12 films, or any other hazardous material that may now or hereafter  
13 exist;

14 (vi) Tanks used for the storage of regulated substances  
15 pursuant to the Petroleum Products and Hazardous Substances Storage  
16 and Handling Act; and

17 (vii) Accessibility standards and specifications adopted  
18 pursuant to section 81-5,147.

19 (2) The State Fire Marshal may enter into contracts with  
20 private individuals or other agencies, boards, commissions, or  
21 governmental bodies for the purpose of carrying out his or her  
22 duties and responsibilities pursuant to the Arson Reporting  
23 Immunity Act, the Nebraska Natural Gas Pipeline Safety Act of 1969,  
24 and sections 81-502 to 81-541.01, 81-5,132 to 81-5,146, and  
25 81-5,151 to 81-5,157.

26 (3) The State Fire Marshal may delegate the authority set  
27 forth in this section to qualified local fire prevention personnel.  
28 The State Fire Marshal may overrule a decision, act, or policy of

1 the local fire prevention personnel. When the State Fire Marshal  
2 overrules the local personnel, such local personnel may follow the  
3 appeals procedure established by sections 81-502.01 to 81-502.03.  
4 Such delegation of authority may be revoked by the State Fire  
5 Marshal for cause upon thirty days' notice after a hearing.

6 (4) The State Fire Marshal, first assistant fire marshal,  
7 and deputies shall have such other powers and perform such other  
8 duties as are set forth in sections 81-501.01 to 81-531 and  
9 81-5,151 to 81-5,157 and as may be conferred and imposed by law.

10 (5) The rules and regulations adopted and promulgated  
11 pursuant to subdivision (1)(d) of this section may conform  
12 generally to the standards recommended by the National Fire  
13 Protection Association, Pamphlet Number 101, known as the Life  
14 Safety Code, and associated pamphlets, but not when doing so would  
15 impose an unduly severe or costly burden without substantially  
16 contributing to the safety of persons or property. This section  
17 and the rules and regulations adopted and promulgated pursuant to  
18 subdivision (1)(d) of this section shall apply to existing as well  
19 as new buildings, structures, and enclosures. Such rules and  
20 regulations shall also apply to sites or structures in public  
21 ownership listed on the National Register of Historic Places but  
22 without destroying the historic quality thereof.

23 (6) Plans for compliance with the rules and regulations  
24 adopted and promulgated pursuant to subdivision (1)(d) of this  
25 section shall be reviewed by the State Fire Marshal. Plans  
26 submitted after remodeling or construction has begun shall be  
27 accompanied by a penalty of fifty dollars in addition to the plan  
28 review fee set out in subdivision (4)(a) of section 81-505.01.

1           Sec. 184. Section 81-604.01, Reissue Revised Statutes of  
2 Nebraska, is amended to read:

3           81-604.01. Any local or state agency or department, or  
4 any private facility involved in arranging or supervising  
5 placements for those persons requiring care or supervision, shall  
6 notify the Department of Health and Human Services Regulation and  
7 Licensure when there is reason to believe that the total number of  
8 ~~persons~~ individuals served in any institution, facility, place, or  
9 building exceeds three individuals prior to January 1, 2002, and  
10 beginning January 1, 2002, exceeds the number specified for  
11 licensure in section 20 of this act and that such facility is not  
12 currently licensed by the Department of Health and Human Services  
13 Regulation and Licensure. The department shall investigate or  
14 inspect such complaints pursuant to sections 71-2017 to 71-2029 ~~and~~  
15 ~~71-5901 to 71-5909~~ prior to January 1, 2002, and beginning January  
16 1, 2002, pursuant to the Uniform Facility Licensing Act.

17           Sec. 185. Section 81-604.03, Reissue Revised Statutes of  
18 Nebraska, is amended to read:

19           81-604.03. The Department of Health and Human Services  
20 Regulation and Licensure is hereby authorized to act as the survey  
21 and certification agency for the medicaid program and to enter into  
22 such agreements with the Department of Health and Human Services  
23 Finance and Support as may be necessary to carry out its duties.  
24 ~~Until January 1, 1997, the Department of Health shall notify the~~  
25 ~~Department of Social Services of any violation by a nursing~~  
26 ~~facility, as defined in section 71-2097, of federal regulations for~~  
27 ~~participation in the medicaid program. On and after January 1,~~  
28 ~~1997, the~~ The Department of Health and Human Services Regulation

1 and Licensure shall notify the Department of Health and Human  
2 Services Finance and Support of any violation by a nursing  
3 facility, as defined in section 71-2097, of federal regulations for  
4 participation in the medicaid program. Civil penalties will be  
5 determined pursuant to sections 71-2097 to 71-20,101.

6 Sec. 186. Section 81-651, Revised Statutes Supplement,  
7 1998, is amended to read:

8 81-651. (1) The Department of Health and Human Services  
9 may provide visiting community nursing services or home health  
10 services to persons living in the state and may charge fees for  
11 such services. The department shall not be exempt from licensure  
12 under subdivision (17) of section 71-2017.01 prior to January 1,  
13 2002, and beginning January 1, 2002, under the Uniform Facility  
14 Licensing Act.

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

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

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

5           Sec. 187. Section 81-658, Revised Statutes Supplement,  
6 1998, is amended to read:

7           81-658. (1) Inpatient, post-acute-care facilities,  
8 including nursing homes and rehabilitation centers, prior to  
9 January 1, 2002, and beginning January 1, 2002, hospitals and  
10 residential care and treatment facilities subject to licensure  
11 under the Uniform Facility Licensing Act shall report the treatment  
12 of persons with brain or head injury to the department biannually.  
13 The report for the months of January through June shall be due on  
14 the following August 1, and the report for the months of July  
15 through December shall be due on February 1 of the following year.

16           (2) The reports shall contain the following information  
17 about the person sustaining the injury:

18           (a) Name;

19           (b) Social security number;

20           (c) Date of birth;

21           (d) Gender;

22           (e) Race or ethnicity;

23           (f) Preadmission residence;

24           (g) Admitting diagnosis;

25           (h) Cause of the injury;

26           (i) Length of stay at the facility, including dates of  
27 admission and discharge;

28           (j) Dispensation upon discharge;

- 1 (k) Identification of reporting source;
- 2 (l) Payor source; and
- 3 (m) Any additional information the department can  
4 demonstrate is reasonable in order to implement the purposes stated  
5 in section 81-653.

6 Sec. 188. Section 81-1247, Reissue Revised Statutes of  
7 Nebraska, is amended to read:

8 81-1247. (1) Hotel shall mean any facility in which the  
9 public may, for a consideration, obtain sleeping accommodations.  
10 The term shall include hotels, motels, tourist homes, campgrounds,  
11 courts, lodging houses, inns, state-operated hotels, and nonprofit  
12 hotels.

13 (2) Hotel shall not , but hotels shall not be defined so  
14 as to include (a) prior to January 1, 2002, hospitals, sanitariums,  
15 nursing homes, or chronic care centers, (b) beginning January 1,  
16 2002, facilities licensed under the Uniform Facility Licensing Act,  
17 or (c) dormitories or facilities operated by an educational  
18 institution and regularly used to house students.

19 Sec. 189. Section 81-2243, Revised Statutes Supplement,  
20 1998, is amended to read:

21 81-2243. Long-term care facility shall include:

- 22 (1) Prior to January 1, 2002:
- 23 (a) A nursing facility;
- 24 ~~(2)~~ (b) An assisted-living facility;
- 25 ~~(3)~~ (c) A boarding home;
- 26 ~~(4)~~ (d) Any other adult care home;
- 27 ~~(5)~~ (e) A continuing care community;
- 28 ~~(6)~~ (f) Any swing bed in an acute care facility or

1 extended care facility; and

2 ~~(7) (g) Any adult day care facility; and~~

3 (2) Beginning January 1, 2002:

4 (a) A residential care and treatment facility;

5 (b) An assisted-living facility;

6 (c) A boarding home;

7 (d) A continuing care community;

8 (e) An ambulatory facility providing adult care; and

9 (f) Any swing bed in a hospital.

10 Sec. 190. Section 81-3201, Revised Statutes Supplement,  
11 1998, is amended to read:

12 81-3201. (1) The Director of Regulation and Licensure  
13 appointed by the Governor for the Department of Health and Human  
14 Services Regulation and Licensure shall (a) have administrative  
15 experience in an executive capacity and some special training in  
16 public health work and (b) be either a graduate of a recognized  
17 school of medicine and licensed to practice medicine and surgery in  
18 the State of Nebraska or a person with a recognized and  
19 demonstrated expertise in and knowledge of health and human  
20 services delivery. If the director appointed is not a licensed  
21 physician, the Governor shall appoint a chief medical officer to be  
22 responsible for oversight of health issues in the health and human  
23 services system, as defined in section 81-3003, and decisions in  
24 contested cases under the Uniform Licensing Law as specified in  
25 section 71-155.01 and of health care facilities and occupations as  
26 specified in this section.

27 (2) The chief medical officer is subject to confirmation  
28 by a majority of the members of the Legislature. The chief medical

1 officer shall be a graduate of a recognized school of medicine and  
 2 licensed to practice medicine and surgery in the State of Nebraska  
 3 and have some special training in public health work. If a chief  
 4 medical officer is appointed, he or she shall perform the duties  
 5 under the Uniform Licensing Law specified in section 71-155.01 and  
 6 shall be the final decisionmaker in contested cases ~~of~~ (a) prior to  
 7 January 1, 2002, of the health care facilities defined in section  
 8 71-2017.01 arising under sections 71-2023, 71-2023.01 to  
 9 71-2023.07, 71-6025 to 71-6031, 71-6042, and 81-604.03, (b)  
 10 boarding homes under section 71-5906, and (c) of occupations  
 11 referenced in sections 71-6038 and 71-6039 section 43 of this act,  
 12 and (c) beginning January 1, 2002, arising under the Uniform  
 13 Facility Licensing Act.

14 Sec. 191. Section 83-101.06, Revised Statutes  
 15 Supplement, 1998, is amended to read:

16 83-101.06. The Department of Health and Human Services  
 17 shall:

18 (1) Administer the clinical programs and services of the  
 19 Beatrice State Developmental Center, the Lincoln Regional Center,  
 20 the Norfolk Regional Center, the Hastings Regional Center, and such  
 21 other medical facilities, including skilled nursing care and  
 22 intermediate care facilities prior to January 1, 2002, and  
 23 beginning January 1, 2002, residential care and treatment  
 24 facilities, as may be provided by the department;

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

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

1           (4) Represent the department in its work with the  
2 University of Nebraska Medical Center concerning psychiatric  
3 services.

4           Sec. 192. Section 83-108, Revised Statutes Supplement,  
5 1998, is amended to read:

6           83-108. The Department of Health and Human Services  
7 shall have oversight and general control of the Beatrice State  
8 Developmental Center, the Nebraska veterans homes, the hospitals  
9 for the mentally ill, such skilled nursing care and intermediate  
10 care facilities prior to January 1, 2002, and beginning January 1,  
11 2002, residential care and treatment facilities as may be  
12 established by the department, facilities and programs operated by  
13 the Office of Juvenile Services, and all charitable institutions.

14           Sec. 193. Section 83-391, Revised Statutes Supplement,  
15 1998, is amended to read:

16           83-391. For purposes of sections 83-108 and 83-391 to  
17 83-393, unless the context otherwise requires:

18           (1) Department means the Department of Health and Human  
19 Services; and

20           (2) Facility means a skilled nursing care or intermediate  
21 care facility prior to January 1, 2002, and beginning January 1,  
22 2002, a residential care and treatment facility as defined in  
23 section 15 of this act.

24           Sec. 194. Section 83-392, Reissue Revised Statutes of  
25 Nebraska, is amended to read:

26           83-392. The department may establish, operate, and  
27 administer skilled nursing care and intermediate care facilities  
28 prior to January 1, 2002, and beginning January 1, 2002,

1 residential care and treatment facilities. No  ~~+ PROVIDED, that no~~  
 2 such facility shall be established, operated, or administered  
 3 without having complied with the laws, rules, and regulations  
 4 establishing standards for construction, maintenance, and operation  
 5 of such facilities and the care of persons in such facilities, and  
 6 no such facility shall be established, operated, or administered  
 7 without a license pursuant to sections 71-2017 to 71-2029 prior to  
 8 January 1, 2002, and beginning January 1, 2002, pursuant to the  
 9 Uniform Facility Licensing Act.

10           Sec. 195. Section 83-1006, Revised Statutes Supplement,  
 11 1998, is amended to read:

12           83-1006. Mental health center shall mean a facility  
 13 which provides services as defined in sections 71-5001 to 71-5041  
 14 and the Alcoholism, Drug Abuse, and Addiction Services Act and  
 15 which, after January 1, 2002, is licensed under the Uniform  
 16 Facility Licensing Act.

17           Sec. 196. Sections 71-2017, 71-2017.01, 71-2017.03,  
 18 71-2017.04, 71-2017.06, 71-2017.07, 71-2018, 71-2020 to 71-2024,  
 19 71-2026 to 71-2029, 71-20,115 to 71-20,119, 71-5803.09, 71-5803.11,  
 20 71-5803.15, 71-6008, 71-6010 to 71-6052, 71-6614, 71-6615, and  
 21 71-7801 to 71-7806 terminate on January 1, 2002.

22           Sec. 197. Sections 1 to 65 of this act become operative  
 23 on January 1, 2002. The other sections of this act become  
 24 operative on their effective date.

25           Sec. 198. Original sections 2-3403, 17-961, 18-2803,  
 26 20-162, 23-3501, 23-3554, 23-3594, 23-3597, 29-3703, 30-2624,  
 27 30-3402, 32-944, 37-1254.06, 43-245, 44-526, 44-771, 44-772,  
 28 44-782, 44-2806, 44-2827.01, 44-5418, 44-6827, 44-7003, 44-7103,

1 44-7203, 44-7303, 58-212, 60-4,164.01, 60-6,201, 60-6,202,  
2 60-6,204, 68-115, 68-1002, 68-1036.02, 69-2507, 71-185.01,  
3 71-1,147.09, 71-1,147.10, 71-1,147.15, 71-1,200, 71-3,106, 71-2002,  
4 71-2049, 71-2075, 71-2076, 71-2079, 71-2084 to 71-2096, 71-20,112,  
5 71-3401, 71-3608, 71-3613, 71-5033, 71-6053, 71-6601, 71-6603,  
6 71-6606, 71-6609, 71-7702, 76-1304, 77-2702.14, 77-2702.15,  
7 77-2704.12, 77-3504, 81-604.01, 81-604.03, 81-1247, and 83-392,  
8 Reissue Revised Statutes of Nebraska, and sections 28-326, 28-372,  
9 30-2627, 30-2639, 68-1006.01, 68-1038, 71-168.02, 71-1,103,  
10 71-1,142, 71-1,147.08, 71-1,147.35, 71-507, 71-511, 71-516.03,  
11 71-533, 71-1637, 71-1638, 71-2048.01, 71-2097, 71-20,103, 71-2411,  
12 71-2601, 71-5803.01, 71-5803.02, 71-5803.05, 71-5803.06,  
13 71-5803.08, 71-5803.10, 71-5803.13, 71-5869, 71-6602, 71-6721,  
14 71-6725, 71-6735, 71-7102, 71-7613, 71-7901, 71-8219, 81-2,245.01,  
15 81-2,270, 81-502, 81-651, 81-658, 81-2243, 81-3201, 83-101.06,  
16 83-108, 83-391, and 83-1006, Revised Statutes Supplement, 1998, are  
17 repealed.

18           Sec. 199. The following sections are outright repealed:  
19 Sections 43-507, 71-5901, 71-5902, 71-5904 to 71-5909, 71-6802 to  
20 71-6815.01, and 71-6817 to 71-6831, Reissue Revised Statutes of  
21 Nebraska, and sections 71-5903, 71-6801, and 71-6816, Revised  
22 Statutes Supplement, 1998.