



**Ninety-Eighth Legislature - Second Session - 2004**  
**Committee Statement**  
**LB 1083**

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**Hearing Date:** February 25, 2004  
**Committee On:** Health and Human Services

**Introducer(s):** (Jensen, Redfield)  
**Title:** Adopt the Nebraska Behavioral Health Services Act

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**Roll Call Vote – Final Committee Action:**

- Advanced to General File
  - X Advanced to General File with Amendments
  - Indefinitely Postponed
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**Vote Results:**

6	Yes	Senator Jensen, Byars, Maxwell, Erdman, Johnson and Stuthman
1	No	Senator Cunningham
	Present, not voting	
	Absent	

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**Proponents:**

Senator Jim Jensen  
Governor Mike Johanns  
Dr. Richard Raymond  
Dr. Klaus Hartmann  
Dr. Arun Sharma  
Dr. Kevin Nohner  
Dr. Susan Boust  
Marie De Martinez  
David Miers  
C.J. Marr  
Susan Krome  
Terri Lynn Brewer  
Carole Boye  
Scott Moore

**Representing:**

Introducer  
Self  
Nebraska Health and Human Services System  
Nebraska Psychiatric Society  
Nebraska Psychiatric Society  
Omaha Medical Society & Nebraska Medical Association  
Nebraska Medical Association & Nebraska Psychiatric Society  
Nebraska Hospital Association  
Bryan LGH Medical Center  
Alegent Health  
Self  
Community Alliance  
Community Alliance  
Self

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Rebecca Raymann	Columbus Behavioral Health Consortium
Mary Ann Borgeson	Douglas County & Region VI Behavioral Health Care
Tom Greener	Region VI Behavioral Health Care
C.J. Johnson	Region V Systems
Beth Baxter	Region III Behavioral Health Services
Bruce Riedman	Mental Health Association of Nebraska
Larry Courtnage	Kim Foundation
Tony Kurtenback	Self
Pat Snyder	Nebraska Health Care Association & Nebraska Assisted Living Association
Tim Groshans	Nebraska Health Care Association & Beverly Health Care
Linda Jensen	Nebraska Nurses Association
Kathleen Koley Gast	American Psychiatric Nurses Association, Nebraska Chapter
Kathleen Bickerstaff	American Psychiatric Nurses Association, Nebraska Chapter
Rick McNeese	First Step Recovery and Wellness Center
Kellie Mercer	Self
Topher Hansen	CenterPointe
Colleen Wuebben	NAMI – Nebraska
<b>Opponents:</b>	<b>Representing:</b>
Mayor Gordon Adams	City of Norfolk
Mayor Richard Sheehy	City of Hastings
Larry Thoren	Hastings Police Department & Police Chiefs' Association of Nebraska
Daniel Lynch	Kearney Police Department
William Mizner	Norfolk Police Department & Police Chiefs' Association of Nebraska
Jeannia Bressler	R Way
Lee Wigert	Mental Health Board, 10 <sup>th</sup> Judicial District
Robert Walton	Anchor House
Dr. Kevin Piske	Self
Daniel Sturgis	Self

Elaine Halferty	Self
Morgan Kupsinel	Nebraska Association of Public Employees
Kristine Boe Simmons	Self
John Kroll	Self
Diane Schumacher	Self
Sherry Block	Self
Jean Laing	Self
Carol Kindig	Self
Jerry McCallum	Madison County & Region IV Governing Board
Larry Woodman	Adams County
Amy Klassen	Self
Daniel Gorham	Self
Meg Westby	Self
Richard Sirois	Self
Tim Obester	Self
Michell Heuertz	Self
Cammie Farrell	Self

**Neutral:**

Tom Cassidy  
 Jim Armitage  
 Fred Salzinger  
 Larry Dix  
 J. Paul McIntosh  
 Sonya Wing  
 Mark Yoakom  
 J. Rock Johnson

**Representing:**

Lincoln Police Department  
 University of Nebraska Medical Center  
 Creighton University  
 Nebraska Association of County Officials  
 Self  
 Self  
 Self  
 Self

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**Summary of purpose and/or changes:** The bill is introduced as implementing legislation mandated by LB 724 (2003). The purpose of the bill is to make necessary and appropriate changes to the state behavioral health system that will result in better services and outcomes for consumers of behavioral health services.

**Nebraska Behavioral Health Services Act** (section 1).

The bill creates a new act, called the Nebraska Behavioral Health Services Act, to replace several acts and sections: (1) the Comprehensive Community Mental Health Services Act

(sections 71-5001 to 71-5014); (2) sections 71-5016 to 71-5040 (not a named act, relating to alcoholism services, mirrors the Comprehensive Community Mental Health Services Act; (3) the Rehabilitation and Support Mental Health Services Incentive Act (sections 71-5042 to 71-5052; a "supplemental program" to the Comprehensive Community Mental Health Services Act, to "provided incentives for the development of rehabilitation and support services"); (4) sections 71-5053 to 71-5057 (LB 1354, 1998); and (5) the Alcoholism, Drug Abuse, and Addiction Services Act (sections 83-158.01 to 83-169).

**Purpose and Definitions** (sections 2-4).

The bill defines terms, provides purposes for the Nebraska Behavioral Health Services Act, and provides the following purposes for the public behavioral health system:

“(1) The public safety and the health and safety of persons with behavioral health disorder is;

(2) Statewide access to behavioral health services, including, but not limited to: (a) adequate availability of behavioral health professionals, programs, and facilities, (b) an appropriate array of community-based behavioral health services and continuum of care, and (c) integration and coordination of behavioral health services with primary health care services;

(3) High quality behavioral health services, including, but not limited to: (a) services that are research-based and consumer-focused, (b) services that emphasize beneficial treatment outcomes and recovery, with appropriate treatment planning, case management, community support, and consumer peer support, (c) appropriate regulation of behavioral health professionals, programs, and facilities, and (d) consumer involvement as a priority in all aspects of service planning and delivery; and

(4) Cost-effective behavioral health services, including, but not limited to: (a) services that are efficiently managed and supported with appropriate planning and information, (b) services that emphasize prevention, early detection, and early intervention, (c) services that are provided in the least restrictive environment consistent with the consumer’s clinical diagnosis and plan of treatment; and (d) funding that is fully integrated and allocated to support the consumer and his or her plan of treatment.”

**State Leadership of the Public Behavioral Health System** (section 5-6).

Changes proposed in LB 1083 are intended to strengthen state leadership of the behavioral health system and to make state leadership more focused and accountable. The bill creates the Division of Behavioral Health Services (division) within the Department of Health and Human Services (department). The administrator of the division is appointed by the Governor and confirmed by the Legislature. The chief clinical officer and program administrator for consumer affairs are appointed by the Director of Health and Human Services. The bill establishes an office of consumer affairs within the division. Qualifications and duties for the chief clinical officer and program director for consumer affairs are provided.

**Regional Governance** (sections 7-9).

Changes proposed in LB 1083 are intended to address issues raised before the Health and Human Services Committee relating to fragmentation caused by separate state and regional behavioral health bureaucracies, and the perceived or actual conflict of interest created when behavioral health regional authorities are both administrators of funding and providers of services. The bill intends to place regional behavioral health authorities more specifically under the direction and oversight of the division.

The bill retains the current six geographic behavioral health “regions.” The bill renames the administrative entity responsible for oversight of the public behavioral health system in the region as a Regional Behavioral Authority (RBHA), to mirror designation of the division as the state’s chief behavioral health authority. Regional governing boards are retained, consisting of one county board member from each county in the region. The administrator of the RBHA is appointed by the regional governing board. The RBHA is made responsible to the division for the administration and coordination of the public behavioral health system within the behavioral health region pursuant to rules and regulations adopted and promulgated by the department.

Funding required of counties for the operation of the RBHA and for the provision of behavioral health services within the region would remain the same. The amount of matching funds required of counties for the provision of services is certified annually by the division. Any additional General Funds made available for the provision of community-based services due to any reduction in regional center services would not be included in the county matching fund calculation.

Except for services already being provided by a RBHA under previously existing law, such authorities are prohibited from providing publicly funded behavioral health services unless: (1) there has been competitive bidding for such services, (2) there are no qualified and willing providers to provide such services, (3) the RBHA receives written authorization from the administrator of the division and enters into a contract with the division to provide such services, and (4) the RBHA complies with all applicable rules and regulations of the department relating to the provision of such services by such authority, including conflict of interest provisions and a requirement that the RBHA maintain a separate budget and administration and separately account for all revenue and expenditures relating to the provision of such services. RBHAs are given until June 30, 2006 to comply with the above restrictions with respect to current services.

#### **Community-Based Services and Regional Centers** (section 10).

Changes proposed in LB 1083 are intended to provide for public investment in the statewide development of community-based behavioral health services in all behavioral health regions, gradually transition persons from regional centers to such services, resulting in a reduction in the necessity and demand for regional center services and the eventual closure of the Norfolk and Hastings Regional Centers.

LB 1083 requires the division to encourage and facilitate the statewide development and provision of community-based behavioral health services, with the purpose of reducing the necessity and demand for regional center services.

No regional center service may be reduced or discontinued and no regional center may be closed unless appropriate community-based services or other regional center services are available to replace the services that are being affected by the reduction, discontinuation, or closure, and no further commitments, admissions, or readmissions for those services are required due to the adequate availability of such replacement services.

The division is required to inform the Governor and the Legislature of any intended reduction, discontinuation, or closure and to provide detailed documentation of the community-based behavioral health services or other regional center services being utilized to replace the reduced or discontinued services.

All funding related to the provision of regional center services that are being reduced or discontinued must be reallocated and expended by the division for purposes related to the statewide development and provision of community-based behavioral health services.

The division may establish state-operated community-based behavioral health services to replace regional center services that are being reduced or discontinued. The division must provide appropriate training and support to transition regional center employees into necessary positions in such state-operated services.

The bill provides that the Norfolk Regional Center will cease operation on or before June 30, 2005, and Hastings Regional Center will cease operation on or before December 31, 2005. The bill intends to require that no closure will occur unless all conditions precedent established above are satisfied.

### **Funding** (sections 11-12).

Changes proposed in LB 1083 are intended to provide for the integration of all public behavioral health funding and to ensure that such funds are appropriately allocated to support the consumer and his or her plan of treatment.

The bill requires the division to coordinate the integration and management of all funds appropriated by the Legislature or otherwise received by the Nebraska Health and Human Services System and designated by the Policy Cabinet for the provision of behavioral health services. Such funds must be managed by the division to ensure (1) the statewide availability of an appropriate array of community-based behavioral health services and continuum of care and (2) the allocation of such funds to support the consumer and his or her plan of treatment.

The bill creates the Behavioral Health Services Fund. The fund would be administered by the division and contain revenue appropriated by the Legislature or otherwise received by the Nebraska Health and Human Services System for the provision of behavioral health services, except for Medicaid funds, and directed by the Policy Cabinet or the Legislature for credit to the fund. The fund is intended as a "distributive fund" to be used by the division for the development and provision of community-based behavioral health services, including, but not limited to, grants, loans, and other assistance for such services or reimbursement to providers of such services.

### **Statewide Advocacy** (sections 13-15).

LB 1083 combines the State Mental Health Planning and Evaluation Council, the State Alcoholism and Drug Abuse Advisory Committee, and the Nebraska Advisory Commission on Compulsive Gambling into a single State Behavioral Health Council that meets federal requirements, and establishes three permanent subcommittees of the council: the Subcommittees on Mental Health Services, Substance Abuse Services, and Compulsive Gambling and Addiction Services. The bill retains and amends provisions relating to the establishment and use of the Compulsive Gamblers Assistance Fund. The bill establishes membership criteria and duties for the council and subcommittees of the council.

### **Planning and Legislative Oversight** (sections 16-18).

Changes proposed in LB 1083 are intended to ensure that behavioral health reforms are implemented and reform goals are achieved through appropriate planning and intensive legislative oversight.

The bill creates the Behavioral Health Oversight Commission of the Legislature, consisting of no more than fifteen members appointed by the chairperson of the Health and Human Services Committee of the Legislature and confirmed by a majority of all members of the committee. Members must have demonstrated interest and commitment and specialized

knowledge, experience, or expertise relating to the provision of behavioral health services in the state and be broadly representative of all behavioral health regions.

The commission is required to oversee and support implementation of the Nebraska Behavioral Health Services Act. The commission, under the direction of the committee, may employ staff, enter into contracts, and engage in other activities as necessary and appropriate to carry out its duties. Funding for the commission would come from revenue allocated to the committee from the Nebraska Health Care Cash Fund. The commission terminates on June 30, 2008.

The bill requires the division, in consultation with the commission, to submit a behavioral health implementation plan to the Governor and the Legislature on or before July 1, 2004. The division is required to advise the committee and the commission of any changes to the plan and provide monthly reports to the committee and the commission during its implementation.

The plan must include detailed descriptions of all completed, current, and proposed activities by the division to:

“(1) Select and appoint an administrator, chief clinical officer, program administrator for consumer affairs, and other staff within the division;

(2) Implement necessary and appropriate administrative and other changes within the Nebraska Health and Human Services System to carry out the Nebraska Behavioral Health Services Act;

(3) Describe and define the role and function of the office of consumer affairs within the division;

(4) Describe and define the relationship between the division and regional behavioral health authorities, including, but not limited to, the nature and scope of the coordination and oversight of such authorities by the division;

(5) Plan for the statewide development and provision of an appropriate array of community-based behavioral health services and continuum of care for both children and adults and the integration and coordination of such services with primary health care services;

(6)(a) Identify persons currently receiving regional center behavioral health services for whom community-based behavioral health services would be appropriate, (b) provide for the development and funding of appropriate community-based behavioral health services for such persons in each behavioral health region, (c) transition such persons from regional centers to appropriate community-based behavioral health services, (d) reduce new admissions and readmissions to regional centers, and (e) establish criteria, procedures, and timelines for the closure of the Norfolk Regional Center and the Hastings Regional Center;

(7) Evaluate and make recommendations relating to the administration and operation of the regional centers;

(8) Integrate all behavioral health funding within the Nebraska Health and Human Services System and allocate such funding to support the consumer and his or her plan of treatment;

(9) Establish (a) priorities for behavioral health services and funding, (b) rates and reimbursement methodologies for providers of behavioral health services and negotiated rulemaking strategies for the development of such methodologies, and (c) fees to be paid by consumers of behavioral health services, which fees shall not exceed the actual costs of providing such services;

(10) Access additional public and private funding for the provision of behavioral health services in each behavioral health region, including additional federal funding through the medical assistance program established in section 68-1018, and establish programs and

procedures for the provision of grants, loans, and other assistance for the provision of such services;

(11) Encourage and facilitate activities of the State Behavioral Health Council and the subcommittees of the council; and

(12) Promote activities in research and education to improve the quality of behavioral health services, the recruitment and retention of behavioral health professionals, and the availability of behavioral health services.”

**Operative date and emergency clause** (sections 37, 40).

The bill has an operative date of July 1, 2004 and contains an emergency clause. The emergency clause pertains to sections 16-18 of the bill. The operative date of July 1, 2004 applies to all other sections.

**Explanation of amendments, if any:** The committee amendment (AM 2889) replaces the bill as introduced and makes the following changes:

1. It broadens and clarifies the definition of “behavioral health services” to include “consumer-provided services, support services, inpatient and outpatient services, and residential and non-residential services provided for the prevention, diagnosis, and treatment of behavioral health disorders and the rehabilitation and recovery of person with such disorders,” and harmonizes the definitions of “community-based services” and “regional center services.”
2. It requires each regional behavioral health authority (RBHA) to establish and utilize a regional advisory committee consisting of consumers, providers, and other interested parties, and continues to permit each RBHA to establish and utilize other task forces or committees as necessary and appropriate to carry out its duties under the Nebraska Behavioral Health Services Act (act). The amendment removes the requirement that RBHAs divest themselves by June 30, 2006 of behavioral health services they currently provide, pursuant to public bidding and other restrictions that apply to new services.
3. It requires all RBHAs to comply with applicable rules and regulations of the Department of Health and Human Services relating to the provision of services by such authority, and requires such rules and regulations to include uniform and equitable public bidding procedures for such services.
4. It authorizes the Division of Behavioral Health Services (division) to reduce or discontinue regional center services or to close a regional center if appropriate community-based or other regional centers services are available for every person receiving regional center services affected by the reduction, discontinuation, or closure, and no further commitments, admissions, or readmissions for such services are required because appropriate replacement services are available. The amendment provides that such provisions are self-executing and require no further authorization or other enabling legislation. The amendment removes specific closing dates for the Norfolk and Hastings Regional Centers.
5. It changes provisions relating to establishment of the State Behavioral Health Council. The amendment provides that the council will consist of ten members from each of three state

advisory committees: (a) the State Advisory Committee on Mental Health Services, consisting of 23 members appointed by the Governor in accordance with federal guidelines; (b) the State Advisory Committee on Substance Abuse Services, consisting of 12 members appointed by the Governor; and (c) and the State Advisory Committee on Problem Gambling and Addiction Services, consisting of 12 members appointed by the Governor. The Governor would appoint three members of each committee to serve on the council, and each committee would select seven of its own members to serve on the council.

6. It increases membership on the Behavioral Health Oversight Commission of the Legislature (commission) from 15 to 20 and requires that the commission include representation from the Legislature, consumers and consumer advocacy organizations, behavioral health providers, the communities of Norfolk and Hastings, state employees, regional behavioral health authorities, mental health boards, and law enforcement. The amendment requires the division to communicate regularly with the commission and the Health and Human Services Committee of the Legislature and provide reports and other information as requested by the commission or the committee during preparation of the behavioral health implementation plan by the division. The commission must review and provide written recommendations relating to the plan no later than October 1, 2004. The division must provide written responses to those recommendations, including any proposed changes to the plan, no later than December 1, 2004.

7. It maintains provisions of LB 1083 which require the behavioral health implementation plan to include criteria, procedures, and timelines for the closure of the Norfolk and Hastings Regional Centers, and provides that the plan must also include policies and procedures for the recruitment, retention, training and support of regional center employees affected by such closures. It also amends provisions relating to negotiated rulemaking strategies for the development and implementation of provider rates and reimbursement methodologies.

8. It requires a mental health board to immediately notify the county attorney when the board receives notice of discharge of a committed person from a regional center. Section 83-1079 requires notice to the mental health board of such discharge.

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**Senator Jim Jensen, Chairperson**