

LEGISLATIVE BILL 834

Approved by the Governor April 6, 2012

Introduced by Gloor, 35; Campbell, 25; Cook, 13; Howard, 9; Krist, 10; Lambert, 2.

FOR AN ACT relating to the Nebraska Regulation of Health Professions Act; to amend sections 38-151, 71-6201, 71-6202, 71-6203, 71-6204, 71-6206, 71-6208, 71-6210, 71-6211, 71-6213, 71-6216, 71-6217, 71-6218, 71-6221, 71-6223, 71-6223.01, 71-6224, 71-6225, and 71-6226, Reissue Revised Statutes of Nebraska, and section 38-157, Revised Statutes Cumulative Supplement, 2010; to restate intent; to define and redefine terms; to change provisions relating to the regulation of health professions and changes in scope of practice; to change membership and duties of technical committees; to eliminate a fund; to harmonize provisions; to repeal the original sections; and to outright repeal section 71-6228, Reissue Revised Statutes of Nebraska.

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

Section 1. Section 38-151, Reissue Revised Statutes of Nebraska, is amended to read:

38-151 (1) It is the intent of the Legislature that the revenue to cover the cost of the credentialing system administered by the department is to be derived from General Funds, cash funds, federal funds, gifts, grants, or fees from individuals or businesses seeking credentials. The credentialing system includes the totality of the credentialing infrastructure and the process of issuance and renewal of credentials, examinations, inspections, investigations, continuing competency, compliance assurance, and the periodic credentialing review process under section 38-128, and the activities conducted under the Nebraska Regulation of Health Professions Act, for individuals and businesses that provide health services, health-related services, and environmental services.

(2) The department shall determine the cost of the credentialing system for such individuals and businesses by calculating the total of the base costs, the variable costs, and any adjustments as provided in sections 38-152 to 38-154.

(3) When fees are to be established pursuant to section 38-155 for individuals or businesses other than individuals in the practice of constructing or decommissioning water wells and installing water well pumps and pumping equipment, the department, with the recommendation of the appropriate board if applicable, shall base the fees on the cost of the credentialing system and shall include usual and customary cost increases, a reasonable reserve, and the cost of any new or additional credentialing activities. For individuals in the practice of constructing or decommissioning water wells and installing water well pumps and pumping equipment, the Water Well Standards and Contractors' Licensing Board shall establish the fees as otherwise provided in this subsection. All such fees shall be used as provided in section 38-157.

Sec. 2. Section 38-157, Revised Statutes Cumulative Supplement, 2010, is amended to read:

38-157 (1) The Professional and Occupational Credentialing Cash Fund is created. Except as provided in section 71-17,113, the fund shall consist of all fees, gifts, grants, and other money, excluding fines and civil penalties, received or collected by the department under sections 38-151 to 38-156 and the Nebraska Regulation of Health Professions Act.

(2) The department shall use the fund for the administration and enforcement of such laws regulating the individuals and businesses listed in section 38-121. ~~except for a percentage of the fees credited to the Nebraska Regulation of Health Professions Fund pursuant to section 71-6228.~~ Transfers may be made from the Professional and Occupational Credentialing Cash Fund fund to the General Fund at the direction of the Legislature. The State Treasurer shall transfer any money in the Nebraska Regulation of Health Professions Fund on the effective date of this act to the Professional and Occupational Credentialing Cash Fund.

(3) Any money in the Professional and Occupational Credentialing Cash Fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act.

Sec. 3. Section 71-6201, Reissue Revised Statutes of Nebraska, is amended to read:

71-6201 Sections 71-6201 to 71-6229 and section 9 of this act shall be known and may be cited as the Nebraska Regulation of Health Professions Act.

Sec. 4. Section 71-6202, Reissue Revised Statutes of Nebraska, is amended to read:

71-6202 The purpose of the Nebraska Regulation of Health Professions Act is to establish guidelines for the regulation of health professions which are not licensed or regulated prior to January 1, 1985, and those licensed or regulated health professions which seek to change their scope of practice. ~~The act is not intended and shall not be construed to apply to any regulatory entity created prior to January 1, 1985, or to any remedial or technical amendments to any laws which licensed or regulated activity prior to January 1, 1985, except as provided in such act.~~ The Legislature believes that all individuals should be permitted to enter into a health profession provide a health service, a health-related service, or an environmental service unless there is an overwhelming need for the state to protect the interests of the public from harm.

Sec. 5. Section 71-6203, Reissue Revised Statutes of Nebraska, is amended to read:

71-6203 For purposes of the Nebraska Regulation of Health Professions Act, unless the context otherwise requires, the definitions found in sections 71-6204 to 71-6220.01 and section 9 of this act shall be used.

Sec. 6. Section 71-6204, Reissue Revised Statutes of Nebraska, is amended to read:

71-6204 Applicant group shall mean any health professional group or organization, any individual, or any other interested party which proposes that any health professional group not previously regulated be regulated by the division or which proposes to change the scope of practice of a regulated health profession.

Sec. 7. Section 71-6206, Reissue Revised Statutes of Nebraska, is amended to read:

71-6206 Certificate or certification shall mean a voluntary process by which a statutory regulatory entity grants recognition to an individual who has met certain prerequisite qualifications specified by such regulatory entity and who may assume or use certified in the title or designation to perform prescribed health professional tasks.

Sec. 8. Section 71-6208, Reissue Revised Statutes of Nebraska, is amended to read:

71-6208 Director shall mean the Director of Public Health of the Division of Public Health of the Department of Health and Human Services.

Sec. 9. Division shall mean the Division of Public Health of the Department of Health and Human Services.

Sec. 10. Section 71-6210, Reissue Revised Statutes of Nebraska, is amended to read:

71-6210 Health profession shall mean any regulated health profession or any health professional group not previously regulated. a vocation involving health services, health-related services, or environmental services requiring specialized knowledge and training. Health profession does not include the vocation of duly recognized members of the clergy acting in their ministerial capacity.

Sec. 11. Section 71-6211, Reissue Revised Statutes of Nebraska, is amended to read:

71-6211 Health professional group not previously regulated shall mean those persons or groups who are not currently licensed or otherwise regulated under the Uniform Credentialing Act, who are determined by the director to be qualified by training, education, or experience to perform the functions prescribed in this section, and whose principal functions, customarily performed for remuneration, are to render services directly or indirectly to individuals for the purpose of:

- (1) Preventing physical, mental, or emotional injury or illness, excluding persons acting in their capacity as clergy;
- (2) Facilitating recovery from injury or illness; ~~or~~
- (3) Providing rehabilitative or continuing care following injury or illness; ~~or~~
- (4) Providing any other health service, health-related service, or environmental service which may be subject to regulation by the division.

Sec. 12. Section 71-6213, Reissue Revised Statutes of Nebraska, is amended to read:

71-6213 License, licensing, or licensure shall mean permission to engage in a health profession which would otherwise be unlawful in this state in the absence of such permission and which is granted to individuals who meet prerequisite qualifications and allows them to perform prescribed health

professional tasks and use a particular title.

Sec. 13. Section 71-6216, Reissue Revised Statutes of Nebraska, is amended to read:

71-6216 Public member shall mean an individual who is not, and never was, a member of the health profession being regulated, the spouse of a member, or an individual who does not have and never has had a material financial interest in ~~the rendering of the health professional service profession~~ being regulated or an activity directly related to the health profession being regulated.

Sec. 14. Section 71-6217, Reissue Revised Statutes of Nebraska, is amended to read:

71-6217 Registration shall mean the formal notification which, prior to rendering services, a practitioner submits to a state agency setting forth the name and address of the practitioner, the location, nature, and operation of the health activity to be practiced, and such other information which is required by the regulatory entity. A registered practitioner may be subject to discipline and standards of professional conduct established by the regulatory entity ~~but shall not~~ and may be required to meet any test of education, experience, or training in order to render services.

Sec. 15. Section 71-6218, Reissue Revised Statutes of Nebraska, is amended to read:

71-6218 Regulated health professions shall mean those persons or groups who are currently licensed or otherwise regulated under the Uniform Credentialing Act, who are qualified by training, education, or experience to perform the functions prescribed in this section, and whose principal functions, customarily performed for remuneration, are to render services directly or indirectly to individuals for the purpose of:

- (1) Preventing physical, mental, or emotional injury or illness;
- (2) Facilitating recovery from injury or illness; ~~or~~
- (3) Providing rehabilitative or continuing care following injury or illness; ~~or-~~
- (4) Providing any other health service, health-related service, or environmental service which may be subject to regulation by the division.

Sec. 16. Section 71-6221, Reissue Revised Statutes of Nebraska, is amended to read:

71-6221 (1) ~~After January 1, 1985,~~ a A health profession shall be regulated by the state only when:

(a) Unregulated practice can clearly harm or endanger the health, safety, or welfare of the public; ~~and the potential for the harm is easily recognizable and not remote or dependent upon tenuous argument;~~

(b) Regulation of the health profession does not impose significant new economic hardship on the public, significantly diminish the supply of qualified practitioners, or otherwise create barriers to service that are not consistent with the public welfare and interest;

(c) The public needs, ~~and can reasonably be expected to benefit from,~~ assurance from the state of initial and continuing professional ability; ~~by the state;~~ and

(d) The public cannot be effectively protected by ~~other means in a more cost-effective manner.~~ a more effective alternative.

(2) If it is determined that practitioners of a health profession not currently regulated are prohibited from the full practice of their profession in Nebraska, then the following criteria shall be used to determine whether regulation is necessary:

(a) Absence of a separate regulated profession creates a situation of harm or danger to the health, safety, or welfare of the public; ~~and the potential for the harm is easily recognizable and not remote or dependent upon tenuous argument;~~

(b) Creation of a separate regulated profession would not create a significant new danger to the health, safety, or welfare of the public;

(c) Creation of a separate regulated profession would benefit the health, safety, or welfare of the public; and

(d) The public cannot be effectively protected by ~~other means in a more cost-effective manner.~~ a more effective alternative.

(3) ~~After March 18, 1988,~~ the The scope of practice of a regulated health profession shall be changed only when:

~~(a) The present scope of practice or limitations on the scope of practice create a situation of harm or danger to the health, safety, or welfare of the public and the potential for the harm is easily recognizable and not remote or dependent upon tenuous argument;~~

~~(b) The proposed change in scope of practice does not create a significant new danger to the health, safety, or welfare of the public;~~

(a) The health, safety, and welfare of the public are inadequately

addressed by the present scope of practice or limitations on the scope of practice;

~~(e) (b) Enactment of the proposed change in scope of practice would benefit the health, safety, or welfare of the public; and~~

~~(d) The public cannot be effectively protected by other means in a more cost-effective manner.~~

(c) The proposed change in scope of practice does not create a significant new danger to the health, safety, or welfare of the public;

(d) The current education and training for the health profession adequately prepares practitioners to perform the new skill or service;

(e) There are appropriate postprofessional programs and competence assessment measures available to assure that the practitioner is competent to perform the new skill or service in a safe manner; and

(f) There are adequate measures to assess whether practitioners are competently performing the new skill or service and to take appropriate action if they are not performing competently.

(4) The Division of Public Health division shall, by rule and regulation, establish standards for the application of each criterion which shall be used by the review bodies in recommending whether proposals for credentialing or change in scope of practice meet the criteria.

Sec. 17. Section 71-6223, Reissue Revised Statutes of Nebraska, is amended to read:

71-6223 (1) An applicant group shall submit a letter of intent to file an application to the director on forms prescribed by the director. The letter of intent shall identify the applicant group, the proposed regulation or change in scope of practice sought, and information sufficient for the director to determine whether the application is eligible for review.

(2) The director shall notify the applicant group as to whether it is eligible for review within fifteen days ~~of~~ after the receipt of the letter of intent. The final application shall be submitted to the director who shall notify the applicant group of its acceptance for review within fifteen days ~~of~~ after receipt of the final application. If more than one application is received in a given year, the director may establish the order in which applications shall be reviewed.

(3) The application shall include an explanation of:

~~(1) The problem and why regulation or change of the scope of practice of a health profession is necessary, including (a) the nature of the potential harm to the public if the health profession is not regulated or the scope of practice of a health profession is not changed and the extent to which there is a threat to public health and safety, (b) the extent to which consumers need, and will benefit from, a method of regulation identifying competent practitioners and indicating typical employers, if any, of practitioners in the health profession, and (c) the extent of autonomy a practitioner has, as indicated by the extent to which the health profession calls for independent judgment, the extent of skill or experience required in making the independent judgment, and the extent to which practitioners are supervised;~~

~~(2) The efforts made to address the problem, including (a) voluntary efforts, if any, by members of the health profession to establish a code of ethics or help resolve disputes between health practitioners and consumers and (b) recourse to, and the extent of use of, applicable law and whether present law could be strengthened to control the problem;~~

~~(3) If the application is for the regulation of an unregulated health profession, an analysis of all feasible methods of regulation, including those methods listed in section 71-6222, identifying why each method is or is not appropriate for regulation of the profession;~~

~~(4) The benefit to the public if the health profession is regulated or the scope of practice of a health profession is changed, including:~~

~~(a) The extent to which the incidence of specific problems present in the unregulated health profession can reasonably be expected to be reduced by regulation;~~

~~(b) Whether the public can identify qualified practitioners;~~

~~(c) The extent to which the public can be confident that qualified practitioners are competent, as determined by:~~

~~(i) Whether the proposed regulatory entity would be a board composed of members of the profession and public members or a state agency, or both, and, if appropriate, their respective responsibilities in administering the system of registration, certification, or licensure, including the composition of the board and the number of public members, if any; the powers and duties of the board or state agency regarding examination and revocation, suspension, and nonrenewal of registrations, certificates, or licenses; the adoption and promulgation of rules and canons of ethics; the conduct of inspections; the~~

receipt of complaints and disciplinary action taken against practitioners, and how fees would be levied and collected to cover the expenses of administering and operating the regulatory system;

(ii) If there is a grandfather clause, whether such practitioners will be required to meet the prerequisite qualifications established by the regulatory entity at a later date;

(iii) The nature of the standards proposed for registration, certification, or licensure as compared with the standards of other jurisdictions;

(iv) Whether the regulatory entity would be authorized to enter into reciprocity agreements with other jurisdictions; and

(v) The nature and duration of any training including, but not limited to, whether the training includes a substantial amount of supervised field experience, whether training programs exist in this state, if there will be an experience requirement, whether the experience must be acquired under a registered, certified, or licensed practitioner, whether there are alternative routes of entry or methods of meeting the prerequisite qualifications, whether all applicants will be required to pass an examination, and if an examination is required, by whom it will be developed and how the costs of development will be met; and

(d) Assurance of the public that practitioners have maintained their competence, including whether the registration, certification, or licensure will carry an expiration date and whether renewal will be based only upon payment of a fee or will involve reexamination, peer review, or other enforcement;

(a) The problem created by not regulating a health professional group not previously regulated or by not changing the scope of practice of a regulated health profession;

(b) If the application is for the regulation of a health professional group not previously regulated, all feasible methods of regulation, including those methods listed in section 71-6222, and the impact of such methods on the public;

(c) The benefit to the public of regulating a health professional group not previously regulated or changing the scope of practice of a regulated health profession;

~~(5) (d) The extent to which regulation or the change of scope of practice might harm the public; including-~~

~~(a) The extent to which regulation will restrict entry into the health profession as determined by (i) whether the proposed standards are more restrictive than necessary to ensure safe and effective performance and (ii) whether the proposed legislation requires registered, certificated, or licensed practitioners in other jurisdictions who migrate to this state to qualify in the same manner as state applicants for registration, certification, and licensure when the other jurisdiction has substantially equivalent requirements for registration, certification, or licensure as those in this state; and~~

~~(b) Whether there are similar professions to that of the applicant group which should be included in, or portions of the applicant group which should be excluded from, the proposed legislation;~~

~~(6) The maintenance of standards, including (a) whether effective quality assurance standards exist in the health profession, such as legal requirements associated with specific programs that define or enforce standards or a code of ethics, and (b) how the proposed legislation will assure quality as determined by the extent to which a code of ethics, if any, will be adopted and the grounds for suspension or revocation of registration, certification, or licensure;~~

(e) The type of standards that exist to ensure that a practitioner of a health profession would maintain competency;

~~(7) (f) A description of the health professional group proposed for regulation, including a list of associations, organizations, and other groups representing the practitioners in this state, an estimate of the number of practitioners in each group, and whether the groups represent different levels of practice; and~~

(g) The role and availability of third-party reimbursement for the services provided by the applicant group;

(h) The experience of other jurisdictions in regulating the practitioners affected by the application;

~~(8) (i) The expected costs of regulation, including (a) (i) the impact registration, certification, or licensure will have on the costs of the services to the public and (b) (ii) the cost to the state and to the general public of implementing the proposed legislation; and-~~

(j) Other information relevant to the requested review as determined

by the division.

Sec. 18. Section 71-6223.01, Reissue Revised Statutes of Nebraska, is amended to read:

71-6223.01 Each application shall be accompanied by an application fee of five hundred dollars to be submitted at the time the letter of intent is filed. ~~All~~ The division shall remit all application fees shall be deposited in the Nebraska Regulation of Health Professions to the State Treasurer for credit to the Professional and Occupational Credentialing Cash Fund. The application fee shall not be refundable, but the director may waive all or part of the fee if he or she finds it to be in the public interest to do so. Such a finding by the director may include, but shall not be limited to, circumstances in which the director determines that the application would be eligible for review and:

- (1) The applicant group is an agency of state government;
- (2) Members of the applicant group will not be materially affected by the implementation of the proposed regulation or change in scope of practice; or
- (3) Payment of the application fee would impose unreasonable hardship on members of the applicant group.

Sec. 19. Section 71-6224, Reissue Revised Statutes of Nebraska, is amended to read:

71-6224 (1) The director with the advice of the board shall appoint an appropriate technical committee to examine and investigate each application. The committee shall consist of six appointed members and one member of the board designated by the board who shall serve as chairperson of the committee. The chairperson of the committee shall not be a member of the applicant group, any health profession sought to be regulated by the application, or any health profession which is directly or indirectly affected by the application. The director shall ensure that the total composition of the committee is fair, impartial, and equitable. In no event shall more than ~~two members~~ one member of the same regulated health profession, the applicant group, or the health profession sought to be regulated by an application serve on a technical committee.

(2) As soon as possible after its appointment, the committee shall meet and review the application assigned to it. ~~Each committee shall~~ The committee shall serve as a factfinding body and undertake such investigation as it deems necessary to address the issues identified in the application. As part of its investigation, each committee shall consider available scientific evidence and conduct public factfinding hearings, and shall otherwise investigate the application. Each committee shall comply with the Open Meetings Act.

(3) An applicant group shall have the burden of producing evidence to support its application.

~~(3) Applicant groups shall have the burden of bringing forth evidence upon which the committee shall make its findings. (4) Each committee shall detail its findings in a report and file the report with the board and the director. Each committee shall evaluate the application presented to it on the basis of the appropriate criteria as established in sections 71-6221 to 71-6223, shall make written findings on all criteria, and shall make a recommendation for approval or denial. Whether it recommends approval or denial of an application, the committee may make additional recommendations regarding changes to the proposal or other solutions to problems identified during the review and may comment on the anticipated benefits to the health, safety, and welfare of the public. If a committee finds that all appropriate criteria are not met, it shall recommend denial of the application. If it finds that all appropriate criteria are met by the application as submitted, it shall recommend approval. If the committee finds that the criteria would be met if amendments were made to the application, it may recommend such amendments to the applicant group and it may allow such amendments to be made before making its final recommendations. If the committee recommends approval of an application for regulation of a health profession not currently regulated, it shall also recommend the least restrictive method of regulation to be implemented consistent with the cost-effective protection of the public and with section 71-6222. The committee may recommend a specific method of regulation not listed in section 71-6222 if it finds that such method is the best alternative method of regulation. Whether it recommends approval or denial of an application, the committee may make additional recommendations regarding solutions to problems identified during the review.~~

Sec. 20. Section 71-6225, Reissue Revised Statutes of Nebraska, is amended to read:

71-6225 The board shall receive reports from the technical committees and shall meet to review and discuss each report. The board

shall apply the criteria established in sections 71-6221 to 71-6223 and compile its own report, including its findings and recommendations, and submit such report, together with the committee report, to the director. The recommendation of the board shall be developed in a manner consistent with subsection ~~(3)~~ (4) of section 71-6224.

Sec. 21. Section 71-6226, Reissue Revised Statutes of Nebraska, is amended to read:

71-6226 (1) After receiving and considering reports from the committee or the board, the director shall prepare a final report for the Legislature. The final report shall include copies of the committee report and the board report, if any, but the director shall not be bound by the findings and recommendations of such reports. The director in compiling his or her report shall apply the criteria established in sections 71-6221 to 71-6223 and may consult with the board or the committee. The recommendation of the director shall be developed in a manner consistent with subsection ~~(3)~~ (4) of section 71-6224. The final report shall be submitted to the Speaker of the Legislature, the Chairperson of the Executive Board of the Legislature, and the Chairperson of the Health and Human Services Committee of the Legislature no later than ~~nine~~ twelve months after the application is submitted to the director and found to be complete and shall be made available to all other members of the Legislature upon request.

(2) The director may recommend that no legislative action be taken on an application. If the director recommends that an application of an applicant group be approved, the director shall recommend an agency to be responsible for the regulation and the level of regulation to be assigned to such applicant group.

(3) An application which is resubmitted shall be considered the same as a new application.

Sec. 22. Original sections 38-151, 71-6201, 71-6202, 71-6203, 71-6204, 71-6206, 71-6208, 71-6210, 71-6211, 71-6213, 71-6216, 71-6217, 71-6218, 71-6221, 71-6223, 71-6223.01, 71-6224, 71-6225, and 71-6226, Reissue Revised Statutes of Nebraska, and section 38-157, Revised Statutes Cumulative Supplement, 2010, are repealed.

Sec. 23. The following section is outright repealed: Section 71-6228, Reissue Revised Statutes of Nebraska.