

LEGISLATURE OF NEBRASKA
ONE HUNDRED THIRD LEGISLATURE
FIRST SESSION
LEGISLATIVE BILL 338

Introduced by Gloor, 35.

Read first time January 17, 2013

Committee: Health and Human Services

A BILL

1 FOR AN ACT relating to public health and welfare; to amend sections
2 38-178, 38-182, 68-901, and 71-448, Revised Statutes
3 Cumulative Supplement, 2012; to prohibit certain
4 practices by health care professionals and facilities; to
5 provide for disciplinary action; to harmonize provisions;
6 and to repeal the original sections.

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

1 Section 1. Section 38-178, Revised Statutes Cumulative
2 Supplement, 2012, is amended to read:

3 38-178 Except as otherwise provided in sections 38-1,119
4 to 38-1,123, a credential to practice a profession may be denied,
5 refused renewal, or have other disciplinary measures taken against it
6 in accordance with section 38-185 or 38-186 on any of the following
7 grounds:

8 (1) Misrepresentation of material facts in procuring or
9 attempting to procure a credential;

10 (2) Immoral or dishonorable conduct evidencing unfitness
11 to practice the profession in this state;

12 (3) Abuse of, dependence on, or active addiction to
13 alcohol, any controlled substance, or any mind-altering substance;

14 (4) Failure to comply with a treatment program or an
15 aftercare program, including, but not limited to, a program entered
16 into under the Licensee Assistance Program established pursuant to
17 section 38-175;

18 (5) Conviction of (a) a misdemeanor or felony under
19 Nebraska law or federal law, or (b) a crime in any jurisdiction
20 which, if committed within this state, would have constituted a
21 misdemeanor or felony under Nebraska law and which has a rational
22 connection with the fitness or capacity of the applicant or
23 credential holder to practice the profession;

24 (6) Practice of the profession (a) fraudulently, (b)
25 beyond its authorized scope, (c) with gross incompetence or gross

1 negligence, or (d) in a pattern of incompetent or negligent conduct;

2 (7) Practice of the profession while the ability to
3 practice is impaired by alcohol, controlled substances, drugs, mind-
4 altering substances, physical disability, mental disability, or
5 emotional disability;

6 (8) Physical or mental incapacity to practice the
7 profession as evidenced by a legal judgment or a determination by
8 other lawful means;

9 (9) Illness, deterioration, or disability that impairs
10 the ability to practice the profession;

11 (10) Permitting, aiding, or abetting the practice of a
12 profession or the performance of activities requiring a credential by
13 a person not credentialed to do so;

14 (11) Having had his or her credential denied, refused
15 renewal, limited, suspended, revoked, or disciplined in any manner
16 similar to section 38-196 by another state or jurisdiction based upon
17 acts by the applicant or credential holder similar to acts described
18 in this section;

19 (12) Use of untruthful, deceptive, or misleading
20 statements in advertisements;

21 (13) Conviction of fraudulent or misleading advertising
22 or conviction of a violation of the Uniform Deceptive Trade Practices
23 Act;

24 (14) Distribution of intoxicating liquors, controlled
25 substances, or drugs for any other than lawful purposes;

1 (15) Violations of the Uniform Credentialing Act or the
2 rules and regulations relating to the particular profession;

3 (16) Unlawful invasion of the field of practice of any
4 profession regulated by the Uniform Credentialing Act which the
5 credential holder is not credentialed to practice;

6 (17) Violation of the Uniform Controlled Substances Act
7 or any rules and regulations adopted pursuant to the act;

8 (18) Failure to file a report required by section
9 38-1,124, 38-1,125, or 71-552;

10 (19) Failure to maintain the requirements necessary to
11 obtain a credential;

12 (20) Violation of an order issued by the department;

13 (21) Violation of an assurance of compliance entered into
14 under section 38-1,108;

15 (22) Failure to pay an administrative penalty;

16 (23) Unprofessional conduct as defined in section 38-179;

17 ~~or~~

18 (24) Violation of the Automated Medication Systems Act;

19 or -

20 (25) Violation of section 4 of this act.

21 Sec. 2. Section 38-182, Revised Statutes Cumulative
22 Supplement, 2012, is amended to read:

23 38-182 A credential to operate a business may be denied,
24 refused renewal, or have disciplinary measures taken against it in
25 accordance with section 38-196 on any of the following grounds:

1 (1) Violation of the Uniform Credentialing Act or the
2 rules and regulations adopted and promulgated under such act relating
3 to the applicable business;

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

6 (3) Conduct or practices detrimental to the health or
7 safety of an individual served or employed by the business;

8 (4) Failure to allow an agent or employee of the
9 department access to the business for the purposes of inspection,
10 investigation, or other information collection activities necessary
11 to carry out the duties of the department;

12 (5) Discrimination or retaliation against an individual
13 served or employed by the business who has submitted a complaint or
14 information to the department or is perceived to have submitted a
15 complaint or information to the department; ~~or~~

16 (6) Failure to file a report required by section 71-552;
17 or -

18 (7) Violation of section 4 of this act.

19 Sec. 3. Section 68-901, Revised Statutes Cumulative
20 Supplement, 2012, is amended to read:

21 68-901 Sections 68-901 to 68-974 and section 4 of this
22 act shall be known and may be cited as the Medical Assistance Act.

23 Sec. 4. (1) It is the intent of the Legislature that any
24 person enrolled in the medical assistance program should have access
25 to quality health care goods and services, when medically necessary

1 and appropriate, under the guidelines and limitations of the medical
2 assistance program for such goods and services. It is also the intent
3 of the Legislature that health care facilities and health care
4 professionals that are licensed under the Health Care Facility
5 Licensure Act and the Uniform Credentialing Act should not
6 discriminate with respect to any person eligible for the medical
7 assistance program by denying access to health care goods and
8 services provided pursuant to the medical assistance program.

9 (2) Health care facilities and health care professionals
10 that are licensed under the Health Care Facility Licensure Act and
11 the Uniform Credentialing Act and that are eligible to enroll as a
12 provider under the medical assistance program shall not discriminate
13 with respect to any person eligible for the medical assistance
14 program by denying access to health care goods and services provided
15 pursuant to the medical assistance program based on the person's
16 enrollment in the medical assistance program. A health care facility
17 or health care professional may be subject to disciplinary action
18 under the Health Care Facility Licensure Act and the Uniform
19 Credentialing Act for such discrimination. A health care professional
20 providing care through a patient-centered medical home shall be
21 deemed to meet the requirements of this section.

22 (3) Nothing in this section shall be construed to provide
23 preference on the timing of goods or services provided to a person
24 enrolled in the medical assistance program.

25 Sec. 5. Section 71-448, Revised Statutes Cumulative

1 Supplement, 2012, is amended to read:

2 71-448 The Division of Public Health of the Department of
3 Health and Human Services may take disciplinary action against a
4 license issued under the Health Care Facility Licensure Act on any of
5 the following grounds:

6 (1) Violation of any of the provisions of the Assisted-
7 Living Facility Act, the Health Care Facility Licensure Act, the
8 Nebraska Nursing Home Act, or the rules and regulations adopted and
9 promulgated under such acts;

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

12 (3) Conduct or practices detrimental to the health or
13 safety of a person residing in, served by, or employed at the health
14 care facility or health care service;

15 (4) A report from an accreditation body or public agency
16 sanctioning, modifying, terminating, or withdrawing the accreditation
17 or certification of the health care facility or health care service;

18 (5) Failure to allow an agent or employee of the
19 Department of Health and Human Services access to the health care
20 facility or health care service for the purposes of inspection,
21 investigation, or other information collection activities necessary
22 to carry out the duties of the Department of Health and Human
23 Services;

24 (6) Discrimination or retaliation against a person
25 residing in, served by, or employed at the health care facility or

1 health care service who has submitted a complaint or information to
2 the Department of Health and Human Services;

3 (7) Discrimination or retaliation against a person
4 residing in, served by, or employed at the health care facility or
5 health care service who has presented a grievance or information to
6 the office of the state long-term care ombudsman;

7 (8) Failure to allow a state long-term care ombudsman or
8 an ombudsman advocate access to the health care facility or health
9 care service for the purposes of investigation necessary to carry out
10 the duties of the office of the state long-term care ombudsman as
11 specified in the rules and regulations adopted and promulgated by the
12 Department of Health and Human Services;

13 (9) Violation of the Emergency Box Drug Act;

14 (10) Failure to file a report required by section
15 38-1,127 or 71-552;

16 (11) Violation of the Medication Aide Act;

17 (12) Failure to file a report of suspected abuse or
18 neglect as required by sections 28-372 and 28-711; ~~or~~

19 (13) Violation of the Automated Medication Systems Act;

20 or -

21 (14) Violation of section 4 of this act.

22 Sec. 6. Original sections 38-178, 38-182, 68-901, and
23 71-448, Revised Statutes Cumulative Supplement, 2012, are repealed.