

LEGISLATURE OF NEBRASKA
ONE HUNDRED THIRD LEGISLATURE
FIRST SESSION

LEGISLATIVE BILL 343

Introduced by Coash, 27.

Read first time January 18, 2013

Committee: Health and Human Services

A BILL

1 FOR AN ACT relating to intellectual disability; to amend sections
2 21-610, 23-104.03, 28-105.01, 30-2624, 31-113, 38-2404,
3 42-374, 43-289, 44-710.01, 71-421, 71-1107, 71-1110,
4 71-2102, 71-6018.01, 77-1827, 79-712, 79-1118.01,
5 79-1128, 83-101.06, 83-112, 83-217, 83-218, 83-363,
6 83-381, 83-382, 83-383, 83-386, 83-387, 83-389, and
7 83-1205, Reissue Revised Statutes of Nebraska, and
8 sections 68-1202 and 79-1124, Revised Statutes Cumulative
9 Supplement, 2012; to change terminology related to mental
10 retardation; to define and redefine terms; to harmonize
11 provisions; and to repeal the original sections.
12 Be it enacted by the people of the State of Nebraska,

1 Section 1. Section 21-610, Reissue Revised Statutes of
2 Nebraska, is amended to read:

3 21-610 When any such organization ~~shall have~~ has
4 established in this state an institution for the care of children or
5 persons who are incapacitated in any manner and such institution
6 ~~shall have~~ has been incorporated under the laws of Nebraska, such
7 corporation shall have power to act either by itself or jointly with
8 any natural person or persons (1) as administrator of the estate of
9 any deceased person whose domicile was within the county in which the
10 corporation is located or whose domicile was outside the State of
11 Nebraska, (2) as executor under a last will and testament or as
12 guardian of the property of any infant, person with ~~mental~~
13 ~~retardation,~~ intellectual disability, person with a mental disorder,
14 or person under other disability, or (3) as trustee for any person or
15 of the estate of any deceased person under the appointment of any
16 court of record having jurisdiction of the estate of such person.

17 Sec. 2. Section 23-104.03, Reissue Revised Statutes of
18 Nebraska, is amended to read:

19 23-104.03 Each county shall have the authority (1) to
20 plan, initiate, fund, maintain, administer, and evaluate facilities,
21 programs, and services that meet the rehabilitation, treatment, care,
22 training, educational, residential, diagnostic, evaluation, community
23 supervision, and protective service needs of dependent, aged, blind,
24 disabled, ill, or infirm persons, persons with a mental disorder, and
25 persons with ~~mental retardation~~ intellectual disability domiciled in

1 the county, (2) to purchase outright by installment contract or by
2 mortgage with the power to borrow funds in connection with such
3 contract or mortgage, hold, sell, and lease for a period of more than
4 one year real estate necessary for use of the county to plan,
5 initiate, fund, maintain, administer, and evaluate such facilities,
6 programs, and services, (3) to lease personal property necessary for
7 such facilities, programs, and services, and such lease may provide
8 for installment payments which extend over a period of more than one
9 year, notwithstanding the provisions of section 23-132 or 23-916, (4)
10 to enter into compacts with other counties, state agencies, other
11 political subdivisions, and private nonprofit agencies to exercise
12 and carry out the powers to plan, initiate, fund, maintain,
13 administer, and evaluate such facilities, programs, and services, and
14 (5) to contract for such services from agencies, either public or
15 private, which provide such services on a vendor basis. Compacts with
16 other public agencies pursuant to subdivision (4) of this section
17 shall be subject to the Interlocal Cooperation Act.

18 Sec. 3. Section 28-105.01, Reissue Revised Statutes of
19 Nebraska, is amended to read:

20 28-105.01 (1) Notwithstanding any other provision of law,
21 the death penalty shall not be imposed upon any person who was under
22 the age of eighteen years at the time of the commission of the crime.

23 (2) Notwithstanding any other provision of law, the death
24 penalty shall not be imposed upon any person with ~~mental retardation.~~
25 intellectual disability.

1 (3) As used in subsection (2) of this section, ~~mental~~
2 ~~retardation~~ intellectual disability means significantly subaverage
3 general intellectual functioning existing concurrently with deficits
4 in adaptive behavior. An intelligence quotient of seventy or below on
5 a reliably administered intelligence quotient test shall be
6 presumptive evidence of ~~mental retardation~~. intellectual disability.

7 (4) If (a) a jury renders a verdict finding the existence
8 of one or more aggravating circumstances as provided in section
9 29-2520 or (b)(i) the information contains a notice of aggravation as
10 provided in section 29-1603 and (ii) the defendant waives his or her
11 right to a jury determination of the alleged aggravating
12 circumstances, the court shall hold a hearing prior to any sentencing
13 determination proceeding as provided in section 29-2521 upon a
14 verified motion of the defense requesting a ruling that the penalty
15 of death be precluded under subsection (2) of this section. If the
16 court finds, by a preponderance of the evidence, that the defendant
17 is a person with ~~mental retardation~~, intellectual disability, the
18 death sentence shall not be imposed. A ruling by the court that the
19 evidence of diminished intelligence introduced by the defendant does
20 not preclude the death penalty under subsection (2) of this section
21 shall not restrict the defendant's opportunity to introduce such
22 evidence at the sentencing determination proceeding as provided in
23 section 29-2521 or to argue that such evidence should be given
24 mitigating significance.

25 Sec. 4. Section 30-2624, Reissue Revised Statutes of

1 Nebraska, is amended to read:

2 30-2624 A visitor shall be trained in law, nursing,
3 social work, mental health, ~~mental-retardation,~~ gerontology, or
4 developmental disabilities and shall be an officer, employee, or
5 special appointee of the court with no personal interest in the
6 proceedings.

7 Any qualified person may be appointed visitor of a
8 proposed ward, except that it shall be unlawful for any owner, part
9 owner, manager, administrator, or employee, or any spouse of an
10 owner, part owner, manager, administrator, or employee of a nursing
11 home, room and board home, convalescent home, group care home, or
12 institution providing residential care to any person physically ~~or~~
13 ~~mentally-handicapped,~~ intellectually disabled, infirm, or aged to be
14 appointed visitor of any such person residing, being under care,
15 receiving treatment, or being housed in any such home or institution
16 within the State of Nebraska.

17 The court shall select the visitor who has the expertise
18 to most appropriately evaluate the needs of the person who is
19 allegedly incapacitated.

20 The court shall maintain a current list of persons
21 trained in or having demonstrated expertise in the areas of mental
22 health, ~~mental-retardation,~~ intellectual disability, drug abuse,
23 alcoholism, gerontology, nursing, and social work, for the purpose of
24 appointing a suitable visitor.

25 Sec. 5. Section 31-113, Reissue Revised Statutes of

1 Nebraska, is amended to read:

2 31-113 The county board on actual view of the premises
3 shall fix and allow such compensation for land appropriated and
4 assess such damages as will in its judgment accrue from the
5 construction of the improvement to each person or corporation making
6 application as provided by section 31-112 and without such
7 application to each person with ~~mental retardation,~~ intellectual
8 disability, person with a mental disorder, or minor owning lands
9 taken or affected by such improvement.

10 Sec. 6. Section 38-2404, Reissue Revised Statutes of
11 Nebraska, is amended to read:

12 38-2404 Administrator or nursing home administrator means
13 any individual who meets the education and training requirements of
14 section 38-2419 and is responsible for planning, organizing,
15 directing, and controlling the operation of a nursing home or an
16 integrated system or who in fact performs such functions, whether or
17 not such functions are shared by one or more other persons.
18 Notwithstanding this section or any other provision of law, the
19 administrator of an intermediate care facility for the mentally
20 retarded may be either a licensed nursing home administrator or a
21 qualified ~~mental retardation~~ professional who supports persons with
22 intellectual disability.

23 Sec. 7. Section 42-374, Reissue Revised Statutes of
24 Nebraska, is amended to read:

25 42-374 A marriage may be annulled for any of the

1 following causes:

2 (1) The marriage between the parties is prohibited by
3 law;

4 (2) Either party is impotent at the time of marriage;

5 (3) Either party had a spouse living at the time of
6 marriage;

7 (4) Either party was mentally ill or a person with ~~mental~~
8 ~~retardation~~ intellectual disability at the time of marriage; or

9 (5) Force or fraud.

10 Sec. 8. Section 43-289, Reissue Revised Statutes of
11 Nebraska, is amended to read:

12 43-289 In no case shall a juvenile committed under the
13 terms of the Nebraska Juvenile Code be confined after he or she
14 reaches the age of majority. The court may, when the health or
15 condition of any juvenile adjudged to be within the terms of such
16 code shall require it, cause the juvenile to be placed in a public
17 hospital or institution for treatment or special care or in an
18 accredited and suitable private hospital or institution which will
19 receive the juvenile for like purposes. Whenever any juvenile has
20 been committed to the Department of Health and Human Services, the
21 department shall follow the court's orders, if any, concerning the
22 juvenile's specific needs for treatment or special care for his or
23 her physical well-being and healthy personality. If the court finds
24 any such juvenile to be a person with ~~mental retardation,~~ it
25 intellectual disability, the court may, upon attaching a physician's

1 certificate and a report as to the mental capacity of such person,
2 commit such juvenile directly to an authorized and appropriate state
3 or local facility or home.

4 The marriage of any juvenile committed to a state
5 institution under the age of nineteen years shall not make such
6 juvenile of the age of majority.

7 A juvenile committed to any such institution shall be
8 subject to the control of the superintendent thereof, and the
9 superintendent, with the advice and consent of the Department of
10 Health and Human Services, shall adopt and promulgate rules and
11 regulations for the promotion, paroling, and final discharge of
12 residents such as shall be considered mutually beneficial for the
13 institution and the residents. Upon final discharge of any resident,
14 such department shall file a certified copy of the discharge with the
15 court which committed the resident.

16 Sec. 9. Section 44-710.01, Reissue Revised Statutes of
17 Nebraska, is amended to read:

18 44-710.01 No policy of sickness and accident insurance
19 shall be delivered or issued for delivery to any person in this state
20 unless (1) the entire money and other considerations therefor are
21 expressed therein, (2) the time at which the insurance takes effect
22 and terminates is expressed therein, (3) it purports to insure only
23 one person, except that a policy may insure, originally or by
24 subsequent amendment, upon the application of an adult member of a
25 family who shall be deemed the policyholder, any two or more eligible

1 members of that family, including husband, wife, dependent children,
2 any children enrolled on a full-time basis in any college,
3 university, or trade school, or any children under a specified age
4 which shall not exceed thirty years and any other person dependent
5 upon the policyholder; any individual policy hereinafter delivered or
6 issued for delivery in this state which provides that coverage of a
7 dependent child shall terminate upon the attainment of the limiting
8 age for dependent children specified in the policy shall also provide
9 in substance that attainment of such limiting age shall not operate
10 to terminate the coverage of such child during the continuance of
11 such policy and while the child is and continues to be both (a)
12 incapable of self-sustaining employment by reason of ~~mental~~
13 ~~retardation~~ intellectual disability or physical handicap and (b)
14 chiefly dependent upon the policyholder for support and maintenance,
15 if proof of such incapacity and dependency is furnished to the
16 insurer by the policyholder within thirty-one days of the child's
17 attainment of the limiting age and subsequently as may be required by
18 the insurer but not more frequently than annually after the two-year
19 period following the child's attainment of the limiting age; such
20 insurer may charge an additional premium for and with respect to any
21 such continuation of coverage beyond the limiting age of the policy
22 with respect to such child, which premium shall be determined by the
23 insurer on the basis of the class of risks applicable to such child,
24 (4) it contains a title on the face of the policy correctly
25 describing the policy, (5) the exceptions and reductions of indemnity

1 are set forth in the policy and, except those which are set forth in
2 sections 44-710.03 and 44-710.04, are printed, at the insurer's
3 option, either included with the benefit provision to which they
4 apply or under an appropriate caption such as EXCEPTIONS, or
5 EXCEPTIONS AND REDUCTIONS; if an exception or reduction specifically
6 applies only to a particular benefit of the policy, a statement of
7 such exception or reduction shall be included with the benefit
8 provision to which it applies, (6) each such form, including riders
9 and endorsements, shall be identified by a form number in the lower
10 left-hand corner of the first page thereof, (7) it contains no
11 provision purporting to make any portion of the charter, rules,
12 constitution, or bylaws of the insurer a part of the policy unless
13 such portion is set forth in full in the policy, except in the case
14 of the incorporation of, or reference to, a statement of rates or
15 classification of risks, or short-rate table filed with the Director
16 of Insurance, and (8) on or after January 1, 1999, any restrictive
17 rider contains a notice of the existence of the Comprehensive Health
18 Insurance Pool if the policy provides health insurance as defined in
19 section 44-4209.

20 Sec. 10. Section 68-1202, Revised Statutes Cumulative
21 Supplement, 2012, is amended to read:

22 68-1202 Social services may be provided on behalf of
23 recipients with payments for such social services made directly to
24 vendors. Social services shall include those mandatory and optional
25 services to former, present, or potential social services recipients

1 provided for under the federal Social Security Act, as amended, and
2 described by the State of Nebraska in the approved State Plan for
3 Services. Such services may include, but shall not be limited to,
4 foster care for children, child care, family planning, treatment for
5 alcoholism and drug addiction, treatment for persons with ~~mental~~
6 ~~retardation,~~ intellectual disability, health-related services,
7 protective services for children, homemaker services, employment
8 services, foster care for adults, protective services for adults,
9 transportation services, home management and other functional
10 education services, housing improvement services, legal services,
11 adult day services, home delivered or congregate meals, educational
12 services, and secondary prevention services, including, but not
13 limited to, home visitation, child screening and early intervention,
14 and parenting education programs.

15 Sec. 11. Section 71-421, Reissue Revised Statutes of
16 Nebraska, is amended to read:

17 71-421 Intermediate care facility for the mentally
18 retarded means a facility where shelter, food, and training or
19 habilitation services, advice, counseling, diagnosis, treatment,
20 care, nursing care, or related services are provided for a period of
21 more than twenty-four consecutive hours to four or more persons
22 residing at such facility who have ~~mental-retardation~~ intellectual
23 disability or related conditions, including epilepsy, cerebral palsy,
24 or other developmental disabilities.

25 Sec. 12. Section 71-1107, Reissue Revised Statutes of

1 Nebraska, is amended to read:

2 71-1107 Developmental disability means ~~mental retardation~~
3 intellectual disability or a severe chronic cognitive impairment,
4 other than mental illness, that is manifested before the age of
5 twenty-two years and is likely to continue indefinitely.

6 Sec. 13. Section 71-1110, Reissue Revised Statutes of
7 Nebraska, is amended to read:

8 71-1110 ~~Mental retardation~~ Intellectual disability means
9 a state of significantly subaverage general intellectual functioning
10 existing concurrently with deficits in adaptive behavior which
11 originates in the developmental period.

12 Sec. 14. Section 71-2102, Reissue Revised Statutes of
13 Nebraska, is amended to read:

14 71-2102 The Legislature finds that shaken baby syndrome
15 is the medical term used to describe the violent shaking of an infant
16 or child and the injuries or other results sustained by the infant or
17 child. The Legislature further finds that shaken baby syndrome may
18 occur when an infant or child is violently shaken as part of a
19 pattern of abuse or because an adult has momentarily succumbed to the
20 frustration of responding to a crying infant or child. The
21 Legislature further finds that these injuries can include brain
22 swelling and damage, subdural hemorrhage, ~~mental retardation,~~
23 intellectual disability, or death. The Legislature further finds and
24 declares that there is a present and growing need to provide programs
25 aimed at reducing the number of cases of shaken baby syndrome in

1 Nebraska.

2 Sec. 15. Section 71-6018.01, Reissue Revised Statutes of
3 Nebraska, is amended to read:

4 71-6018.01 (1) Unless a waiver is granted pursuant to
5 subsection (2) of this section, a nursing facility shall use the
6 services of (a) a licensed registered nurse for at least eight
7 consecutive hours per day, seven days per week and (b) a licensed
8 registered nurse or licensed practical nurse on a twenty-four-hour
9 basis seven days per week. Except when waived under subsection (2) of
10 this section, a nursing facility shall designate a licensed
11 registered nurse or licensed practical nurse to serve as a charge
12 nurse on each tour of duty. The Director of Nursing Services shall be
13 a licensed registered nurse, and this requirement shall not be
14 waived. The Director of Nursing Services may serve as a charge nurse
15 only when the nursing facility has an average daily occupancy of
16 sixty or fewer residents.

17 (2) The department may waive either the requirement that
18 a nursing facility or long-term care hospital certified under Title
19 XIX of the federal Social Security Act, as amended, use the services
20 of a licensed registered nurse for at least eight consecutive hours
21 per day, seven days per week, or the requirement that a nursing
22 facility or long-term care hospital certified under Title XIX of the
23 federal Social Security Act, as amended, use the services of a
24 licensed registered nurse or licensed practical nurse on a twenty-
25 four-hour basis seven days per week, including the requirement for a

1 charge nurse on each tour of duty, if:

2 (a)(i) The facility or hospital demonstrates to the
3 satisfaction of the department that it has been unable, despite
4 diligent efforts, including offering wages at the community
5 prevailing rate for the facilities or hospitals, to recruit
6 appropriate personnel;

7 (ii) The department determines that a waiver of the
8 requirement will not endanger the health or safety of individuals
9 staying in the facility or hospital; and

10 (iii) The department finds that, for any periods in which
11 licensed nursing services are not available, a licensed registered
12 nurse or physician is obligated to respond immediately to telephone
13 calls from the facility or hospital; or

14 (b) The department has been granted any waiver by the
15 federal government of staffing standards for certification under
16 Title XIX of the federal Social Security Act, as amended, and the
17 requirements of subdivisions (a)(ii) and (iii) of this subsection
18 have been met.

19 (3) The department shall apply for such a waiver from the
20 federal government to carry out subdivision (1)(b) of this section.

21 (4) A waiver granted under this section shall be subject
22 to annual review by the department. As a condition of granting or
23 renewing a waiver, a facility or hospital may be required to employ
24 other qualified licensed personnel. The department may grant a waiver
25 under this section if it determines that the waiver will not cause

1 the State of Nebraska to fail to comply with any of the applicable
2 requirements of medicaid so as to make the state ineligible for the
3 receipt of all funds to which it might otherwise be entitled.

4 (5) The department shall provide notice of the granting
5 of a waiver to the office of the state long-term care ombudsman and
6 to the Nebraska Advocacy Services or any successor designated for the
7 protection of and advocacy for persons with mental illness or ~~mental~~
8 ~~retardation.~~ intellectual disability. A nursing facility granted a
9 waiver shall provide written notification to each resident of the
10 facility or, if appropriate, to the guardian, legal representative,
11 or immediate family of the resident.

12 Sec. 16. Section 77-1827, Reissue Revised Statutes of
13 Nebraska, is amended to read:

14 77-1827 The real property of persons with ~~mental~~
15 ~~retardation or~~ intellectual disability or a mental disorder so sold,
16 or any interest they may have in real property sold for taxes, may be
17 redeemed at any time within five years after such sale.

18 Sec. 17. Section 79-712, Reissue Revised Statutes of
19 Nebraska, is amended to read:

20 79-712 Provisions shall be made by the proper local
21 school authorities for instructing the pupils in all public schools
22 in a comprehensive health education program which shall include
23 instruction (1) as to the physiological, psychological, and
24 sociological aspects of drug use, misuse, and abuse and (2) on ~~mental~~
25 ~~retardation~~ intellectual disability and other developmental

1 disabilities, such as cerebral palsy, autism, and epilepsy, their
2 causes, and the prevention thereof through proper nutrition and the
3 avoidance of the consumption of drugs as defined in this section. For
4 purposes of this section, drugs means any and all biologically active
5 substances used in the treatment of illnesses or for recreation or
6 pleasure. Special emphasis shall be placed upon the commonly abused
7 drugs of tobacco, alcohol, marijuana, hallucinogenics, amphetamines,
8 barbiturates, and narcotics.

9 Sec. 18. Section 79-1118.01, Reissue Revised Statutes of
10 Nebraska, is amended to read:

11 79-1118.01 Disability means an impairment which causes a
12 child to be classified as ~~mentally retarded, intellectually disabled,~~
13 hard of hearing, deaf, speech and language impaired, blind and
14 visually impaired, behaviorally disordered, orthopedically impaired,
15 other health impaired, deaf-blind, or developmentally delayed or as
16 having multiple disabilities or specific learning disabilities,
17 traumatic brain injury, or autism and causes such child to need
18 special education and related services. For purposes of this section:

19 (1) Autism means a developmental disability significantly
20 affecting verbal and nonverbal communication and social interaction,
21 generally evident before age three, that adversely affects a child's
22 educational performance. Other characteristics often associated with
23 autism are engagement in repetitive activities and stereotyped
24 movements, resistance to environmental change or change in daily
25 routines, and unusual responses to sensory experiences. Autism does

1 not apply if a child's educational performance is adversely affected
2 primarily because the child has a serious emotional disturbance;

3 (2) Behaviorally disordered means a condition in which a
4 child exhibits one or more of the following characteristics over a
5 long period of time and to a marked degree which adversely affects
6 educational performance:

7 (a) An inability to learn which cannot be explained by
8 intellectual, sensory, or health factors;

9 (b) An inability to build or maintain satisfactory
10 interpersonal relationships with peers and teachers;

11 (c) Inappropriate types of behavior or feelings under
12 normal circumstances;

13 (d) A general pervasive mood of unhappiness or
14 depression; or

15 (e) A tendency to develop physical symptoms or fears
16 associated with personal or school problems.

17 Behaviorally disordered includes schizophrenia but does
18 not include social maladjustment unless the characteristics defined
19 in subdivision (a) or (b) of this subdivision are also present;

20 (3) Blind and visually impaired means partially seeing or
21 blind, which visual impairment, even with correction, adversely
22 affects a child's educational performance;

23 (4) Deaf means a hearing impairment which is so severe
24 that processing linguistic information through hearing, with or
25 without amplification, is impaired to the extent that educational

1 performance is adversely affected;

2 (5) Deaf-blind means concomitant hearing and visual
3 impairments, the combination of which causes such severe
4 communication and other developmental and educational problems that
5 such impairments cannot be accommodated in special education programs
6 solely for children who are deaf or blind;

7 (6) Developmental delay means either a significant delay
8 in function in one or more of the following areas: (a) Cognitive
9 development; (b) physical development; (c) communication development;
10 (d) social or emotional development; or (e) adaptive behavior or
11 skills development, or a diagnosed physical or mental condition that
12 has a high probability of resulting in a substantial delay in
13 function in one or more of such areas;

14 (7) Hard of hearing means a hearing impairment, whether
15 permanent or fluctuating, which adversely affects educational
16 performance but is not included under the term deaf in subdivision
17 (4) of this section;

18 (8) ~~Mentally retarded~~ Intellectually disabled means a
19 condition in which a child exhibits significantly subaverage general
20 intellectual functioning existing concurrently with deficits in
21 adaptive behavior and manifested during the developmental period
22 which adversely affects educational performance;

23 (9) Multiple disabilities means concomitant impairments,
24 such as ~~mentally retarded blind~~ intellectually disabled-blind or
25 ~~mentally retarded orthopedically~~ intellectually disabled-

1 orthopedically impaired, the combination of which causes such severe
2 educational problems that a child with such impairments cannot be
3 accommodated in special education programs for one of the
4 impairments. Multiple disabilities does not include deaf-blind;

5 (10) Orthopedically impaired means a severe orthopedic
6 impairment which adversely affects a child's educational performance.
7 Severe orthopedic impairments include impairments caused by (a)
8 congenital anomaly, including, but not limited to, clubfoot or
9 absence of a member, (b) disease, including, but not limited to,
10 poliomyelitis or bone tuberculosis, or (c) other causes, including,
11 but not limited to, cerebral palsy, amputations, and fractures and
12 burns which cause contractures;

13 (11) Other health impaired means having limited strength,
14 vitality, or alertness due to chronic or acute health problems,
15 including, but not limited to, a heart condition, tuberculosis,
16 rheumatic fever, nephritis, asthma, sickle cell anemia, hemophilia,
17 epilepsy, lead poisoning, leukemia, or diabetes, which adversely
18 affects a child's educational performance;

19 (12) Specific learning disability means a disorder in one
20 or more of the basic psychological processes involved in
21 understanding or in using language, spoken or written, which may
22 manifest itself in an imperfect ability to listen, think, speak,
23 read, write, spell, or do mathematical calculations. Specific
24 learning disability includes, but is not limited to, perceptual
25 disabilities, brain injury, minimal brain dysfunction, dyslexia, and

1 developmental aphasia;

2 (13) Speech-and-language-impaired means having a
3 communication disorder such as stuttering, impaired articulation,
4 language impairments, or voice impairment which adversely affects a
5 child's educational performance; and

6 (14) Traumatic brain injury means an acquired injury to
7 the brain caused by an external physical force, resulting in total or
8 partial functional disability or psychosocial impairment, or both,
9 that adversely affects a child's educational performance. Traumatic
10 brain injury applies to open or closed head injuries resulting in
11 impairments in one or more areas, including cognition; language;
12 memory; attention; reasoning; abstract thinking; judgment; problem
13 solving; sensory, perceptual, and motor abilities; psychosocial
14 behavior; physical functions; information processing; and speech.
15 Traumatic brain injury does not include brain injuries that are
16 congenital or degenerative or brain injuries induced by birth trauma.

17 The State Department of Education may group or subdivide
18 the classifications of children with disabilities for the purpose of
19 program description and reporting. The department shall establish
20 eligibility criteria and age ranges for the disability classification
21 of developmental delay.

22 Sec. 19. Section 79-1124, Revised Statutes Cumulative
23 Supplement, 2012, is amended to read:

24 79-1124 Service agency means the school district,
25 educational service unit, local or regional office of ~~mental~~

1 ~~retardation, intellectual disability,~~ interim-program school, or some
2 combination thereof or such other agency as may provide a special
3 education program approved by the State Department of Education,
4 including an institution not wholly owned or controlled by the state
5 or any political subdivision to the extent that it provides
6 educational or other services for the benefit of children from the
7 age of five to the age of twenty-one years with disabilities if such
8 services are nonsectarian in nature.

9 Sec. 20. Section 79-1128, Reissue Revised Statutes of
10 Nebraska, is amended to read:

11 79-1128 The special education programs required by
12 section 79-1127 may be provided by any school district, by
13 contracting with another school district or service agency, or by
14 some combination of school districts, an educational service unit,
15 combination of educational service units, the local or regional
16 office of ~~mental retardation, intellectual disability,~~ any program
17 approved by the State of Nebraska, or any combination thereof, except
18 that only nonsectarian services shall be considered for approval by
19 the State of Nebraska. Any ~~office of mental retardation~~ program
20 receiving funds under the Special Education Act shall not use such
21 funds to match state funds under the provisions of other programs.
22 The members of the school board of any school district not offering
23 continuous special education programs acceptable to the State Board
24 of Education shall be in violation of the law. No state funds shall
25 be paid to any school district as long as such violation exists, but

1 no deduction shall be made from any funds required by the
2 Constitution of Nebraska to be paid to such district.

3 Sec. 21. Section 83-101.06, Reissue Revised Statutes of
4 Nebraska, is amended to read:

5 83-101.06 The Department of Health and Human Services
6 shall:

7 (1) Administer the clinical programs and services of the
8 Beatrice State Developmental Center, the Lincoln Regional Center, the
9 Norfolk Regional Center, the Hastings Regional Center, and such other
10 medical facilities, including skilled nursing care and intermediate
11 care facilities, as may be provided by the department;

12 (2) Plan, develop, administer, and operate mental health
13 and ~~mental retardation~~ intellectual disability clinics, programs, and
14 services;

15 (3) Plan, develop, and execute the clinical programs and
16 services carried on by the department; and

17 (4) Represent the department in its work with the
18 University of Nebraska Medical Center concerning psychiatric
19 services.

20 Sec. 22. Section 83-112, Reissue Revised Statutes of
21 Nebraska, is amended to read:

22 83-112 (1) The Department of Health and Human Services
23 shall gather information as to the expenditures of charitable
24 institutions in this and other countries and regarding the best and
25 most successful methods of caring for persons with ~~mental retardation~~

1 intellectual disability and persons with a mental disorder.

2 (2) The Department of Health and Human Services shall
3 encourage scientific investigation of the treatment of mental
4 problems, epilepsy, and all other diseases and causes that contribute
5 to mental disabilities by the medical staffs of the state medical
6 institutions. The department shall provide forms for statistical
7 returns to be made by the institutions. The department shall make an
8 investigation of the conditions, causes, prevention, and cure of
9 epilepsy, ~~mental retardation,~~ intellectual disability, and mental
10 disorders. The department shall give special attention to the methods
11 of care, treatment, education, and improvement of the persons served
12 by the institutions under its control and shall exercise a careful
13 supervision of the methods to the end that, so far as practicable,
14 the best treatment and care known to modern science shall be given to
15 such persons and that the best methods of teaching, improving, and
16 educating such persons shall be used.

17 Sec. 23. Section 83-217, Reissue Revised Statutes of
18 Nebraska, is amended to read:

19 83-217 The Nebraska institution for ~~children with mental~~
20 ~~retardation and adults requiring~~ persons with intellectual disability
21 who require residential care shall be known and designated as the
22 Beatrice State Developmental Center.

23 Sec. 24. Section 83-218, Reissue Revised Statutes of
24 Nebraska, is amended to read:

25 83-218 The Beatrice State Developmental Center shall

1 provide residential care and humane treatment for those persons with
2 ~~mental retardation~~ intellectual disability who require residential
3 care, shall study to improve their condition, shall classify them,
4 and shall furnish such training in industrial, mechanical,
5 agricultural, and academic subjects as they may be capable of
6 learning. Whenever the Department of Health and Human Services
7 determines that continued residence in the Beatrice State
8 Developmental Center is no longer necessary for the welfare, care,
9 treatment, or training of such person, it shall have authority to
10 discharge or transfer such person as provided in section 83-387. The
11 Department of Health and Human Services shall discharge any person
12 from the Beatrice State Developmental Center without requiring
13 sterilization of such person, if the discharge satisfies the
14 requirements of this section, notwithstanding any court order,
15 judgment, or decree rendered prior to December 25, 1969, requiring
16 sterilization as a condition of discharge.

17 Sec. 25. Section 83-363, Reissue Revised Statutes of
18 Nebraska, is amended to read:

19 83-363 As used in sections 83-227.01, 83-227.02, 83-350,
20 and 83-363 to 83-380, unless the context otherwise requires:

21 (1) Department means the Department of Health and Human
22 Services;

23 (2) State institution means the state hospitals at
24 Lincoln, Norfolk, and Hastings, the Beatrice State Developmental
25 Center, and such other institutions as may hereafter be established

1 by the Legislature for the care and treatment of persons with a
2 mental disorder or ~~mental retardation~~; persons with intellectual
3 disability;

4 (3) Relative means the spouse of a patient or, if the
5 patient has no spouse and is under the age of majority at the time he
6 or she is admitted, the parents of a patient in a state institution;
7 and

8 (4) Parents means either or both of a patient's natural
9 parents unless such patient has been legally adopted by other
10 parents, in which case parents means either or both of the adoptive
11 parents.

12 Sec. 26. Section 83-381, Reissue Revised Statutes of
13 Nebraska, is amended to read:

14 83-381 As used in sections 83-217, 83-218, and 83-381 to
15 83-390, unless the context otherwise requires:

16 (1) Person with ~~mental retardation~~ intellectual
17 disability means any person of subaverage general intellectual
18 functioning which is associated with a significant impairment in
19 adaptive behavior;

20 (2) Department means the Department of Health and Human
21 Services or such person or agency within the Department of Health and
22 Human Services as the chief executive officer of the department may
23 designate; and

24 (3) Residential facility means an institution specified
25 under section 83-217 to provide residential care by the State of

1 Nebraska for persons with ~~mental-retardation.~~ intellectual
2 disability.

3 Sec. 27. Section 83-382, Reissue Revised Statutes of
4 Nebraska, is amended to read:

5 83-382 Except as provided in sections 79-1148 and
6 79-1149, the department shall have jurisdiction of the admission of
7 persons with ~~mental-retardation-intellectual disability~~ to a
8 residential facility. Applications for admission to a residential
9 facility shall be filed with the department.

10 Sec. 28. Section 83-383, Reissue Revised Statutes of
11 Nebraska, is amended to read:

12 83-383 (1) An application for admission shall be made in
13 writing by one of the following persons:

14 (a) If the person applying for admission has a court-
15 appointed guardian, the application shall be made by the guardian;
16 and

17 (b) If the person applying for admission does not have a
18 court-appointed guardian and has not reached the age of majority, as
19 established by section 43-2101, as such section may from time to time
20 be amended, the application shall be made by both parents if they are
21 living together or by the parent having custody of such person if
22 both parents are not then living or are not then living together.

23 (2) The county court of the county of residence of any
24 person with ~~mental-retardation-intellectual disability~~ or the county
25 court of the county in which a state residential facility is located

1 shall have authority to appoint a guardian for any person with ~~mental~~
2 ~~retardation~~ intellectual disability upon the petition of the husband,
3 wife, parent, person standing in loco parentis to such person, a
4 county attorney, or any authorized official of the department. If the
5 guardianship proceedings are initiated by an official of the
6 department, the costs thereof may be taxed to and paid by the
7 department if the person with ~~mental-retardation~~ intellectual
8 disability is without means to pay the costs. The department shall
9 pay such costs upon presentation of a proper claim by the judge of
10 the county court in which the proceedings were initiated. The costs
11 of such proceedings shall include court costs, attorneys' fees,
12 sheriffs' fees, psychiatric fees, and other necessary expenses of the
13 guardianship.

14 Sec. 29. Section 83-386, Reissue Revised Statutes of
15 Nebraska, is amended to read:

16 83-386 The department shall examine all information
17 concerning the person for whom admission is requested and shall
18 determine therefrom whether the person is a person with ~~mental~~
19 ~~retardation~~ intellectual disability and whether residence in the
20 residential facility is necessary for the welfare, care, treatment,
21 or training of such person. Such determination shall be made in
22 writing and shall set forth the reasons for the determination. If at
23 any time it shall become necessary, for want of room or other cause,
24 to discriminate in the admission of persons with ~~mental-retardation~~
25 intellectual disability to residential facilities, the selection

1 shall be made as follows: (1) Persons whose care is necessary in
2 order to protect themselves or the public health and safety; (2)
3 persons who are most likely to be benefited thereby; (3) persons
4 shall next be admitted in the order in which their applications for
5 admission have been filed with the department; and (4) when cases are
6 equally meritorious in all other respects, an indigent person or a
7 person from an indigent family shall be given preference.

8 Sec. 30. Section 83-387, Reissue Revised Statutes of
9 Nebraska, is amended to read:

10 83-387 At such time as the department determines that
11 continued residence in a residential facility will no longer benefit
12 a person with ~~mental retardation,~~ intellectual disability, the
13 department shall arrange for the discharge or transfer of such person
14 from the residential facility. The department shall give reasonable
15 notice to the person authorized to make an application for admission
16 for such person under subsection (1) of section 83-383 that the
17 department intends to discharge or transfer such person. The
18 department shall also be responsible for the placement of such person
19 in any other available program or facility and in the development of
20 other methods for the care, treatment, and training of such person.

21 Sec. 31. Section 83-389, Reissue Revised Statutes of
22 Nebraska, is amended to read:

23 83-389 A person admitted to a residential facility under
24 the provisions of sections 83-217, 83-218, and 83-381 to 83-390 shall
25 be immediately discharged from the residential facility after notice

1 of intention to remove the person with ~~mental-retardation~~
2 intellectual disability has been given by the person authorized to
3 make an application for admission under subsection (1) of section
4 83-383 and the normal discharge procedures are completed.

5 Sec. 32. Section 83-1205, Reissue Revised Statutes of
6 Nebraska, is amended to read:

7 83-1205 Developmental disability shall mean:

8 (1) ~~Mental-retardation;~~ Intellectual disability; or

9 (2) A severe, chronic disability other than ~~mental~~
10 ~~retardation~~ intellectual disability or mental illness which:

11 (a) Is attributable to a mental or physical impairment
12 other than a mental or physical impairment caused solely by mental
13 illness;

14 (b) Is manifested before the age of twenty-two years;

15 (c) Is likely to continue indefinitely; and

16 (d) Results in:

17 (i) In the case of a person under three years of age, at
18 least one developmental delay; or

19 (ii) In the case of a person three years of age or older,
20 a substantial limitation in three or more of the following areas of
21 major life activity, as appropriate for the person's age:

22 (A) Self-care;

23 (B) Receptive and expressive language development and
24 use;

25 (C) Learning;

1 (D) Mobility;

2 (E) Self-direction;

3 (F) Capacity for independent living; and

4 (G) Economic self-sufficiency.

5 Sec. 33. Original sections 21-610, 23-104.03, 28-105.01,
6 30-2624, 31-113, 38-2404, 42-374, 43-289, 44-710.01, 71-421, 71-1107,
7 71-1110, 71-2102, 71-6018.01, 77-1827, 79-712, 79-1118.01, 79-1128,
8 83-101.06, 83-112, 83-217, 83-218, 83-363, 83-381, 83-382, 83-383,
9 83-386, 83-387, 83-389, and 83-1205, Reissue Revised Statutes of
10 Nebraska, and sections 68-1202 and 79-1124, Revised Statutes
11 Cumulative Supplement, 2012, are repealed.