

LEGISLATIVE BILL 340

Approved by the Governor April 25, 2017

Introduced by Murante, 49; Brewer, 43; Briese, 41; at the request of the Governor.

A BILL FOR AN ACT relating to veterans homes; to amend sections 80-314, 80-315, 80-316, 80-317, 80-319, 80-320, 80-321, 80-322, 81-1316, 81-3113, 81-3116, 83-107.01, and 83-108, Reissue Revised Statutes of Nebraska; to name the Nebraska Veterans Services Act; to transfer powers and duties from the Division of Veterans' Homes of the Department of Health and Human Services to the Department of Veterans' Affairs; to provide for transfer of personnel, property, funds, rights, and duties as prescribed; to create a fund; to eliminate the division; to harmonize provisions; to provide an operative date; to repeal the original sections; and to declare an emergency.

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

Section 1. This section, sections 2 and 11 to 16 of this act, and sections 80-314 to 80-331 shall be known and may be cited as the Nebraska Veterans Services Act.

Sec. 2. For purposes of the Nebraska Veterans Services Act:

(1) Department means the Department of Veterans' Affairs;

(2) Director means the Director of Veterans' Affairs; and

(3) Veterans homes means the homes listed in section 80-315.

Sec. 3. Section 80-314, Reissue Revised Statutes of Nebraska, is amended to read:

80-314 Effective July 1, 2017, all programs, services, and duties of the Division of Veterans' Homes of the Department of Health and Human Services shall be transferred to the Department of Veterans' Affairs. The department Division of Veterans' Homes shall be responsible for the management and administration of the veterans homes and the treatment of the members thereof, define the duties of the officers, fix their compensation, and adopt and promulgate rules and regulations. The director shall Director of Veterans' Homes and the Director of Veterans' Affairs shall jointly develop member grievance procedures, family support programs, volunteer support, policy, and internal standards. The director Director of Veterans' Affairs shall have access to all confidential information relating to members' care.

Sec. 4. Section 80-315, Reissue Revised Statutes of Nebraska, is amended to read:

80-315 (1) The Grand Island Veterans' Home, the Norfolk Veterans' Home, the Eastern Nebraska Thomas Fitzgerald Veterans' Home, and the Western Nebraska Veterans' Home are established. On July 1, 2007, the Eastern Nebraska Veterans' Home is established. The State of Nebraska shall maintain the homes as provided in the Nebraska Veterans Services Act sections 80-314 to 80-331.

(2) The veterans' home known as the Thomas Fitzgerald Veterans' Home as of July 14, 2006, shall continue to be known by that name until July 1, 2007. On and after July 1, 2007, the veterans' home shall be known as the Eastern Nebraska Veterans' Home.

Sec. 5. Section 80-316, Reissue Revised Statutes of Nebraska, is amended to read:

80-316 (1) The department shall purpose of the Division of Veterans' Homes of the Department of Health and Human Services is to provide domiciliary and nursing home care and subsistence to:

(a) All persons who served on active duty in the armed forces of the United States other than active duty for training and who were discharged or otherwise separated with a characterization of honorable or general (under honorable conditions) if, at the time of making an application for admission to one of the Nebraska veterans homes:

(i) The applicant has been a bona fide resident of the State of Nebraska for at least two years;

(ii) The applicant has become disabled due to service, old age, or otherwise to an extent that it would prevent such applicant from earning a livelihood; and

(iii) The applicant's income from all sources is such that the applicant would be dependent wholly or partially upon public charities for support or the type of care needed is available only at a state institution;

(b) The spouse of any such person admitted to one of the homes who has attained the age of fifty years and has been married to such member for at least two years before his or her entrance into the home;

(c) Subject to subsection (2) of this section, the surviving spouses and parents of eligible servicemen and servicewomen as defined in subdivision (a) of this subsection who died while in the service of the United States or who have since died of a service-connected disability as determined by the United States Department of Veterans Affairs; and

(d) Subject to subsection (2) of this section, the surviving spouses of eligible servicemen or servicewomen as defined in subdivision (a) of this subsection who have since died.

(2) The surviving spouses and parents referred to in subdivision (1)(c) or (d) of this section shall be eligible for such care and subsistence if, at the time of applying, they:

(a) Have been bona fide residents of the State of Nebraska for at least two years;

(b) Have attained the age of fifty years;

(c) Are unable to earn a livelihood; and

(d) Are dependent wholly or partially upon public charities or the type of care needed is available only at a state institution.

(3) No one admitted to one of the Nebraska veterans homes under conditions enumerated in this section shall have a vested right to continued residence in such home if such person ceases to meet any of the eligibility requirements of this section, except that no person who has been regularly admitted shall be denied continued residence solely because of his or her marriage to a member of one of the homes.

Sec. 6. Section 80-317, Reissue Revised Statutes of Nebraska, is amended to read:

80-317 The Veterans' Homes Board shall prescribe rules of membership in the Nebraska veterans homes in accordance with the Nebraska Veterans Services Act sections 80-314 to 80-331. An application for membership in a Nebraska veterans home shall be made to a county veterans service officer, to a recognized veterans organization as defined in subdivision (1) of section 80-401.01, or to a Nebraska veterans home, and such officer, organization, or Nebraska veterans home shall coordinate the required financial and medical information and, if necessary, provide an opinion regarding its validity. The county veterans service officer, recognized veterans organization, or Nebraska veterans home shall at once forward the application together with a finding in regard to the condition of the applicant to the board, whose duty it is to receive, review, and act upon applications for membership. During the interim between meetings of the board, the secretary of the board is authorized to adjudicate applications, subject to the approval of the full board at its next meeting.

Sec. 7. Section 80-319, Reissue Revised Statutes of Nebraska, is amended to read:

80-319 The Veterans' Homes Board shall meet at least quarterly and at other times at the request of either the chairperson or the secretary of the board at a site selected by the secretary after consultation with the chairperson. The board shall review all applications submitted for admission to the Nebraska veterans homes system and shall make all final determinations regarding admission, or continued admission, to one of the homes. The board may check periodically on members of the Nebraska veterans homes to determine whether or not their physical or financial status has so changed since admission that they should no longer be maintained there. The board has power to subpoena witnesses and take testimony under oath relative to the duties of the board. No specified amount, either as to income or accumulated reserve, shall be arbitrarily fixed for determining the eligibility of an applicant to membership or to continuing rights of membership, but each case shall be considered solely on its merits and the evidence presented. The department Division of Veterans' Homes shall consult with the board prior to denying further residence to members the board finds should no longer be supported there.

Sec. 8. Section 80-320, Reissue Revised Statutes of Nebraska, is amended to read:

80-320 (1) Nothing in the Nebraska Veterans Services Act sections 80-314 to 80-331 shall be construed as limiting the authority vested with the director Director of Veterans' Homes to adopt and promulgate rules and regulations, not inconsistent with the act herewith, for the administration of the Nebraska veterans homes. The department Department of Health and Human Services, in conjunction and after consultation with the Veterans' Homes Board, shall adopt and promulgate rules and regulations governing admission to and administration of the homes.

(2) All rules, regulations, and orders of the Division of Veterans' Homes of the Department of Health and Human Services or its predecessor agencies adopted prior to July 1, 2017, in connection with the powers, duties, and functions transferred to the Department of Veterans' Affairs pursuant to the Nebraska Veterans Services Act, shall continue to be effective until revised, amended, repealed, or nullified pursuant to law.

Sec. 9. Section 80-321, Reissue Revised Statutes of Nebraska, is amended to read:

80-321 Nothing in the Nebraska Veterans Services Act sections 80-314 to 80-331 shall be construed to deny any person who has been properly admitted to one of the Nebraska veterans homes the privilege of paying the cost of his or her care, or any part thereof, if he or she so desires or if it has been determined by the Veterans' Homes Board that his or her financial status is such that he or she should no longer be maintained there at public expense.

Sec. 10. Section 80-322, Reissue Revised Statutes of Nebraska, is amended to read:

80-322 Any veteran, spouse, surviving spouse, or parent admitted to one of the Nebraska veterans homes under section 80-316 who has an income in excess of forty dollars per month, including federal pension, compensation, or social security, or has sufficient assets will be required to reimburse the state monthly a reasonable amount for the expense of his or her maintenance. The amount shall be determined by the Veterans' Homes Board. All money paid to the

state by members of the Nebraska veterans homes in compliance with this section shall be remitted to the State Treasurer for credit to the Department of Veterans' Affairs Cash Fund. The State Treasurer shall transfer any money remaining in the Health and Human Services Cash Fund on July 1, 2017, that was credited to the fund pursuant to this section to the Department of Veterans' Affairs Cash Fund.

Sec. 11. The Department of Veterans' Affairs Cash Fund is created. The fund shall include money transferred pursuant to section 80-322. The department shall administer the fund. Any money in the 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. 12. On and after July 1, 2017, positions of employment in the Division of Veterans' Homes of the Department of Health and Human Services related to the powers, duties, and functions transferred pursuant to the Nebraska Veterans Services Act are transferred to the Department of Veterans' Affairs. For purposes of the transition, employees of the division shall be considered employees of the department and shall retain their rights under the state personnel system or pertinent bargaining agreement, and their service shall be deemed continuous. This section does not grant employees any new rights or benefits not otherwise provided by law or bargaining agreement or preclude the department or the director from exercising any of the prerogatives of management set forth in section 81-1311 or as otherwise provided by law. This section is not an amendment to or substitute for the provisions of any existing bargaining agreements.

Sec. 13. On and after July 1, 2017, whenever the Division of Veterans' Homes of the Department of Health and Human Services is referred to or designated by any contract or other document in connection with the duties and functions transferred to the Department of Veterans' Affairs pursuant to the Nebraska Veterans Services Act, such reference or designation shall apply to such department. All contracts entered into by the division prior to July 1, 2017, in connection with the duties and functions transferred to the department are hereby recognized, with the department succeeding to all rights and obligations under such contracts. Any cash funds, custodial funds, gifts, trusts, grants, and any appropriations of funds from prior fiscal years available to satisfy obligations incurred under such contracts shall be transferred and appropriated to the department for the payments of such obligations. All documents and records transferred, or copies of the same, may be authenticated or certified by the department for all legal purposes.

Sec. 14. No suit, action, or other proceeding, judicial or administrative, lawfully commenced prior to July 1, 2017, or which could have been commenced prior to that date, by or against the Division of Veterans' Homes of the Department of Health and Human Services, or the director or any employee thereof in such director's or employee's official capacity or in relation to the discharge of his or her official duties, shall abate by reason of the transfer of duties and functions from the Division of Veterans' Homes of the Department of Health and Human Services to the Department of Veterans' Affairs.

Sec. 15. On and after July 1, 2017, unless otherwise specified, whenever any provision of law refers to the Division of Veterans' Homes of the Department of Health and Human Services in connection with duties and functions transferred to the Department of Veterans' Affairs, such law shall be construed as referring to the department.

Sec. 16. On July 1, 2017, all items of property, real and personal, including office furniture and fixtures, books, documents, and records of the Division of Veterans' Homes of the Department of Health and Human Services pertaining to the duties and functions transferred to the Department of Veterans' Affairs pursuant to the Nebraska Veterans Services Act shall become the property of the department.

On July 1, 2017, any federal, cash, canteen, and trust funds remaining in the following program classifications shall be transferred from Agency No. 25, the Department of Health and Human Services, to Agency No. 28, the Department of Veterans' Affairs: Program No. 510, Veterans' Home System Administration; Program No. 519, Grand Island Veterans' Home; Program No. 520, Norfolk Veterans' Home; Program No. 521, Western Nebraska Veterans' Home; and Program No. 522, Eastern Nebraska Veterans' Home.

Any appropriation and salary limit provided in any legislative bill enacted by the One Hundred Fifth Legislature, First Session, to Agency No. 25, Department of Health and Human Services, in the following program classification, shall be null and void, and any such amounts are hereby appropriated to Agency No. 28, Department of Veterans' Affairs: Program No. 519, Nebraska Veterans' Homes. Any financial obligations of the Department of Health and Human Services for Program No. 519, Nebraska Veterans' Homes, that remain unpaid as of June 30, 2017, and that are subsequently certified as valid encumbrances to the accounting division of the Department of Administrative Services pursuant to sections 81-138.01 to 81-138.04, shall be paid by the Department of Veterans' Affairs from the unexpended balance of appropriations existing in such program classification on June 30, 2017.

Sec. 17. Section 81-1316, Reissue Revised Statutes of Nebraska, is amended to read:

81-1316 (1) All agencies and personnel of state government shall be covered by sections 81-1301 to 81-1319 and shall be considered subject to the State Personnel System, except the following:

- (a) All personnel of the office of the Governor;

- (b) All personnel of the office of the Lieutenant Governor;
 - (c) All personnel of the office of the Secretary of State;
 - (d) All personnel of the office of the State Treasurer;
 - (e) All personnel of the office of the Attorney General;
 - (f) All personnel of the office of the Auditor of Public Accounts;
 - (g) All personnel of the Legislature;
 - (h) All personnel of the court systems;
 - (i) All personnel of the Board of Educational Lands and Funds;
 - (j) All personnel of the Public Service Commission;
 - (k) All personnel of the Nebraska Brand Committee;
 - (l) All personnel of the Commission of Industrial Relations;
 - (m) All personnel of the State Department of Education;
 - (n) All personnel of the Nebraska state colleges and the Board of Trustees of the Nebraska State Colleges;
 - (o) All personnel of the University of Nebraska;
 - (p) All personnel of the Coordinating Commission for Postsecondary Education;
 - (q) All personnel of the Governor's Policy Research Office, but not to include personnel within the State Energy Office;
 - (r) All personnel of the Commission on Public Advocacy;
 - (s) All agency heads;
 - (t)(i) The Director of Behavioral Health of the Division of Behavioral Health; (ii) the Director of Children and Family Services of the Division of Children and Family Services; (iii) the Director of Developmental Disabilities of the Division of Developmental Disabilities; (iv) the Director of Medicaid and Long-Term Care of the Division of Medicaid and Long-Term Care; and (v) the Director of Public Health of the Division of Public Health; ~~and (vi) the Director of Veterans' Homes of the Division of Veterans' Homes;~~
 - (u) The chief medical officer established under section 81-3115, the Administrator of the Office of Juvenile Services, and the chief executive officers of the Beatrice State Developmental Center, Lincoln Regional Center, Norfolk Regional Center, Hastings Regional Center, Grand Island Veterans' Home, Norfolk Veterans' Home, Eastern Nebraska Veterans' Home, Western Nebraska Veterans' Home, Youth Rehabilitation and Treatment Center-Kearney, and Youth Rehabilitation and Treatment Center-Geneva;
 - (v) The chief executive officers of all facilities operated by the Department of Correctional Services and the medical director for the department appointed pursuant to section 83-4,156;
 - (w) All personnel employed as pharmacists, physicians, psychiatrists, or psychologists by the Department of Correctional Services;
 - (x) All personnel employed as pharmacists, physicians, psychiatrists, psychologists, service area administrators, or facility operating officers of the Department of Health and Human Services;
 - (y) Deputies and examiners of the Department of Banking and Finance and the Department of Insurance as set forth in sections 8-105 and 44-119, except for those deputies and examiners who remain in the State Personnel System; and
 - (z) All personnel of the Tax Equalization and Review Commission.
- (2) At each agency head's discretion, up to the following number of additional positions may be exempted from the State Personnel System, based on the following agency size categories:

Number of Agency Employees	Number of Noncovered Positions
less than 25	0
25 to 100	1
101 to 250	2
251 to 500	3
501 to 1000	4
1001 to 2000	5
2001 to 3000	8
3001 to 4000	11
4001 to 5000	14
<u>4001 to 5000</u>	<u>40</u>
over 5000	50

The purpose of having such noncovered positions shall be to allow agency heads the opportunity to recruit, hire, and supervise critical, confidential, or policymaking personnel without restrictions from selection procedures, compensation rules, career protections, and grievance privileges. Persons holding the noncovered positions shall serve at the pleasure of the agency head and shall be paid salaries set by the agency head. An agency with over five

thousand employees shall provide notice in writing to the Health and Human Services Committee of the Legislature when forty noncovered positions have been filled by the agency head pursuant to this subsection.

(3) No changes to this section or to the number of noncovered positions within an agency shall affect the status of personnel employed on the date the changes become operative without their prior written agreement. A state employee's career protections or coverage by personnel rules and regulations shall not be revoked by redesignation of the employee's position as a noncovered position without the prior written agreement of such employee.

Sec. 18. Section 81-3113, Reissue Revised Statutes of Nebraska, is amended to read:

81-3113 The Department of Health and Human Services is created. The department shall have five ~~six~~ divisions to be known as (1) the Division of Behavioral Health, (2) the Division of Children and Family Services, (3) the Division of Developmental Disabilities, (4) the Division of Medicaid and Long-Term Care, and (5) the Division of Public Health, ~~and (6) the Division of Veterans' Homes.~~

Sec. 19. Section 81-3116, Reissue Revised Statutes of Nebraska, is amended to read:

81-3116 The responsibilities of the divisions created in section 81-3113 include, but are not limited to, the following:

(1) The Division of Behavioral Health shall administer (a) the state hospitals for the mentally ill designated in section 83-305 and (b) publicly funded community-based behavioral health services;

(2) The Division of Children and Family Services shall administer (a) protection and safety programs and services, including child welfare programs and services and the Office of Juvenile Services, (b) economic and family support programs and services, and (c) service areas as may be designated by the chief executive officer or by the Director of Children and Family Services under authority of the chief executive officer, except that on and after September 1, 2012, the western, central, and northern service areas shall be aligned to be coterminous with the district court judicial districts described in section 24-301.02;

(3) The Division of Developmental Disabilities shall administer (a) the Beatrice State Developmental Center and (b) publicly funded community-based developmental disabilities services;

(4) The Division of Medicaid and Long-Term Care shall administer (a) the medical assistance program also known as medicaid, (b) aging services, and (c) other related programs and services; and

(5) The Division of Public Health shall administer (a) preventive and community health programs and services, (b) the regulation and licensure of health-related professions and occupations, and (c) the regulation and licensure of health care facilities and health care services. ~~;~~ and

~~(6) The Division of Veterans' Homes shall administer (a) the Eastern Nebraska Veterans' Home, (b) the Grand Island Veterans' Home, (c) the Norfolk Veterans' Home, and (d) the Western Nebraska Veterans' Home.~~

Sec. 20. Section 83-107.01, Reissue Revised Statutes of Nebraska, is amended to read:

83-107.01 The official names of the state institutions under the supervision of the Department of Health and Human Services shall be as follows: (1) Beatrice State Developmental Center, (2) Lincoln Regional Center, (3) Norfolk Regional Center, (4) Hastings Regional Center, (5) ~~Grand Island Veterans' Home,~~ (6) ~~Norfolk Veterans' Home,~~ (7) ~~Western Nebraska Veterans' Home,~~ (8) Youth Rehabilitation and Treatment Center-Kearney, and (6) (9) Youth Rehabilitation and Treatment Center-Geneva, ~~and (10) the Thomas Fitzgerald Veterans' Home prior to July 1, 2007, and, on and after July 1, 2007, the Eastern Nebraska Veterans' Home.~~

Sec. 21. Section 83-108, Reissue Revised Statutes of Nebraska, is amended to read:

83-108 The Department of Health and Human Services shall have oversight and general control of the Beatrice State Developmental Center, ~~the Nebraska veterans homes,~~ the hospitals for the mentally ill, such skilled nursing care and intermediate care facilities as may be established by the department, facilities and programs operated by the Office of Juvenile Services, and all charitable institutions.

Sec. 22. This act becomes operative on July 1, 2017.

Sec. 23. Original sections 80-314, 80-315, 80-316, 80-317, 80-319, 80-320, 80-321, 80-322, 81-1316, 81-3113, 81-3116, 83-107.01, and 83-108, Reissue Revised Statutes of Nebraska, are repealed.

Sec. 24. Since an emergency exists, this act takes effect when passed and approved according to law.