

LEGISLATIVE BILL 783

Approved by the Governor August 10, 2020

Introduced by Lowe, 37.

A BILL FOR AN ACT relating to health care; to amend section 71-405, Reissue Revised Statutes of Nebraska, section 38-2025, Revised Statutes Cumulative Supplement, 2018, and section 71-7910.01, Revised Statutes Supplement, 2019; to provide an exemption from licensure under the Medicine and Surgery Practice Act; to redefine ambulatory surgical center under the Health Care Facility Licensure Act; to redefine professional health care service entity under the Health Care Quality Improvement Act; and to repeal the original sections.

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

Section 1. Section 38-2025, Revised Statutes Cumulative Supplement, 2018, is amended to read:

38-2025 The following classes of persons shall not be construed to be engaged in the unauthorized practice of medicine:

- (1) Persons rendering gratuitous services in cases of emergency;
- (2) Persons administering ordinary household remedies;
- (3) The members of any church practicing its religious tenets, except that they shall not prescribe or administer drugs or medicines, perform surgical or physical operations, nor assume the title of or hold themselves out to be physicians, and such members shall not be exempt from the quarantine laws of this state;
- (4) Students of medicine who are studying in an accredited school or college of medicine and who gratuitously prescribe for and treat disease under the supervision of a licensed physician;
- (5) Physicians who serve in the armed forces of the United States or the United States Public Health Service or who are employed by the United States Department of Veterans Affairs or other federal agencies, if their practice is limited to that service or employment;
- (6) Physicians who are licensed in good standing to practice medicine under the laws of another state when incidentally called into this state or contacted via electronic or other medium for consultation with a physician licensed in this state. For purposes of this subdivision, consultation means evaluating the medical data of the patient as provided by the treating physician and rendering a recommendation to such treating physician as to the method of treatment or analysis of the data. The interpretation of a radiological image by a physician who specializes in radiology is not a consultation;
- (7) Physicians who are licensed in good standing to practice medicine in another state but who, from such other state, order diagnostic or therapeutic services on an irregular or occasional basis, to be provided to an individual in this state, if such physicians do not maintain and are not furnished for regular use within this state any office or other place for the rendering of professional services or the receipt of calls;
- (8) Physicians who are licensed in good standing to practice medicine in another state and who, on an irregular and occasional basis, are granted temporary hospital privileges to practice medicine and surgery at a hospital or other medical facility licensed in this state;
- (9) Persons providing or instructing as to use of braces, prosthetic appliances, crutches, contact lenses, and other lenses and devices prescribed by a physician licensed to practice medicine while working under the direction of such physician;
- (10) Dentists practicing their profession when licensed and practicing in accordance with the Dentistry Practice Act;
- (11) Optometrists practicing their profession when licensed and practicing under and in accordance with the Optometry Practice Act;
- (12) Osteopathic physicians practicing their profession if licensed and practicing under and in accordance with sections 38-2029 to 38-2033;
- (13) Chiropractors practicing their profession if licensed and practicing under the Chiropractic Practice Act;
- (14) Podiatrists practicing their profession when licensed to practice in this state and practicing under and in accordance with the Podiatry Practice Act;
- (15) Psychologists practicing their profession when licensed to practice in this state and practicing under and in accordance with the Psychology Interjurisdictional Compact or the Psychology Practice Act;
- (16) Advanced practice registered nurses practicing in their clinical specialty areas when licensed under the Advanced Practice Registered Nurse Practice Act and practicing under and in accordance with their respective practice acts;
- (17) Surgical first assistants practicing in accordance with the Surgical First Assistant Practice Act;
- (18) Persons licensed or certified under the laws of this state to practice a limited field of the healing art, not specifically named in this

section, when confining themselves strictly to the field for which they are licensed or certified, not assuming the title of physician, surgeon, or physician and surgeon, and not professing or holding themselves out as qualified to prescribe drugs in any form or to perform operative surgery;

(19) Persons obtaining blood specimens while working under an order of or protocols and procedures approved by a physician, registered nurse, or other independent health care practitioner licensed to practice by the state if the scope of practice of that practitioner permits the practitioner to obtain blood specimens;

(20) Physicians who are licensed in good standing to practice medicine under the laws of another state or jurisdiction who accompany an athletic team or organization into this state for an event from the state or jurisdiction of licensure. This exemption is limited to treatment provided to such athletic team or organization while present in Nebraska; ~~and~~

(21) Persons who are not licensed, certified, or registered under the Uniform Credentialing Act, to whom are assigned tasks by a physician or osteopathic physician licensed under the Medicine and Surgery Practice Act, if such assignment of tasks is in a manner consistent with accepted medical standards and appropriate to the skill and training, on the job or otherwise, of the persons to whom the tasks are assigned. For purposes of this subdivision, assignment of tasks means the routine care, activities, and procedures that (a) are part of the routine functions of such persons who are not so licensed, certified, or registered, (b) reoccur frequently in the care of a patient or group of patients, (c) do not require such persons who are not so licensed, certified, or registered to exercise independent clinical judgment, (d) do not require the performance of any complex task, (e) have results which are predictable and have minimal potential risk, and (f) utilize a standard and unchanging procedure; and

(22) ~~(21)~~ Other trained persons employed by a licensed health care facility or health care service defined in the Health Care Facility Licensure Act or clinical laboratory certified pursuant to the federal Clinical Laboratories Improvement Act of 1967, as amended, or Title XVIII or XIX of the federal Social Security Act to withdraw human blood for scientific or medical purposes.

Any person who has held or applied for a license to practice medicine and surgery in this state, and such license or application has been denied or such license has been refused renewal or disciplined by order of limitation, suspension, or revocation, shall be ineligible for the exceptions described in subdivisions (5) through (8) of this section until such license or application is granted or such license is renewed or reinstated. Every act or practice falling within the practice of medicine and surgery as defined in section 38-2024 and not specially excepted in this section shall constitute the practice of medicine and surgery and may be performed in this state only by those licensed by law to practice medicine in Nebraska.

Sec. 2. Section 71-405, Reissue Revised Statutes of Nebraska, is amended to read:

71-405 (1) Ambulatory surgical center means a facility (a) where surgical services are provided to persons not requiring hospitalization who are admitted ~~to and discharged from such facility within twenty-three hours and fifty-nine minutes from the time of admission the same working day and are not permitted to stay overnight at such facility,~~ (b) which meets all applicable requirements for licensure as a health clinic under the Health Care Facility Licensure Act, and (c) which has qualified for a written agreement with the Health Care Financing Administration of the United States Department of Health and Human Services or its successor to participate in medicare as an ambulatory surgical center as defined in 42 C.F.R. 416 et seq. or which receives other third-party reimbursement for such services.

(2) Ambulatory surgical center does not include an office or clinic used solely by a practitioner or group of practitioners in the practice of medicine, dentistry, or podiatry.

Sec. 3. Section 71-7910.01, Revised Statutes Supplement, 2019, is amended to read:

71-7910.01 Professional health care service entity means an entity which is organized under the Nebraska Nonprofit Corporation Act, for purposes of rendering professional services pursuant to the Nebraska Professional Corporation Act, the Nebraska Uniform Limited Liability Company Act, or the Uniform Partnership Act of 1998 and which renders health care services through individuals credentialed under the Uniform Credentialing Act.

Sec. 4. Original section 71-405, Reissue Revised Statutes of Nebraska, section 38-2025, Revised Statutes Cumulative Supplement, 2018, and section 71-7910.01, Revised Statutes Supplement, 2019, are repealed.