

LEGISLATURE OF NEBRASKA
ONE HUNDRED NINTH LEGISLATURE
FIRST SESSION

LEGISLATIVE BILL 436

Introduced by Health and Human Services Committee: Hardin, 48,
Chairperson; Ballard, 21; Hansen, 16; Meyer, 17.

Read first time January 21, 2025

Committee: Health and Human Services

1 A BILL FOR AN ACT relating to the Nebraska Regulation of Health
2 Professions Act; to amend sections 71-6221, 71-6223, 71-6224, and
3 71-6226, Reissue Revised Statutes of Nebraska; to change provisions
4 relating to regulation of unregulated health professions and changes
5 in scope of practice; to harmonize provisions; and to repeal the
6 original sections.

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

1 **Section 1.** Section 71-6221, Reissue Revised Statutes of Nebraska, is
2 amended to read:

3 71-6221 (1) A health profession shall be regulated by the state only
4 when:

5 (a) ~~Unregulated practice is harming or endangering can clearly harm~~
6 ~~or endanger~~ the health, safety, or welfare of the public;

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

11 ~~(b) (c)~~ The public needs assurance from the state of initial and
12 continuing professional ability; ~~and~~

13 ~~(c) The level of regulation that is proposed or in place is adequate~~
14 ~~and appropriate in order for the state to protect the health, safety, and~~
15 ~~welfare of the public; and~~

16 (d) The public cannot be protected by a more effective alternative.

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

21 ~~(a) Absence of a separate regulated profession creates a situation~~
22 ~~of harm or danger to the health, safety, or welfare of the public;~~

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

25 ~~(a) Allowing the profession to practice (c) Creation of a separate~~
26 ~~regulated profession would benefit the health, safety, or welfare of the~~
27 ~~public; and~~

28 ~~(b) There are sufficient requirements for education and training to~~
29 ~~ensure initial and continuing professional competency and to protect the~~
30 ~~health, safety, and welfare of the public;~~

31 ~~(c) The level of regulation would be adequate and appropriate for~~

1 the state to protect the health, safety, and welfare of the public; and

2 (d) The public cannot be protected by a more effective alternative.

3 (3) The scope of practice of a regulated health profession shall be
4 changed only when:

5 ~~(a) The health, safety, and welfare of the public are inadequately~~
6 ~~addressed by the present scope of practice or limitations on the scope of~~
7 ~~practice;~~

8 (a) (b) Enactment of the proposed change in scope of practice would
9 benefit the health, safety, or welfare of the public;

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

12 (b) (d) The current education and training for the health profession
13 that would be required to perform the new skill or service would be
14 adequate to ensure professional competency and protect the health,
15 safety, and welfare of the public; and adequately prepares practitioners
16 to perform the new skill or service;

17 (c) The state would have adequate means to assure qualifications and
18 competency of licensees with regard to the new authority and to take
19 appropriate action if they are not performing competently.

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

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

26 (4) The division shall adopt and promulgate rules and regulations
27 to , by rule and regulation, establish standards for the application of
28 each criterion which shall be used by the review bodies in recommending
29 whether proposals for credentialing or change in scope of practice meet
30 the criteria.

31 **Sec. 2.** Section 71-6223, Reissue Revised Statutes of Nebraska, is

1 amended to read:

2 71-6223 (1) An applicant group shall submit a letter of intent to
3 file an application to the director on forms prescribed by the director.
4 The letter of intent shall identify the applicant group, the proposed
5 regulation or change in scope of practice sought, and information
6 sufficient for the director to determine whether the application is
7 eligible for review.

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

15 (3) The application shall include an explanation of:

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

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

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

26 (c) ~~The extent of any risks or potential adverse consequences for~~
27 the health, safety, or welfare of the public which might result from
28 regulation or from the change of scope of practice;

29 ~~(d) The extent to which regulation or the change of scope of~~
30 ~~practice might harm the public;~~

31 (d) ~~(e)~~ The type of standards that exist to ensure that a

1 practitioner of a health profession would maintain competency;

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

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

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

11 ~~(h)~~ ~~(i)~~ The expected implications ~~costs~~ of regulation, including (i)
12 the impact registration, certification, or licensure will have on the
13 costs of the services to the public and (ii) the cost to the state and to
14 the general public of implementing the proposed legislation; and

15 ~~(i)~~ ~~(j)~~ Other information relevant to the requested review as
16 determined by the division.

17 **Sec. 3.** Section 71-6224, Reissue Revised Statutes of Nebraska, is
18 amended to read:

19 71-6224 ~~(1)~~~~(a)~~ ~~(1)~~ The director with the advice of the board shall
20 appoint an appropriate technical committee to examine and investigate
21 each application.

22 ~~(b)~~ For applications involving unregulated health professions or
23 professions without a regulatory entity under the Uniform Credentialing
24 Act, the ~~The~~ committee shall consist of six appointed members and one
25 member of the board designated by the board who shall serve as
26 chairperson of the committee. The chairperson of the committee shall not
27 be a member of the applicant group, any health profession sought to be
28 regulated by the application, or any health profession which is directly
29 or indirectly affected by the application. The director shall ensure that
30 the total composition of the committee is fair, impartial, and equitable.
31 In no event shall more than one member of the same regulated health

1 profession, the applicant group, or the health profession sought to be
2 regulated by an application serve on a technical committee.

3 (c) For applications involving a change of scope of practice for a
4 regulated health profession with a regulatory entity under the Uniform
5 Credentialing Act, the regulatory entity of that profession shall serve
6 as the technical committee.

7 (2) As soon as possible after its appointment, the committee shall
8 meet and review the application assigned to it. The committee shall serve
9 as a factfinding body and undertake such investigation as it deems
10 necessary to address the issues identified in the application and shall
11 consult with the applicant group and opponents, if any, in assessing
12 solutions to those issues that address the health, safety, and welfare of
13 the public. As part of its investigation, each committee shall consider
14 available scientific evidence and conduct public factfinding hearings.
15 Each committee shall comply with the Open Meetings Act.

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

18 (4) Each committee shall detail its findings in a report and file
19 the report with the board and the director. Each committee shall evaluate
20 the application presented to it on the basis of the appropriate criteria
21 as established in sections 71-6221 to 71-6223, shall make written
22 findings on all criteria, and shall make a recommendation ~~for approval or~~
23 ~~denial.~~ Whether it recommends approval or denial of an application or
24 offers a neutral recommendation, the committee may make additional
25 recommendations regarding changes to the proposal or other solutions to
26 problems identified during the review and may comment on the anticipated
27 benefits to the health, safety, and welfare of the public. If the
28 committee recommends approval of an application for regulation of a
29 health profession not currently regulated, it shall also recommend the
30 least restrictive method of regulation to be implemented consistent with
31 the cost-effective protection of the public and with section 71-6222. The

1 committee may recommend a specific method of regulation not listed in
2 section 71-6222 if it finds that such method is the best alternative
3 method of regulation.

4 **Sec. 4.** Section 71-6226, Reissue Revised Statutes of Nebraska, is
5 amended to read:

6 71-6226 (1) After receiving and considering reports from the
7 committee ~~and~~ of the board, the director shall prepare a ~~final~~ report for
8 the Legislature. ~~The final report shall include copies of the committee~~
9 ~~report and the board report, if any, but the director shall not be bound~~
10 ~~by the findings and recommendations of such reports.~~ The director in
11 compiling his or her report shall apply the criteria established in
12 sections 71-6221 to 71-6223 and may consult with the board or the
13 committee. The recommendation of the director shall be developed in a
14 manner consistent with subsection (4) of section 71-6224. The director
15 shall electronically submit his or her report, along with the reports of
16 the committee and the board, final report shall be submitted
17 electronically to the Speaker of the Legislature, the Chairperson of the
18 Executive Board of the Legislature, and the Chairperson of the Health and
19 Human Services Committee of the Legislature no later than six ~~twelve~~
20 months after the application is submitted to the director and found to be
21 complete and shall be made available electronically to all other members
22 of the Legislature upon request.

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

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

30 **Sec. 5.** Original sections 71-6221, 71-6223, 71-6224, and 71-6226,
31 Reissue Revised Statutes of Nebraska, are repealed.