LEGISLATIVE BILL 849

Approved by the Governor April 13, 2010

Introduced by Gay, 14.

FOR AN ACT relating to public health and welfare; to amend sections 38-1901, 38-1902, 38-1908, 38-1918, 38-2605, 38-2617, 38-2841, 68-906, 68-1017, 68-1017.01, 68-1070, 70-1603, 70-1605, 71-401, 71-403, 71-415, 71-516.04, 71-1559, 71-1796, 71-4604.01, 71-7447, 71-8403, 77-27,165, 83-1220, 83-1221, 83-1222, 83-1223, and 83-1224, Reissue Revised Statutes of Nebraska, and sections 38-2826, 38-2850, 38-2867, 38-2869, and 83-1217, Revised Statutes Supplement, 2009; to change provisions relating to the Medical Radiography Practice Act, and the practices of optometry and pharmacy; to adopt federal law for purposes of the Medical Assistance Act and the Supplemental Nutrition Assistance Program; to remove and change references to Supplemental Nutrition Assistance Program coupons and benefits; to change provisions relating to notice of discontinuation of utility service; to require licensure of children's day health services; to provide requirements for staff training for purposes of the Alzheimer's Special Care Disclosure Act; to change provisions relating to fees and funds of the Public Service Commission; to change provisions relating to requests for access to medical records; to change notification requirements for child support claims against income tax refunds; to change provisions relating to developmental disability services; to change provisions relating to hearing officers of the Division of Developmental Disabilities; to create and eliminate funds; to repeal a termination date relating to the Nebraska Center for Nursing Act; to harmonize provisions; to provide operative dates; to repeal the original sections; to outright repeal section 71-17,100, Reissue Revised Statutes of Nebraska; and to declare an emergency.

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

Section 1. Section 38-1901, Reissue Revised Statutes of Nebraska, is amended to read:

38-1901 Sections 38-1901 to 38-1920 and section 4 of this act shall be known and may be cited as the Medical Radiography Practice Act.

Sec. 2. Section 38-1902, Reissue Revised Statutes of Nebraska, is amended to read:

38-1902 For purposes of the Medical Radiography Practice Act and elsewhere in the Uniform Credentialing Act, unless the context otherwise requires, the definitions found in sections 38-1903 to 38-1913 and section 4 of this act apply.

Sec. 3. Section 38-1908, Reissue Revised Statutes of Nebraska, is amended to read:

38-1908 Medical radiography means the application of radiation to humans for diagnostic purposes, including, but not limited to, ~~adjustment or manipulation of X-ray systems and accessories including image receptors, positioning of patients, processing of films, and any other action that materially affects the radiation dose to patients.~~ utilizing proper:

(1) Radiation protection for the patient, the radiographer, and others;

(2) Radiation generating equipment operation and quality control;

(3) Image production and evaluation;

(4) Radiographic procedures;

(5) Processing of films;

(6) Positioning of patients;

(7) Performance methods to achieve optimum radiographic technique with a minimum of radiation exposure; and

(8) Patient care and management as it relates to the practice of medical radiography.

Sec. 4. Patient care and management, as it relates to the practice of medical radiography, includes, but is not limited to:

(1) Infection control;

(2) Patient transfer and movement;

(3) Assisting patients with medical equipment;

(4) Routine monitoring;

(5) Medical emergencies;

(6) Proper use of contrast media; and

(7) Patient safety and protection, including minimizing and

monitoring patient radiation exposure through utilizing proper professional standards and protocols, including the principle of as low as reasonably achievable.

Sec. 5. Section 38-1918, Reissue Revised Statutes of Nebraska, is amended to read:

38-1918 ~~(1)~~ (1)(a) The educational program for medical radiographers shall consist of twenty-four months of instruction in radiography approved by the board which includes, but is not limited to:~~,~~ ~~radiographic procedures, imaging equipment, image production and evaluation, film processing, radiation physics, radiation protection, radiation biology, radiographic pathology, and quality assurance activities.~~

(i) Radiation protection for the patient, the radiographer, and others;

(ii) Radiation generating equipment operation and quality control;

(iii) Image production and evaluation;

(iv) Radiographic procedures;

(v) Processing of films;

(vi) Positioning of patients;

(vii) Performance methods to achieve optimum radiographic technique with a minimum of radiation exposure; and

(viii) Patient care and management as it relates to the practice of medical radiography.

(b) The board shall recognize equivalent courses of instruction successfully completed by individuals who are applying for licensure as medical radiographers when determining if the requirements of section 38-1915 have been met.

(2) The examination for limited radiographers shall include, but not be limited to:

(a) Radiation protection, radiation generating equipment ~~maintenance and~~ operation and quality control, image production and evaluation, radiographic procedures, and patient care and management; and

(b) The anatomy of, and positioning for, specific regions of the human anatomy. The anatomical regions shall include at least one of the following:

(i) Chest;

(ii) Extremities;

(iii) Skull and sinus;

(iv) Spine; or

(v) Ankle and foot.

(3) The examination for limited radiographers in bone density shall include, but not be limited to, basic concepts of bone densitometry, equipment operation and quality control, radiation safety, and dual X-ray absorptiometry (DXA) scanning of the finger, heel, forearm, lumbar spine, and proximal femur.

(4) The department, with the recommendation of the board, shall adopt and promulgate rules and regulations regarding the examinations required in sections 38-1915 and 38-1916. Such rules and regulations shall provide for (a) the administration of examinations based upon national standards, such as the Examination in Radiography from the American Registry of Radiologic Technologists for medical radiographers, the Examination for the Limited Scope of Practice in Radiography or the Bone Densitometry Equipment Operator Examination from the American Registry of Radiologic Technologists for limited radiographers, or equivalent examinations that, as determined by the board, meet the standards for educational and psychological testing as recommended by the American Psychological Association, the American Educational Research Association, and the National Council on Measurement in Education, (b) procedures to be followed for examinations, (c) the method of grading and the passing grades for such examinations, (d) security protection for questions and answers, and (e) for medical radiographers, the contents of such examination based on the course requirements for medical radiographers prescribed in subsection (1) of this section. Any costs incurred in determining the extent to which examinations meet the examining standards of this subsection shall be paid by the individual or organization proposing the use of such examination.

(5) No applicant for a license as a limited radiographer may take the examination for licensure, or for licensure for any specific anatomical region, more than three times without first waiting a period of one year after the last unsuccessful attempt of the examination and submitting proof to the department of completion of continuing competency activities as required by the board for each subsequent attempt.

Sec. 6. Section 38-2605, Reissue Revised Statutes of Nebraska, is amended to read:

38-2605 (1) The practice of optometry means one or a combination of

the following:

(a) The examination of the human eye to diagnose, treat, or refer for consultation or treatment any abnormal condition of the human eye, ocular adnexa, or visual system;

(b) The employment of instruments, devices, pharmaceutical agents, and procedures intended for the purpose of investigating, examining, diagnosing, treating, managing, or correcting visual defects or abnormal conditions of the human eye, ocular adnexa, or visual system;

(c) The prescribing and application of lenses, devices containing lenses, prisms, contact lenses, ophthalmic devices, orthoptics, vision training, pharmaceutical agents, and prosthetic devices to correct, relieve, or treat defects or abnormal conditions of the human eye, ocular adnexa, or visual system;

(d) The dispensing and sale of a contact lens, including a cosmetic or plano contact lens or a contact lens containing an ocular pharmaceutical agent which an optometrist is authorized by law to prescribe and which is classified by the federal Food and Drug Administration as a drug;

~~(d)~~ (e) The ordering of procedures and laboratory tests rational to the diagnosis or treatment of conditions or diseases of the human eye, ocular adnexa, or visual system; and

~~(e)~~ (f) The removal of superficial eyelid, conjunctival, and corneal foreign bodies.

(2) The practice of optometry does not include the use of surgery, laser surgery, oral therapeutic agents used in the treatment of glaucoma, oral steroids, or oral immunosuppressive agents or the treatment of infantile/congenital glaucoma, which means the condition is present at birth.

Sec. 7. Section 38-2617, Reissue Revised Statutes of Nebraska, is amended to read:

38-2617 (1) A licensed optometrist who administers or prescribes pharmaceutical agents for examination or for treatment shall provide the same standard of care to patients as that provided by a physician licensed in this state to practice medicine and surgery utilizing the same pharmaceutical agents for examination or treatment.

(2) An optometrist who dispenses a contact lens containing an ocular pharmaceutical agent which is classified by the federal Food and Drug Administration as a drug shall comply with the rules and regulations of the board relating to packaging, labeling, storage, drug utilization review, and record keeping. The board shall adopt and promulgate rules and regulations relating to packaging, labeling, storage, drug utilization review, and record keeping for such contact lenses.

Sec. 8. Section 38-2826, Revised Statutes Supplement, 2009, is amended to read:

38-2826 Labeling means the process of preparing and affixing a label to any drug container or device container, exclusive of the labeling by a manufacturer, ~~packer,~~ packager, or distributor of a nonprescription drug or commercially packaged legend drug or device. Any such label shall include all information required by federal and state law or regulation. Compliance with labeling requirements under federal law for devices described in subsection (2) of section 38-2841, medical gases, and medical gas devices constitutes compliance with state law and regulations for purposes of this section.

Sec. 9. Section 38-2841, Reissue Revised Statutes of Nebraska, is amended to read:

38-2841 (1) Prescription drug or device or legend drug or device means:

~~(1)~~ (a) A drug or device which is required under federal law to be labeled with one of the following statements prior to being dispensed or delivered:

~~(a)~~ (i) Caution: Federal law prohibits dispensing without prescription;

~~(b)~~ (ii) Caution: Federal law restricts this drug to use by or on the order of a licensed veterinarian; or

~~(c)~~ (iii) "Rx Only"; or

~~(2)~~ (b) A drug or device which is required by any applicable federal or state law to be dispensed pursuant only to a prescription or chart order or which is restricted to use by practitioners only.

(2) Prescription drug or device or legend drug or device does not include a type of device, including supplies and device components, which carries the federal Food and Drug Administration legend "Caution: federal law restricts this device to sale by or on the order of a licensed health care practitioner" or an alternative legend approved by the federal Food and Drug Administration which it recognizes, in published guidance, as conveying essentially the same message.

Sec. 10. Section 38-2850, Revised Statutes Supplement, 2009, is amended to read:

38-2850 As authorized by the Uniform Credentialing Act, the practice of pharmacy may be engaged in by a pharmacist, a pharmacist intern, or a practitioner with a pharmacy license. The practice of pharmacy shall not be construed to include:

(1) Persons who sell, offer, or expose for sale completely denatured alcohol or concentrated lye, insecticides, and fungicides in original packages;

(2) Practitioners, other than veterinarians, certified nurse midwives, certified registered nurse anesthetists, and nurse practitioners, who dispense drugs or devices as an incident to the practice of their profession, except that if such practitioner regularly engages in dispensing such drugs or devices to his or her patients for which such patients are charged, such practitioner shall obtain a pharmacy license;

(3) Persons who sell, offer, or expose for sale nonprescription drugs or proprietary medicines, the sale of which is not in itself a violation of the Nebraska Liquor Control Act;

(4) Medical representatives, detail persons, or persons known by some name of like import, but only to the extent of permitting the relating of pharmaceutical information to health care professionals;

(5) Licensed veterinarians practicing within the scope of their profession;

(6) Certified nurse midwives, certified registered nurse anesthetists, and nurse practitioners who dispense sample medications which are provided by the manufacturer and are dispensed at no charge to the patient;

(7) Hospitals engaged in the compounding and dispensing of drugs and devices pursuant to chart orders for persons registered as patients and within the confines of the hospital, except that if a hospital engages in such compounding and dispensing for persons not registered as patients and within the confines of the hospital, such hospital shall obtain a pharmacy license or delegated dispensing permit;

(8) Optometrists who prescribe or dispense eyeglasses or contact lenses to their own patients, including contact lenses that contain and deliver ocular pharmaceutical agents as authorized under the Optometry Practice Act, and ophthalmologists who prescribe or dispense eyeglasses or contact lenses to their own patients, including contact lenses that contain and deliver ocular pharmaceutical agents;

(9) Registered nurses employed by a hospital who administer pursuant to a chart order, or procure for such purpose, single doses of drugs or devices from original drug or device containers or properly labeled prepackaged drug or device containers to persons registered as patients and within the confines of the hospital;

(10) Persons employed by a facility where dispensed drugs and devices are delivered from a pharmacy for pickup by a patient or caregiver and no dispensing or storage of drugs or devices occurs;

(11) Persons who sell or purchase medical products, compounds, vaccines, or serums used in the prevention or cure of animal diseases and maintenance of animal health if such medical products, compounds, vaccines, or serums are not sold or purchased under a direct, specific, written medical order of a licensed veterinarian; ~~and~~

(12) A pharmacy or a person accredited by an accrediting body which or who, pursuant to a medical order, (a) administers, dispenses, or distributes medical gas or medical gas devices to patients or ultimate users or (b) purchases or receives medical gas or medical gas devices for administration, dispensing, or distribution to patients or ultimate users; and~~.~~

(13) A business or a person accredited by an accrediting body which or who, pursuant to a medical order, (a) sells, delivers, or distributes devices described in subsection (2) of section 38-2841 to patients or ultimate users or (b) purchases or receives such devices with intent to sell, deliver, or distribute to patients or ultimate users.

Sec. 11. Section 38-2867, Revised Statutes Supplement, 2009, is amended to read:

38-2867 (1) Except as provided for pharmacy technicians in sections 38-2890 to 38-2897, for persons described in subdivision (12) or (13) of section 38-2850, and for individuals authorized to dispense under a delegated dispensing permit, no person other than a licensed pharmacist, a pharmacist intern, or a practitioner with a pharmacy license shall provide pharmaceutical care, compound and dispense drugs or devices, or dispense pursuant to a medical order. Notwithstanding any other provision of law to the contrary, a

pharmacist or pharmacist intern may dispense drugs or devices pursuant to a medical order of a practitioner authorized to prescribe in another state if such practitioner could be authorized to prescribe such drugs or devices in this state.

(2) Except as provided for pharmacy technicians in sections 38-2890 to 38-2897, for persons described in subdivision (12) or (13) of section 38-2850, and for individuals authorized to dispense under a delegated dispensing permit, it shall be unlawful for any person to permit or direct a person who is not a pharmacist intern, a licensed pharmacist, or a practitioner with a pharmacy license to provide pharmaceutical care, compound and dispense drugs or devices, or dispense pursuant to a medical order.

(3) It shall be unlawful for any person to coerce or attempt to coerce a pharmacist to enter into a delegated dispensing agreement or to supervise any pharmacy technician for any purpose or in any manner contrary to the professional judgment of the pharmacist. Violation of this subsection by a health care professional regulated pursuant to the Uniform Credentialing Act shall be considered an act of unprofessional conduct. A violation of this subsection by a facility shall be prima facie evidence in an action against the license of the facility pursuant to the Health Care Facility Licensure Act. Any pharmacist subjected to coercion or attempted coercion pursuant to this subsection has a cause of action against the person and may recover his or her damages and reasonable attorney's fees.

(4) Violation of this section by an unlicensed person shall be a Class III misdemeanor.

Sec. 12. Section 38-2869, Revised Statutes Supplement, 2009, is amended to read:

38-2869 (1)(a) Prior to the dispensing or the delivery of a drug or device pursuant to a medical order to a patient or caregiver, a pharmacist shall in all care settings conduct a prospective drug utilization review. Such prospective drug utilization review shall involve monitoring the patient-specific medical history described in subdivision (b) of this subsection and available to the pharmacist at the practice site for:

(i) Therapeutic duplication;

(ii) Drug-disease contraindications;

(iii) Drug-drug interactions;

(iv) Incorrect drug dosage or duration of drug treatment;

(v) Drug-allergy interactions; and

(vi) Clinical abuse or misuse.

(b) A pharmacist conducting a prospective drug utilization review shall ensure that a reasonable effort is made to obtain from the patient, his or her caregiver, or his or her practitioner and to record and maintain records of the following information to facilitate such review:

(i) The name, address, telephone number, date of birth, and gender of the patient;

(ii) The patient's history of significant disease, known allergies, and drug reactions and a comprehensive list of relevant drugs and devices used by the patient; and

(iii) Any comments of the pharmacist relevant to the patient's drug therapy.

(c) The assessment of data on drug use in any prospective drug utilization review shall be based on predetermined standards, approved by the board.

(2)(a) Prior to the dispensing or delivery of a drug or device pursuant to a prescription, the pharmacist shall ensure that a verbal offer to counsel the patient or caregiver is made. The counseling of the patient or caregiver by the pharmacist shall be on elements which, in the exercise of the pharmacist's professional judgment, the pharmacist deems significant for the patient. Such elements may include, but need not be limited to, the following:

(i) The name and description of the prescribed drug or device;

(ii) The route of administration, dosage form, dose, and duration of therapy;

(iii) Special directions and precautions for preparation, administration, and use by the patient or caregiver;

(iv) Common side effects, adverse effects or interactions, and therapeutic contraindications that may be encountered, including avoidance, and the action required if such effects, interactions, or contraindications occur;

(v) Techniques for self-monitoring drug therapy;

(vi) Proper storage;

(vii) Prescription refill information; and

(viii) Action to be taken in the event of a missed dose.

(b) The patient counseling provided for in this subsection shall

be provided in person whenever practical or by the utilization of telephone service which is available at no cost to the patient or caregiver.

(c) Patient counseling shall be appropriate to the individual patient and shall be provided to the patient or caregiver.

(d) Written information may be provided to the patient or caregiver to supplement the patient counseling provided for in this subsection but shall not be used as a substitute for such patient counseling.

(e) This subsection shall not be construed to require a pharmacist to provide patient counseling when:

(i) The patient or caregiver refuses patient counseling;

(ii) The pharmacist, in his or her professional judgment, determines that patient counseling may be detrimental to the patient's care or to the relationship between the patient and his or her practitioner;

(iii) The patient is a patient or resident of a health care facility or health care service licensed under the Health Care Facility Licensure Act to whom prescription drugs or devices are administered by a licensed or certified staff member or consultant or a certified physician's assistant;

(iv) The practitioner authorized to prescribe drugs or devices specifies that there shall be no patient counseling unless he or she is contacted prior to such patient counseling. The prescribing practitioner shall specify such prohibition in an oral prescription or in writing on the face of a written prescription, including any prescription which is received by facsimile or electronic transmission. The pharmacist shall note "Contact Before Counseling" on the face of the prescription if such is communicated orally by the prescribing practitioner; ~~or~~

(v) A medical gas or a medical gas device is administered, dispensed, or distributed by a person described in subdivision (12) of section 38-2850; or~~.~~

(vi) A device described in subsection (2) of section 38-2841 is sold, distributed, or delivered by a business or person described in subdivision (13) of section 38-2850.

Sec. 13. Section 68-906, Reissue Revised Statutes of Nebraska, is amended to read:

68-906 For purposes of paying medical assistance under the Medical Assistance Act and sections 68-1002 and 68-1006, the State of Nebraska accepts and assents to all applicable provisions of Title XIX and Title XXI of the federal Social Security Act. Any reference in the Medical Assistance Act to the federal Social Security Act or other acts or sections of federal law shall be to such federal acts or sections as they existed on January 1, ~~2009.~~ 2010.

Sec. 14. Section 68-1017, Reissue Revised Statutes of Nebraska, is amended to read:

68-1017 (1) Any person, including vendors and providers of medical assistance and social services, who, by means of a willfully false statement or representation, or by impersonation or other device, obtains or attempts to obtain ~~(1)~~ (a) an assistance certificate of award to which he or she is not entitled, ~~(2)~~ (b) any commodity, any foodstuff, any food ~~coupon,~~ instrument, any Supplemental Nutrition Assistance Program ~~coupon, electronic~~ benefit~~,~~ or electronic benefit card, or any payment to which such individual is not entitled or a larger payment than that to which he or she is entitled, ~~(3)~~ (c) any payment made on behalf of a recipient of medical assistance or social services, or ~~(4)~~ (d) any other benefit administered by the Department of Health and Human Services, or who violates any statutory provision relating to assistance to the aged, blind, or disabled, aid to dependent children, social services, or medical assistance, commits an offense. ~~and~~

(2) Any person who commits an offense under subsection (1) of this section shall upon conviction be punished as follows: (a) If the aggregate value of all funds or other benefits obtained or attempted to be obtained is less than five hundred dollars, the person so convicted shall be guilty of a Class III misdemeanor; or (b) if the aggregate value of all funds and other benefits obtained or attempted to be obtained is five hundred dollars or more, the person so convicted shall be guilty of a Class IV felony.

Sec. 15. Section 68-1017.01, Reissue Revised Statutes of Nebraska, is amended to read:

68-1017.01 (1) A person commits an offense if he or she knowingly uses, alters, or transfers any Supplemental Nutrition Assistance Program ~~coupons, electronic~~ benefits~~,~~ or electronic benefit cards or any authorizations to participate in the Supplemental Nutrition Assistance Program in any manner not authorized by law. An offense under this subsection shall be a Class III misdemeanor if the value of the Supplemental Nutrition Assistance Program ~~coupons, electronic~~ benefits, electronic benefit cards, or authorizations is less than five hundred dollars and shall be a Class IV

felony if the value is five hundred dollars or more.

(2) A person commits an offense if he or she knowingly (a) possesses any Supplemental Nutrition Assistance Program ~~coupons, electronic~~ benefits~~,~~ or electronic benefit cards or any authorizations to participate in the Supplemental Nutrition Assistance Program when such individual is not authorized by law to possess them, (b) redeems Supplemental Nutrition Assistance Program ~~coupons, electronic~~ benefits~~,~~ or electronic benefit cards when he or she is not authorized by law to redeem them, or (c) redeems Supplemental Nutrition Assistance Program ~~coupons, electronic~~ benefits~~,~~ or electronic benefit cards for purposes not authorized by law. An offense under this subsection shall be a Class III misdemeanor if the value of the Supplemental Nutrition Assistance Program ~~coupons, electronic~~ benefits, electronic benefit cards, or authorizations is less than five hundred dollars and shall be a Class IV felony if the value is five hundred dollars or more.

(3) A person commits an offense if he or she knowingly possesses blank authorizations to participate in the Supplemental Nutrition Assistance Program when such possession is not authorized by law. An offense under this subsection shall be a Class IV felony.

(4) When any Supplemental Nutrition Assistance Program ~~coupons, electronic~~ benefits~~,~~ or electronic benefit cards or any authorizations to participate in the Supplemental Nutrition Assistance Program of various values are obtained in violation of this section pursuant to one scheme or a continuing course of conduct, whether from the same or several sources, such conduct may be considered as one offense, and the values aggregated in determining the grade of the offense.

Sec. 16. Section 68-1070, Reissue Revised Statutes of Nebraska, is amended to read:

68-1070 (1) If the following non-United-States citizens meet the income and other requirements for participation in the medical assistance program established pursuant to the Medical Assistance Act, in the program for financial assistance pursuant to section 43-512, in the Supplemental Nutrition Assistance Program administered by the State of Nebraska pursuant to the federal Food and Nutrition Act of 2008, 7 U.S.C. 2011 et seq., as such sections ~~as the act~~ existed on January 1, ~~2009,~~ 2010, or in the program for assistance to the aged, blind, and disabled, such persons shall be eligible for such program or benefits:

(a) Non-United-States citizens lawfully admitted, regardless of the date entry was granted, into the United States for permanent residence;

(b) ~~Refugees admitted under section 207 of the federal Immigration and Naturalization Act, non-United-States citizens granted asylum under section 208 of such federal act, and non-United-States citizens whose deportation is withheld under section 243(h) of such federal act,~~ Non-United-States citizens described in 8 U.S.C. 1613(b)(1)(A) through (C), as such section existed on January 1, 2010, regardless of the date of entry into the United States; and

(c) Individuals for whom coverage is mandated under federal law.

(2) Individuals eligible for the Supplemental Nutrition Assistance Program under this section shall receive any Supplemental Nutrition Assistance Program ~~coupons or electronic~~ benefits or a state voucher which can be used only for food products authorized under the federal Food and Nutrition Act of 2008, 7 U.S.C. 2011 et seq., as such sections ~~as the act~~ existed on January 1, ~~2009,~~ 2010, in the amount of the Supplemental Nutrition Assistance Program benefit for which this individual was otherwise eligible but for the citizenship provisions of ~~Public Law 104-193, 110 Stat. 2105 (1996).~~ 7 U.S.C. 2015, as such section existed on January 1, 2010.

(3) The income and resources of any individual who assists a non-United-States citizen to enter the United States by signing an affidavit of support shall be deemed available in determining the non-United-States citizen's eligibility for assistance until the non-United-States citizen becomes a United States citizen.

Sec. 17. Section 70-1603, Reissue Revised Statutes of Nebraska, is amended to read:

70-1603 No municipal utility owned and operated by a village furnishing water, natural gas, or electricity at retail in this state shall discontinue service to any domestic subscriber for nonpayment of any past-due account unless such utility first gives written notice by mail to any subscriber whose service is proposed to be terminated at least seven days prior to termination. ~~As to any subscriber who has previously been identified as a welfare recipient to the utility by the Department of Health and Human Services, such notice shall be by certified mail and notice of such proposed termination shall be given to the department.~~

Sec. 18. Section 70-1605, Reissue Revised Statutes of Nebraska, is

amended to read:

70-1605 No public or private utility company, other than a municipal utility owned and operated by a village, furnishing water, natural gas, or electricity at retail in this state shall discontinue service to any domestic subscriber for nonpayment of any past-due account unless the utility company first gives notice by first-class mail or in person to any subscriber whose service is proposed to be terminated. If notice is given by first-class mail, such mail shall be conspicuously marked as to its importance. Service shall not be discontinued for at least seven days after notice is sent or given. Holidays and weekends shall be excluded from the seven days. ~~As to any subscriber who has previously been identified as a welfare recipient to the company by the Department of Health and Human Services, such notice shall be by certified mail and notice of such proposed termination shall be given to the department.~~

Sec. 19. Section 71-401, Reissue Revised Statutes of Nebraska, is amended to read:

71-401 Sections 71-401 to 71-464 and section 21 of this act shall be known and may be cited as the Health Care Facility Licensure Act.

Sec. 20. Section 71-403, Reissue Revised Statutes of Nebraska, is amended to read:

71-403 For purposes of the Health Care Facility Licensure Act, unless the context otherwise requires, the definitions found in sections 71-404 to 71-431 and section 21 of this act shall apply.

Sec. 21. (1) Children's day health service means a person or any legal entity which provides specialized care and treatment, including an array of social, medical, rehabilitation, or other support services for a period of less than twenty-four consecutive hours in a community-based group program to twenty or more persons under twenty-one years of age who require such services due to medical dependence, birth trauma, congenital anomalies, developmental disorders, or functional impairment.

(2) Children's day health service does not include services provided under the Developmental Disabilities Services Act.

Sec. 22. Section 71-415, Reissue Revised Statutes of Nebraska, is amended to read:

71-415 Health care service means an adult day service, a home health agency, a hospice or hospice service, ~~or~~ a respite care service, or beginning January 1, 2011, a children's day health service. Health care service does not include an in-home personal services agency as defined in section 71-6501.

Sec. 23. Section 71-516.04, Reissue Revised Statutes of Nebraska, is amended to read:

71-516.04 Any facility which offers to provide or provides care for persons with Alzheimer's disease, dementia, or a related disorder by means of an Alzheimer's special care unit shall disclose the form of care or treatment provided that distinguishes such form as being especially applicable to or suitable for such persons. The disclosure shall be made to the Department of Health and Human Services and to any person seeking placement within an Alzheimer's special care unit. The department shall examine all such disclosures in the records of the department as part of the facility's license renewal procedure at the time of licensure or relicensure.

The information disclosed shall explain the additional care provided in each of the following areas:

(1) The Alzheimer's special care unit's written statement of its overall philosophy and mission which reflects the needs of residents afflicted with Alzheimer's disease, dementia, or a related disorder;

(2) The process and criteria for placement in, transfer to, or discharge from the unit;

(3) The process used for assessment and establishment of the plan of care and its implementation, including the method by which the plan of care evolves and is responsive to changes in condition;

(4) Staff training and continuing education practices which shall include, but not be limited to, four hours annually for direct care staff. Such training shall include topics pertaining to the form of care or treatment set forth in the disclosure described in this section. The requirement in this subdivision shall not be construed to increase the aggregate hourly training requirements of the Alzheimer's special care unit;

(5) The physical environment and design features appropriate to support the functioning of cognitively impaired adult residents;

(6) The frequency and types of resident activities;

(7) The involvement of families and the availability of family support programs; and

(8) The costs of care and any additional fees.

Sec. 24. Section 71-1559, Reissue Revised Statutes of Nebraska, is

amended to read:

71-1559 (1) Every modular housing unit, except those constructed or manufactured by any school district or community college area as a part of a buildings trade or other instructional program offered by such district or area, manufactured, sold, offered for sale, or leased in this state more than six months after July 10, 1976, and before May 1, 1998, shall comply with the seal requirements of the state agency responsible for regulation of modular housing units as such requirements existed on the date of manufacture.

(2) Every modular housing unit, except those constructed or manufactured by any school district or community college area as part of a buildings trade or other instructional program offered by such district or area, manufactured, sold, offered for sale, or leased in this state on or after May 1, 1998, shall bear a seal issued by the commission certifying that the construction and the structural, plumbing, heating, and electrical systems of such modular housing unit have been installed in compliance with its standards applicable at the time of manufacture. Each manufacturer of such modular housing units, except those constructed or manufactured by such school district or community college area, shall submit its plans to the commission for the purposes of inspection. The commission shall establish a compliance assurance program consisting of an application form and a compliance assurance manual. Such manual shall identify and list all procedures which the manufacturer and the inspection agency propose to implement to assure that the finished modular housing unit conforms to the approved building system and the applicable codes adopted by the commission. The compliance assurance program requirements shall apply to all inspection agencies, whether commission or authorized third party, and shall define duties and responsibilities in the process of inspecting, monitoring, and issuing seals for modular housing units. The commission shall issue the seal only after ascertaining that the manufacturer is in full compliance with the compliance assurance program through inspections at the plant by the commission or authorized third-party inspection agency. Such inspections shall be of an unannounced frequency such that the required level of code compliance performance is implemented and maintained throughout all areas of plant and site operations that affect regulatory aspects of the construction. Each seal issued by the state shall remain the property of the commission and may be revoked by the commission in the event of violation of the conditions of issuance.

(3) Modular housing units constructed or manufactured by any school district or community college area as a part of a buildings trade or other instructional program offered by such district or area shall be inspected by the local inspection authority or, upon request of the district or area, by the commission. If the commission inspects a unit and finds that it is in compliance, the commission shall issue a seal certifying that the construction and the structural, plumbing, heating, and electrical systems of such unit have been installed in compliance with the standards applicable at the time of manufacture.

(4) The commission shall charge a seal fee of not less than one hundred and not more than one thousand dollars per modular housing unit, as determined annually by the commission after published notice and a hearing, for seals issued by the commission under subsection (2) or (3) of this section.

(5) Inspection fees shall be paid for all inspections by the commission of manufacturing plants located outside of the State of Nebraska. Such fees shall consist of a reimbursement by the manufacturer of actual travel and inspection expenses only and shall be paid prior to any issuance of seals.

(6) All fees collected under the Nebraska Uniform Standards for Modular Housing Units Act shall be remitted to the State Treasurer for credit to the ~~Modular Housing Units~~ Public Service Commission Housing and Recreational Vehicle Cash Fund. ~~which is hereby created. Money credited to the fund pursuant to this section shall be used by the commission for the purpose of administering the act. Transfers from the fund to the General Fund may be made at the direction of the Legislature. Any money in the Modular Housing Units Cash 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. 25. Section 71-1796, Reissue Revised Statutes of Nebraska, is amended to read:

71-1796 Sections 71-1796 to ~~71-17,100~~ 71-1799 shall be known and may be cited as the Nebraska Center for Nursing Act.

Sec. 26. Section 71-4604.01, Reissue Revised Statutes of Nebraska, is amended to read:

71-4604.01 (1)(a) Every manufactured home or recreational vehicle

manufactured, sold, offered for sale, or leased in this state more than four months after May 27, 1975, and before May 1, 1998, shall comply with the seal requirements of the state agency responsible for regulation of manufactured homes or recreational vehicles as such requirements existed on the date of manufacture.

(b) Every manufactured home or recreational vehicle manufactured, sold, offered for sale, or leased in this state on or after May 1, 1998, shall bear a seal issued by the commission certifying that the body and frame design and construction and the plumbing, heating, and electrical systems of such manufactured home or recreational vehicle have been installed in compliance with the standards adopted by the commission, applicable at the time of manufacture. Manufactured homes destined for sale outside the United States shall be exempt from displaying the seal issued by the state if sufficient proof of such delivery is submitted to the commission for review. Recreational vehicles destined for sale or lease outside this state or the United States shall be exempt from displaying the seal issued by the state if sufficient proof of such delivery is submitted to the commission for review. The commission shall issue the recreational-vehicle seal upon an inspection of the plans and specifications for the recreational vehicle or upon an actual inspection of the recreational vehicle during or after construction if the recreational vehicle is in compliance with state standards. The commission shall issue the manufactured-home seal in accordance with the National Manufactured Housing Construction and Safety Standards Act of 1974, 42 U.S.C. 5401 et seq., as such act existed on January 1, 2005. Each seal issued by the state shall remain the property of the commission and may be revoked by the commission in the event of a violation of the conditions of issuance.

(2) The commission shall charge a fee ~~of not less than ten dollars and not more than seventy-five dollars, as~~ in an amount determined annually by the commission after published notice and a hearing, for seals issued by the commission. A seal shall be placed on each manufactured home. The commission shall assess any costs of inspections conducted outside of Nebraska to the manufacturer in control of the inspected facility or to a manufacturer requesting such inspection. Such costs shall include, but not be limited to, actual travel, personnel, and inspection expenses and shall be paid prior to any issuance of seals.

(3) The commission shall adopt and promulgate rules and regulations governing the submission of plans and specifications of manufactured homes and recreational vehicles. A person who submits recreational-vehicle plans and specifications to the commission for review and approval shall be assessed an hourly rate by the commission for performing the review of the plans and specifications and related functions. The hourly rate shall be not less than fifteen dollars per hour and not more than seventy-five dollars per hour as determined annually by the commission after published notice and hearing based on the number of hours of review time as follows:

(a) New model, one hour;

(b) Quality control manual, two hours;

(c) Typicals, one-half hour;

(d) Revisions, three-fourths hour;

(e) Engineering calculations, three-fourths hour;

(f) Initial package, fifteen hours; and

(g) Yearly renewal, two hours plus the three-fourths hour for revisions.

(4) The commission shall charge each manufacturer an inspection fee of two hundred fifty dollars for each inspection of any new recreational vehicle manufactured by such manufacturer and not bearing a seal issued by the State of Nebraska or some reciprocal state.

(5) All fees collected pursuant to the Uniform Standard Code for Manufactured Homes and Recreational Vehicles shall be remitted to the State Treasurer for credit to the ~~Manufactured Homes and Recreational Vehicles~~ Public Service Commission Housing and Recreational Vehicle Cash Fund. ~~which is hereby created. Money credited to the fund pursuant to this section shall be used by the commission for the purpose of administering the code. Any money in the Manufactured Homes and Recreational Vehicles Cash 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. 27. Section 71-7447, Reissue Revised Statutes of Nebraska, is amended to read:

71-7447 (1) No person or entity may act as a wholesale drug distributor in this state without first obtaining a wholesale drug distributor license from the department. The department shall issue a license to any applicant that satisfies the requirements for licensure under the Wholesale

Drug Distributor Licensing Act. Manufacturers are exempt from any licensing and other requirements of the act to the extent not required by federal law or regulation except for those requirements deemed necessary and appropriate under rules and regulations adopted and promulgated by the department.

(2) Wholesale medical gas distributors shall be exempt from any licensing and other requirements of the Wholesale Drug Distributor Licensing Act to the extent not required under federal law but shall be licensed as wholesale drug distributors by the department for the limited purpose of engaging in the wholesale distribution of medical gases upon application to the department, payment of a licensure fee, and inspection of the applicant's facility by the department, except that the applicant may submit and the department may accept an inspection accepted in another state or an inspection conducted by a nationally recognized accreditation program approved by the board. For purposes of such licensure, wholesale medical gas distributors shall only be required to provide information required under subdivisions (1)(a) through (1)(c) of section 71-7448.

(3) The Wholesale Drug Distributor Licensing Act does not apply to:

(a) An agent or employee of a licensed wholesale drug distributor who possesses drug samples when such agent or employee is acting in the usual course of his or her business or employment; or

(b) Any person who (i) engages in a wholesale transaction relating to the manufacture, distribution, sale, transfer, or delivery of medical gases the gross dollar value of which does not exceed five percent of the total retail sales of medical gases by such person during the immediately preceding calendar year and (ii) has either a pharmacy permit or license ~~or a drug dispensing permit~~ or a delegated dispensing permit or is exempt from the practice of pharmacy under subdivision (12) of section 38-2850.

Sec. 28. Section 71-8403, Reissue Revised Statutes of Nebraska, is amended to read:

71-8403 (1) A patient may request a copy of the patient's medical records or may request to examine such records. Access to such records shall be provided upon request pursuant to sections 71-8401 to 71-8407, except that mental health medical records may be withheld if any treating physician, psychologist, or mental health practitioner determines in his or her professional opinion that release of the records would not be in the best interest of the patient unless the release is required by court order. The request and any authorization shall be in writing. If an authorization does not contain an expiration date or specify an event the occurrence of which causes the authorization to expire, the authorization shall expire twelve months after the date the authorization was executed by the patient. ~~and shall be valid for one hundred eighty days after the date of execution by the patient.~~

(2) Upon receiving a written request for a copy of the patient's medical records under subsection (1) of this section, the provider shall furnish the person making the request a copy of such records not later than thirty days after the written request is received.

(3) Upon receiving a written request to examine the patient's medical records under subsection (1) of this section, the provider shall, as promptly as required under the circumstances but no later than ten days after receiving the request: (a) Make the medical records available for examination during regular business hours; (b) inform the patient if the records do not exist or cannot be found; (c) if the provider does not maintain the records, inform the patient of the name and address of the provider who maintains such records, if known; or (d) if unusual circumstances have delayed handling the request, inform the patient in writing of the reasons for the delay and the earliest date, not later than twenty-one days after receiving the request, when the records will be available for examination. The provider shall furnish a copy of medical records to the patient as provided in subsection (2) of this section if requested.

(4) This section does not require the retention of records or impose liability for the destruction of records in the ordinary course of business prior to receipt of a request made under subsection (1) of this section. A provider shall not be required to disclose confidential information in any medical record concerning another patient or family member who has not consented to the release of the record.

Sec. 29. Section 77-27,165, Reissue Revised Statutes of Nebraska, is amended to read:

77-27,165 ~~Prior to December 1 of each year, the~~ The Department of Health and Human Services shall send notification to the debtor of the assertion of the department's rights, or of the rights of an individual not eligible as a public assistance recipient, to all or a portion of the debtor's income tax refund. The notice shall contain the procedures available to the

debtor for protesting the offset, the debtor's opportunity to give written notice of intent to contest the validity of the claim before the department within thirty days of the date of mailing the notice, and the defenses the debtor may raise. The debt shall be certified by the department through a preoffset review.

Sec. 30. Section 83-1217, Revised Statutes Supplement, 2009, is amended to read:

83-1217 The department shall contract for specialized services and shall only contract with specialized programs which meet certification and accreditation requirements. Assisted services provided under this section through community-based developmental disability programs shall be reimbursed on a daily rate basis, including such services provided to eligible recipients under the medical assistance program established in section 68-903 upon approval for such reimbursement from the federal Centers for Medicare and Medicaid Services. The department shall apply to the federal Centers for Medicare and Medicaid Services for approval of any necessary waiver amendments to permit such reimbursement ~~no later than September 1, 2009,~~ and shall begin reimbursing such services on a daily rate basis no later than ~~ninety days after such approval.~~ March 1, 2011. In order to be certified, each specialized program shall:

(1) Have an internal quality assurance process;

(2) Have a program evaluation component;

(3) Have a complaint mechanism for persons with developmental disabilities and their families;

(4) Have a process to ensure direct and open communication with the department;

(5) Develop, implement, and regularly evaluate a plan to ensure retention of quality employees and prevent staff turnover;

(6) Have measures to enhance staff training and development;

(7) Be governed by a local governing board or have an advisory committee, the membership of which consists of (a) ~~county commissioners or other locally elected officials, (b) persons with developmental disabilities or members of their families, and (c) persons who are not elected officials,~~ persons with developmental disabilities, ~~or~~ (b) family members or legal guardians of persons with developmental disabilities, and (c) persons who are interested community members;~~.~~ ~~At least one-third of the membership shall be persons with developmental disabilities or members of their families. No more than one-third of the membership shall be elected officials, and no more than one-third of the membership shall be persons who are not elected officials, persons with developmental disabilities, or family members of persons with developmental disabilities;~~

(8) Meet accreditation standards developed by the department;

(9) Require a criminal history record information check of all employees hired on or after September 13, 1997, who work directly with clients receiving services and who are not licensed or certified as members of their profession; and

(10) Meet any other certification requirements developed by the department to further the purposes of the Developmental Disabilities Services Act.

Sec. 31. Section 83-1220, Reissue Revised Statutes of Nebraska, is amended to read:

83-1220 The department shall conduct hearings initiated under section 83-1219 using hearing officers. The department may employ, retain, or approve such qualified hearing officers as are necessary to conduct the hearings. The hearing officers shall not be persons who are employees or officers of a local agency which is involved in providing services to the person with developmental disabilities. A person who otherwise qualifies to conduct a hearing shall not be considered an employee of the agency solely because the person is paid by the agency to serve as a hearing officer. No hearing officer shall participate in any way in any hearing or matter in which the hearing officer may have a conflict of interest. ~~Hearing officers appointed and assigned by the~~ The department shall have exclusive original jurisdiction over cases arising under sections 83-1219 to 83-1224, and in no event shall juvenile courts have jurisdiction over such matters.

Sec. 32. Section 83-1221, Reissue Revised Statutes of Nebraska, is amended to read:

83-1221 Upon the receipt of a petition pursuant to section 83-1219, the department shall assign it to a hearing officer. The hearing officer shall receive all subsequent pleadings and shall conduct the hearing. At the hearing the parties shall present evidence on the issues raised in the pleadings. At the completion of the proceedings, the hearing officer shall prepare a report based on the evidence presented containing recommendations for the director

to make findings of fact and conclusions of law. Within forty-five days after the receipt of a request for a hearing, the ~~hearing officer~~ director shall prepare a final decision and order directing such action as may be necessary. At the request of either party for good cause shown, the hearing officer may grant specific extensions of time beyond this period. The report and the final decision and order shall be delivered to each party or attorney of record by certified mail. ~~and to the director.~~

Sec. 33. Section 83-1222, Reissue Revised Statutes of Nebraska, is amended to read:

83-1222 Any party at a hearing conducted pursuant to section 83-1219 shall have the right to:

(1) Be accompanied and advised by counsel and by individuals with special knowledge or training with respect to the needs of persons with developmental disabilities;

(2) Present evidence and confront, cross-examine, and compel the attendance of witnesses;

(3) Prohibit the introduction of any evidence at the hearing that has not been disclosed to that party at least five days before the hearing;

(4) Obtain a written or electronic verbatim record of the hearing; and

(5) Obtain written findings of fact and decisions from the director.

The hearing officer may also produce evidence on his or her own motion.

Sec. 34. Section 83-1223, Reissue Revised Statutes of Nebraska, is amended to read:

83-1223 The hearing officer shall have the power by subpoena to compel the appearance of witnesses and the production of any relevant evidence. Any witness compelled to attend or produce evidence shall be entitled to the fees and expenses allowed in district court. Any failure to respond to such subpoena shall be certified by the ~~hearing officer~~ director to the district court of Lancaster County for enforcement or for punishment for contempt of the district court.

Sec. 35. Section 83-1224, Reissue Revised Statutes of Nebraska, is amended to read:

83-1224 (1) Any party aggrieved by the findings, conclusions, or final decision and order of the ~~hearing officer~~ director shall be entitled to judicial review under this section. Any party of record also may seek enforcement of the final decision and order of the ~~hearing officer~~ director pursuant to this section.

(2) Proceedings for judicial review shall be instituted by filing a petition in the district court of Lancaster County within thirty days after service of the final decision and order on the party seeking such review. All parties of record shall be made parties to the proceedings. The court, in its discretion, may permit other interested parties to intervene.

(3) The filing of a petition for judicial review to such district court shall operate to stay the enforcement of the final decision and order of the ~~hearing officer.~~ director. While judicial proceedings are pending in district court and unless the parties otherwise agree, the person with developmental disabilities shall remain in his or her current placement. If the health or safety of the person with developmental disabilities or of other persons would be endangered by delaying a change in placement, the service provider may make such change without prejudice to the rights of any party.

(4) Within thirty days after receiving notification that a petition for judicial review has been filed or, if good cause is shown, within such further time as the court may allow, the department shall prepare and transmit to the court a certified transcript of the proceedings before the hearing officer.

(5) Judicial review shall be heard de novo on the record. The court shall receive the records of the administrative proceedings, base its decision on the preponderance of the evidence, and grant such relief as the court determines is appropriate. The district court may affirm, reverse, or modify the decision of the ~~hearing officer,~~ director, or remand the case to the ~~hearing officer~~ director for further proceedings, including the receipt of additional evidence, for good cause shown.

(6) An aggrieved party may secure a review of any final judgment of the district court under this section by appeal to the Court of Appeals. Such appeal shall be taken in the manner provided by law for appeals in civil cases and shall be heard de novo on the record.

(7) When no petition for judicial review or other civil action is filed within thirty days after service of the final decision and order on all of the parties, the ~~hearing officer's~~ director's final decision and order shall become effective. Proceedings for enforcement of ~~a hearing officer's~~ the

director's final decision and order shall be instituted by filing a petition for appropriate relief in the district court of Lancaster County within one year after the date of the ~~hearing officer's~~ director's final decision and order.

Sec. 36. (1) The Public Service Commission Housing and Recreational Vehicle Cash Fund is created. The fund shall consist of fees collected under the Nebraska Uniform Standards for Modular Housing Units Act and fees collected pursuant to the Uniform Standard Code for Manufactured Homes and Recreational Vehicles.

(2) Money credited to the fund shall be used by the Public Service Commission for the purposes of administering the Nebraska Uniform Standards for Modular Housing Units Act and the Uniform Standard Code for Manufactured Homes and Recreational Vehicles.

(3) Transfers from the fund to the General Fund may be made at the direction of the Legislature. Any money in the Public Service Commission Housing and Recreational Vehicle Cash 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.

(4) On the operative date of this section, the State Treasurer shall transfer any money in the Modular Housing Units Cash Fund and any money in the Manufactured Homes and Recreational Vehicles Cash Fund to the Public Service Commission Housing and Recreational Vehicle Cash Fund.

Sec. 37. Sections 24, 26, 36, and 40 of this act become operative on July 1, 2010. Sections 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 19, 20, 21, 22, 23, 27, 30, 31, 32, 33, 34, 35, and 39 of this act become operative three calendar months after the adjournment of this legislative session. The other sections of this act become operative on their effective date.

Sec. 38. Original sections 38-1901, 38-1902, 38-1908, 38-1918, 70-1603, 70-1605, 71-1796, 71-8403, and 77-27,165, Reissue Revised Statutes of Nebraska, are repealed.

Sec. 39. Original sections 38-2605, 38-2617, 38-2841, 68-906, 68-1017, 68-1017.01, 68-1070, 71-401, 71-403, 71-415, 71-516.04, 71-7447, 83-1220, 83-1221, 83-1222, 83-1223, and 83-1224, Reissue Revised Statutes of Nebraska, and sections 38-2826, 38-2850, 38-2867, 38-2869, and 83-1217, Revised Statutes Supplement, 2009, are repealed.

Sec. 40. Original sections 71-1559 and 71-4604.01, Reissue Revised Statutes of Nebraska, are repealed.

Sec. 41. The following section is outright repealed: Section 71-17,100, Reissue Revised Statutes of Nebraska.

Sec. 42. Since an emergency exists, this act takes effect when passed and approved according to law.