

LEGISLATIVE BILL 1040

Approved by the Governor February 19, 1972

Introduced by Thomas C. Kennedy, 21st District; Richard Maresh, 32nd District; Glenn A. Goodrich, 20th District; Richard Lewis, 38th District; Harold T. Moylan, 6th District; Leslie A. Stull, 49th District; Loran Schmit, 23rd District

AN ACT to amend sections 71-2042, 71-2043, and 71-2044, Revised Statutes Supplement, 1969, relating to nursing home administrators; to define terms; to transfer duties from the Director of Health to the examining board; to define terms; to designate the board as the Board of Examiners in Nursing Home Administration and to change its composition and increase its duties; to provide for fees; to make certain acts unlawful; to provide penalties; to repeal the original sections, and also sections 71-2041 and 71-2045, Revised Statutes Supplement, 1969; and to declare an emergency.

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

Section 1. For the purpose of sections 1 to 13 of this act, unless the context otherwise requires:

(1) Board shall mean the Board of Examiners in Nursing Home Administration;

(2) Administrator of a home for the aged or infirm or nursing home administrator shall mean any individual responsible for planning, organizing, directing, and controlling the operation of a home for the aged or infirm, or who in fact performs such functions, whether or not such functions are shared by one or more other persons; Provided, that each such administrator shall be full-time and responsible for the operation of only one such licensed facility;

(3) Home for the aged or infirm or nursing home shall mean any institution or facility licensed as such by the Department of Health pursuant to sections 71-2017 to 71-2029, whether proprietary or nonprofit, including, but not limited to, homes for the aged or infirm owned or administered by the federal or state government or an agency or political subdivision thereof; and

(4) Custodial home shall mean any institution, place, building, or agency providing for a period exceeding twenty-four consecutive hours accommodation, board, and personal assistance in feeding, dressing, and other essential daily living activities to two or more nonrelated individuals who by reason of age, illness, disease, or physical or mental infirmity are unable to sufficiently or properly care for themselves or manage their own affairs, but who do not require the daily services of a licensed professional nurse or a licensed practical nurse. The term custodial home shall not include hospitals, nursing and care homes, adult foster homes, or boarding homes for the aged, but may provide custodial care for persons who have not yet attained the age of sixty-two years of age or more.

Sec. 2. That section 71-2042, Revised Statutes Supplement, 1969, be amended to read as follows:

71-2042. It shall be the duty of the Director of Health board to:

(1) Develop, impose, and enforce standards which must be met by individuals in order to receive a license as an administrator of a home for the aged or infirm, which standards shall be designed to insure that administrators of homes for the aged or infirm will be individuals who are of good character and are otherwise suitable, and who, by training or experience in the field of institutional administration, are qualified to serve as administrators of homes for the aged or infirm;

(2) Develop and apply appropriate techniques, including examinations and investigations, for determining whether an individual meets such standards;

(3) Issue licenses to individuals determined, after the application of such techniques, to meet such standards, and revoke or suspend licenses previously issued by him in any case where the individual holding any such license is determined substantially to have failed to conform to the requirements of such standards;

(4) Establish and carry out procedures designed to insure that individuals licensed as administrators of homes for the aged or infirm will, during any period that they serve as such, comply with the requirements of such standards;

(5) Receive, investigate, and take appropriate action with respect to any charge or complaint filed with the Department of Health to the effect that any individual licensed as an administrator of a home for the

aged or infirm failed to comply with the requirements of such standards; and

(6) Conduct a continuing study and investigation of homes for the aged or infirm and administrators of homes for the aged or infirm within the state with a view to the improvement of the standards imposed for the licensing of such administrators and of procedures and methods for the enforcement of such standards; and

(7) Conduct or cause to be conducted by making use of the resources available, one or more courses of instruction and training sufficient to meet the requirements of sections 1 to 13 of this act, and to make provisions for such courses and their accessibility to residents of this state unless it finds that there are a sufficient number of approved courses which are taught by others within this state. In lieu thereof, the board may approve courses taught within and without this state as sufficient to meet the education and training requirements of sections 1 to 13 of this act. For purposes of this subdivision, the board shall have the authority to receive and disburse federal funds received pursuant to section 1908 (e) (1) of the Social Security Act.

Sec. 3. That section 71-2043, Revised Statutes Supplement, 1969, be amended to read as follows:

71-2043. The Director--of--Health board shall waive the rules and standards developed, imposed and enforced by him it regarding licensing requirements for administrators of homes for the aged or infirm if the individual for whom the waiver is sought shall have been, during all of the year immediately preceding July 1, 1970, an administrator of a home for the aged or infirm; Provided, that the waiver of requirements shall not extend past June 30, 1972, and that there is provided during the period of waiver a program of training and instruction designed to enable all individuals, with respect to whom any such waiver is granted, to attain the qualifications necessary to meet such standards.

Sec. 4. That section 71-2044, Revised Statutes Supplement, 1969, be amended to read as follows:

71-2044. Standards established by the Director of-Health board shall not require an applicant for licensing to demonstrate proficiency in medical techniques or to meet medical education qualifications or medical standards if such applicant is certified by a recognized church or religious denomination which teaches reliance on spiritual means alone for healing as having

been approved to administer institutions, certified by such church or denomination, for the care and treatment of the sick in accord with its teachings.

Sec. 5. There is hereby created under the supervision of the Department of Health, the Board of Examiners in Nursing Home Administration which shall consist of the Director of Health or his designated representative, the Director of Public Welfare or his designated representative, a representative of the Nebraska Commission on Aging to be designated by the Commission, and the following members appointed by the State Board of Health: (1) Two members who shall be actively engaged in the management, operation, or ownership of proprietary homes for the aged or infirm or nursing homes; (2) one member who shall be actively engaged in the management or operation of a nonprofit home for the aged or infirm or nursing home or hospital caring for chronically ill or infirm, aged patients; (3) one member who shall be a member of the faculty of a college or university located in the state who is actively engaged in a teaching program relating to business administration, social work, or some other aspect of the administration of health care facilities; (4) one member who shall be a licensed physician and surgeon with a demonstrated interest in long-term care; and (5) one member who shall be a licensed registered professional nurse; Provided, that the present members of the board shall serve as members of such board until the expiration of their respective terms or until their successors have been appointed and qualified. Each of the appointed members who is an administrator of a home for the aged or infirm shall be licensed pursuant to sections 1 to 13 of this act.

The State Board of Health shall make appointments to the board within sixty days after the effective date of this act. The appointed members shall be appointed for a term of three years; Provided, that in making such appointments the State Board of Health shall provide for staggered terms of office so that the term of two appointed members of the board shall expire each year and a successor shall be appointed thereafter for a term of three years. Commencing in 1972 the term of each member shall commence on the first day of December, following the expiration of the term of the member whom such person succeeds. Vacancies in any appointive position on the board shall be filled for the unexpired portion of the term by appointment by the State Board of Health in the same manner as original appointments are made. Appointed members shall serve until their successors are appointed and qualified.

Sec. 6. The board shall license administrators of homes for the aged or infirm in accordance with sections 1 to 13 of this act and standards, rules and regulations issued by it pursuant thereto. The license of an administrator of a home for the aged or infirm shall not be transferable or assignable. Such licenses may be denied, suspended or revoked by the board for due cause which shall include: (1) Fraud in procuring a license; (2) immoral, unprofessional or dishonorable conduct; (3) habitual intoxication or addiction to the use of drugs; (4) distribution of intoxicating liquors or drugs for other than lawful purposes; (5) conviction of a felony; (6) physical or mental incapacity to perform professional duties; (7) violation of any provision of sections 1 to 13 of this act or standards, rules and regulations adopted thereunder or of any law, standards, rules and regulations relating to the proper administration and management of a home for the aged or infirm; and (8) failure to pay the required fees. Except in cases of failure to pay the required fees, no license shall be denied, suspended or revoked except after due notice and opportunity for a hearing. Any denial, suspension or revocation of such license shall be subject to review pursuant to the provisions of Chapter 84, article 9.

Sec. 7. Each licensed administrator of a home for the aged or infirm in active practice within the State of Nebraska shall be required on or before December 31 of each year, commencing in 1972, to attend at least twenty-five hours annually of approved schools, clinics, forums, lectures or educational seminars as may be announced and approved by the board as prerequisite for the licensee's next subsequent annual license renewal. Licensees who have not complied with such requirement shall not be issued a renewal license unless exempt for good cause shown as determined by the board.

Sec. 8. After the effective date of this act, no home for the aged or infirm within the state may operate except under the supervision of an administrator duly licensed in the manner provided in sections 1 to 13 of this act.

Sec. 9. After the effective date of this act, every administrator of a home for the aged or infirm shall be licensed by the board, except as otherwise provided in sections 1 to 13 of this act. Such license shall be renewed annually by the board upon the payment of the renewal fee and compliance with all requirements of sections 1 to 13 of this act and standards, rules and regulations adopted thereunder. The initial license fee shall be thirty dollars and the renewal license fee shall

be ten dollars per year payable to the Department of Health. All licenses shall expire on December 31 of each calendar year. All fees collected under the provisions of sections 1 to 13 of this act shall be paid monthly to the State Treasurer who shall keep the same in a special fund to be known as the Board of Examiners in Nursing Home Administration Fund, which fund shall be used and expended by the Department of Health to pay the compensation and travel expenses of members and employees of the board, and other expenses necessary for the board to administer and carry out the provisions of sections 1 to 13 of this act.

Sec. 10. The board shall elect from its appointed members a chairman, vice-chairman, and such other officers as it deems necessary. The members of the board who are not officers or employees of the State of Nebraska shall, in addition to travel and other necessary expenses, receive a per diem of twenty dollars for each day actually engaged in the discharge of their duties, including compensation for the time spent in conducting the examination. Traveling and other necessary expenses shall be reimbursed on the same basis and subject to the same conditions as those of full-time state employees. All expenses of the board and in the administration of sections 1 to 13 of this act shall be paid from the fund by voucher signed by the head of the Bureau of Examining Boards, Department of Health, and no part of the General Fund shall be expended for this purpose. The board shall receive all license renewal funds above the necessary operating expenses incurred by the Bureau of Examining Boards, Department of Health, for annual renewal of licensure. Such expense shall not exceed three dollars and fifty cents per licensed administrator of a home for the aged or infirm. Any surplus in funds at the end of the fiscal year shall be retained by the board for future expenditures. Expenses of members who are in the employ of the state shall be paid from the appropriation to their respective departments. Appointed members may be removed by the State Board of Health for misconduct, incapacity, incompetence or neglect of duty after being served with a written statement of charges and after opportunity for a hearing on such charges. The board, with the approval of the Department of Health, may employ and fix the compensation and duties of necessary personnel, including an executive secretary, to assist it in the performance of its duties.

Sec. 11. The board may issue a license as an administrator of a home for the aged or infirm, without examination, to any person who holds a current license as an administrator of a home for the aged or infirm or to a nursing home administrator from another jurisdiction if

the board finds that the standards for licensure in such other jurisdiction are at least the substantial equivalent of those prevailing in this state, and that the applicant is otherwise qualified.

Sec. 12. In the event that a licensed administrator of a home for the aged or infirm is removed from his position by death or other unexpected cause, the owner, governing body, or other appropriate authority of the home for the aged or infirm suffering such removal may designate an acting administrator of a home for the aged or infirm who may serve without a license for no more than ninety days.

Sec. 13. On and after the effective date of this act, it shall be unlawful and constitute a misdemeanor for any person to act or serve in the capacity of an administrator of a home for the aged or infirm unless he is the holder of a license as an administrator of a home for the aged or infirm issued in accordance with the provisions of sections 1 to 13 of this act. Such person shall, upon conviction thereof, be punished by a fine of not less than fifty dollars nor more than five hundred dollars, or by imprisonment for not more than ninety days, or by both such fine and imprisonment. Each day upon which such violation occurs shall constitute a separate violation.

Sec. 14. That original sections 71-2042 to 71-2044, Revised Statutes Supplement, 1969, and also sections 71-2041 and 71-2045, Revised Statutes Supplement, 1969, are repealed.

Sec. 15. Since an emergency exists, this act shall be in full force and take effect, from and after its passage and approval, according to law.