

LEGISLATIVE BILL 384

Approved by the Governor March 17, 1988

Introduced by Health & Human Services Committee,
Wesely, 26, Chairperson; Lynch, 13;
Schellpeper, 18; Pappas, 42; Goodrich, 20;
Beyer, 3; Morehead, 30

AN ACT relating to the Nebraska Regulation of Health Professions Act; to amend sections 71-6201, 71-6203, 71-6217, 71-6221 to 71-6226, 71-6228, and 71-6230, Reissue Revised Statutes of Nebraska, 1943; to define and redefine terms; to provide and change criteria for the regulation of health professions; to require a letter of intent; to change application review procedures; to eliminate obsolete language; to provide for a fee; to harmonize provisions; to extend the termination date of such act; to repeal the original sections; and to declare an emergency.

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

Section 1. That section 71-6201, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

71-6201. Sections 71-6201 to 71-6230 and sections 3, 4, 6, and 14 of this act shall be known and may be cited as the Nebraska Regulation of Health Professions Act.

Sec. 2. That section 71-6203, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

71-6203. For purposes of the Nebraska Regulation of Health Professions Act, unless the context otherwise requires, the definitions found in sections 71-6204 to 71-6220 and sections 3, 4, and 6 of this act shall be used.

Sec. 3. Credentialing shall mean the process of regulating health professions by means of registration, certification, or licensure.

Sec. 4. Welfare shall include the ability of the public to achieve ready access to high quality health care services at reasonable costs.

Sec. 5. That section 71-6217, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

71-6217. Registration shall mean the formal notification which, prior to rendering services, a practitioner submits to a state agency setting forth the name and address of the practitioner, the location, nature, and operation of the health activity to be practiced, and if required by the regulatory entity, a description of the service to be provided such other information which is required by the regulatory entity. A registered practitioner may be subject to discipline and standards of professional conduct established by the regulatory entity but shall not be required to meet any test of education, experience, or training in order to render services.

Sec. 6. Review body shall mean the committee, the board, or the director charged with reviewing applications for new credentialing or change in scope of practice.

Sec. 7. That section 71-6221, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

71-6221. (1) After January 1, 1985, a health profession shall be regulated by the state only when:

{1} (a) Unregulated practice can clearly harm or endanger the health, safety, or welfare of the public; and the potential for the harm is easily recognizable and not remote or dependent upon tenuous argument;

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

{2} (c) The public needs, and can reasonably be expected to benefit from, an assurance of initial and continuing professional ability by the state; and

{3} (d) The public cannot be effectively protected by other means in a more cost-effective manner.

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

(a) Absence of a separate regulated profession creates a situation of harm or danger to the health, safety, or welfare of the public and the potential for the harm is easily recognizable and not remote or dependent upon tenuous argument;

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

(c) Creation of a separate regulated profession would benefit the health, safety, or welfare of the public; and

(d) The public cannot be effectively protected by other means in a more cost-effective manner.

(3) After the effective date of this act, the scope of practice of a regulated health profession shall be changed only when:

(a) The present scope of practice or limitations on the scope of practice create a situation of harm or danger to the health, safety, or welfare of the public and the potential for the harm is easily recognizable and not remote or dependent upon tenuous argument;

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

(c) Enactment of the proposed change in scope of practice would benefit the health, safety, or welfare of the public; and

(d) The public cannot be effectively protected by other means in a more cost-effective manner.

(4) The Department of Health shall, by rule and regulation, establish standards for the application of each criterion which shall be used by the review bodies in recommending whether proposals for credentialing or change in scope of practice meet the criteria.

Sec. 8. That section 71-6222, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

71-6222. After evaluating the criteria in sections 71-6221 to 71-6223 and considering governmental and societal costs and benefits, if the Legislature finds that it is necessary to regulate a health profession not previously regulated by law, the least restrictive alternative method of regulation shall be implemented, consistent with the public interest and this section, as follows:

(1) When the threat to the public health, safety, welfare, or economic well-being is relatively small, regulation shall be by means other than direct credentialing of the health profession. Such regulation may include, but shall not be limited to:

(a) Inspection requirements;

(b) Enabling an appropriate state agency to

bring an end to a harmful practice by injunctive relief in court;

(c) Regulating the business activity or entity providing the service rather than the employees of the business or entity; or

(d) Regulating or modifying the regulation of the health profession supervising or responsible for the service being performed;

(2) When there exists a diversity of approaches, methods, and theories by which services may be rendered and when the right of the consumer to choose freely among such options is considered to be of equal importance with the need to protect the public from harm, the regulation shall implement a system of registration; When a service is being performed for individuals involving a hazard to the public health, safety, or welfare, the regulation shall impose inspection requirements and enable an appropriate state agency to enforce violations by injunctive relief in court including, but not limited to, regulation of the business activity providing the service rather than the employees of the business;

(2) When the threat to the public health, safety, or economic well-being is relatively small as a result of the operation of the health profession, the regulation shall implement a system of registration;

(3) When the consumer may have a substantial basis for relying on the services of a practitioner, the regulation shall implement a system of certification; or

(4) When it is apparent that adequate regulation cannot be achieved by means other than licensing, the regulation shall implement a system of licensing.

Sec. 9. That section 71-6223, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

71-6223. After January 17, 1985, an applicant group shall submit a letter of intent to file an application to the director on forms prescribed by the director. For purposes of this section, any applicant group which has obtained the introduction of a legislative bill in the 1985 regular session of the Legislature which proposes the regulation of a health professional group not previously licensed or which proposes to change the scope of practice of a regulated health profession and submits an application to the director within sixty days of April 16, 1985, shall have priority for consideration of its application and the director shall submit his or her final report to the

Legislature on such applications by January 17, 1986. The letter of intent shall identify the applicant group, the proposed regulation or change in scope of practice sought, and information sufficient for the director to determine whether the application is eligible for review. The director shall notify the applicant group as to whether it is eligible for review within fifteen days of the receipt of the letter of intent. The final application shall be submitted to the director who shall notify the applicant group of its acceptance for review within fifteen days of receipt of the final application. If more than one application is received in a given year, the director may establish the order in which applications shall be reviewed. The application shall include an explanation of:

(1) The problem and why regulation or change of the scope of practice of a health profession is necessary, including (a) the nature of the potential harm to the public if the health profession is not regulated or the scope of practice of a health profession is not changed and the extent to which there is a threat to public health and safety, (b) the extent to which consumers need, and will benefit from, a method of regulation identifying competent practitioners and indicating typical employers, if any, of practitioners in the health profession, and (c) the extent of autonomy a practitioner has, as indicated by the extent to which the health profession calls for independent judgment, the extent of skill or experience required in making the independent judgment, and the extent to which practitioners are supervised;

(2) The efforts made to address the problem, including (a) voluntary efforts, if any, by members of the health profession to establish a code of ethics or help resolve disputes between health practitioners and consumers and (b) recourse to, and the extent of use of, applicable law and whether present law could be strengthened to control the problem;

(3) The alternatives considered and reasons for choosing between such alternatives, including (a) regulation of business employers or practitioners rather than employee practitioners, (b) regulation of the program or service rather than the individual practitioners, (c) registration of all practitioners, (d) certification of all practitioners, (e) other alternatives, (f) why the use of the alternatives specified in this subdivision would not be adequate to protect the public interest, and (g) why licensing would serve to protect the public interest If the application

is for the regulation of an unregulated health profession, an analysis of all feasible methods of regulation, including those methods listed in section 71-6222, identifying why each method is or is not appropriate for regulation of the profession;

(4) The benefit to the public if the health profession is regulated or the scope of practice of a health profession is changed, including:

(a) The extent to which the incidence of specific problems present in the unregulated health profession can reasonably be expected to be reduced by regulation;

(b) Whether the public can identify qualified practitioners;

(c) The extent to which the public can be confident that qualified practitioners are competent, as determined by:

(i) Whether the proposed regulatory entity would be a board composed of members of the profession and public members or a state agency, or both, and, if appropriate, their respective responsibilities in administering the system of registration, certification, or licensure, including the composition of the board and the number of public members, if any; the powers and duties of the board or state agency regarding examination and revocation, suspension, and nonrenewal of registrations, certificates, or licenses; the adoption and promulgation of rules and canons of ethics; the conduct of inspections; the receipt of complaints and disciplinary action taken against practitioners; and how fees would be levied and collected to cover the expenses of administering and operating the regulatory system;

(ii) If there is a grandfather clause, whether such practitioners will be required to meet the prerequisite qualifications established by the regulatory entity at a later date;

(iii) The nature of the standards proposed for registration, certification, or licensure as compared with the standards of other jurisdictions;

(iv) Whether the regulatory entity would be authorized to enter into reciprocity agreements with other jurisdictions; and

(v) The nature and duration of any training including, but not limited to, whether the training includes a substantial amount of supervised field experience; whether training programs exist in this state; if there will be an experience requirement; whether the experience must be acquired under a

registered, certified, or licensed practitioner; whether there are alternative routes of entry or methods of meeting the prerequisite qualifications; whether all applicants will be required to pass an examination; and if an examination is required, by whom it will be developed and how the costs of development will be met; and

(d) Assurance of the public that practitioners have maintained their competence, including whether the registration, certification, or licensure will carry an expiration date and whether renewal will be based only upon payment of a fee or will involve reexamination, peer review, or other enforcement;

(5) The extent to which regulation or the change of scope of practice might harm the public, including:

(a) The extent to which regulation will restrict entry into the health profession as determined by (i) whether the proposed standards are more restrictive than necessary to ensure safe and effective performance and (ii) whether the proposed legislation requires registered, certificated, or licensed practitioners in other jurisdictions who migrate to this state to qualify in the same manner as state applicants for registration, certification, and licensure when the other jurisdiction has substantially equivalent requirements for registration, certification, or licensure as those in this state; and

(b) Whether there are similar professions to that of the applicant group which should be included in, or portions of the applicant group which should be excluded from, the proposed legislation;

(6) The maintenance of standards, including (a) whether effective quality assurance standards exist in the health profession, such as legal requirements associated with specific programs that define or enforce standards or a code of ethics, and (b) how the proposed legislation will assure quality as determined by the extent to which a code of ethics, if any, will be adopted and the grounds for suspension or revocation of registration, certification, or licensure;

(7) A description of the group proposed for regulation, including a list of associations, organizations, and other groups representing the practitioners in this state, an estimate of the number of practitioners in each group, and whether the groups represent different levels of practice; and

(8) The expected costs of regulation, including (a) the impact registration, certification, or

licensure will have on the costs of the services to the public and (b) the cost to the state and to the general public of implementing the proposed legislation.

Sec. 10. That section 71-6224, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

71-6224. (1) The director with the advice of the board shall appoint an appropriate technical committee to examine and investigate each application. The committee shall consist of six appointed members and one member of the board designated by the board who shall serve as chairperson of the committee. The chairperson of the committee shall not be a member of the applicant group, any health profession sought to be regulated by the application, or any health profession which is directly or indirectly affected by the application. The director shall ensure that the total composition of the committee is fair, impartial, and equitable. If any member of a technical committee is a member of a health profession affected, either directly or indirectly, by the application, the director shall also appoint representatives of other health professions affected by the application to such committee to ensure that all affected health professions are equally and fairly represented on such committee. In no event shall more than two members of the same regulated health profession, the applicant group, or the health profession sought to be regulated by an application serve on a technical committee.

(2) As soon as possible after its appointment, the committee shall meet and review the application assigned to it. Each committee shall conduct public factfinding hearings and shall otherwise investigate the application. Each committee shall comply with sections 84-1408 to 84-1414.

(3) Applicant groups shall have the burden of bringing forth evidence upon which the committee shall make its findings. Each committee shall detail its findings in a report and file the report with the board and the director. A committee may recommend that an application for regulation or change in the scope of practice be denied. If the committee determines that an application should be approved, the committee's report shall include a recommendation concerning the least restrictive alternative method of regulation to be implemented, consistent with the public interest. Such recommendation shall be based on the criteria established in sections 71-6221 to 71-6223. Each committee shall evaluate the application presented to it

on the basis of the appropriate criteria as established in sections 71-6221 to 71-6223. If a committee finds that all appropriate criteria are not met, it shall recommend denial of the application. If it finds that all appropriate criteria are met by the application as submitted, it shall recommend approval. If the committee finds that the criteria would be met if amendments were made to the application, it may recommend such amendments to the applicant group and it may allow such amendments to be made before making its final recommendations. If the committee recommends approval of an application for regulation of a health profession not currently regulated, it shall also recommend the least restrictive method of regulation to be implemented consistent with the cost-effective protection of the public and with section 71-6222. The committee may recommend a specific method of regulation not listed in section 71-6222 if it finds that such method is the best alternative method of regulation. Whether it recommends approval or denial of an application, the committee may make additional recommendations regarding solutions to problems identified during the review.

Sec. 11. That section 71-6225, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

71-6225. After January 17, 1986, the The board shall receive reports from the technical committees and shall meet to review and discuss each report. The board shall apply the criteria established in sections 71-6221 to 71-6223 and compile its own report, including its findings and recommendations, and submit such report, together with the committee report, to the director. The recommendation of the board shall be developed in a manner consistent with subsection (3) of section 71-6224.

Sec. 12. That section 71-6226, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

71-6226. (1) After receiving and considering reports from the committee or the board, the director shall prepare a final report for the Legislature. The final report shall include copies of the committee report and the board report, if any, but the director shall not be bound by the findings and recommendations of such reports. The director in compiling his or her report shall apply the criteria established in sections 71-6221 to 71-6223 and may consult with the board or the committee. The recommendation of the director shall be

developed in a manner consistent with subsection (3) of section 71-6224. The final report shall be submitted to the Speaker of the Legislature, the Chairperson of the Executive Board of the Legislature, and the Chairperson of the Public Health and Welfare Health and Human Services Committee of the Legislature no later than nine months after the application is submitted to the director and shall be made available to all other members of the Legislature upon request. if an application is submitted to the director within sixty days of April 16, 1985, by an applicant group which has obtained the introduction of a legislative bill in the 1985 regular session of the Legislature that proposes the regulation of a health professional group not previously licensed or proposes to change the scope of practice of a regulated health profession; the director shall submit a final report to the Legislature on such application by January 1, 1986-

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

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

Sec. 13. That section 71-6228, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

71-6228. The Nebraska Regulation of Health Professions Fund is hereby created. All money in the fund shall be used exclusively for the operation and administration of the Nebraska Regulation of Health Professions Act. The State Treasurer shall credit to the fund five percent of all fees collected on or after July 1, 1984, and prior to the effective date of this act pursuant to the licensing or regulation of regulated health professions and remitted to the state treasury by the Department of Health or any board or board of examiners of any regulated health profession. On and after the effective date of this act, the director shall annually determine the percent of all fees collected during that year pursuant to the licensing or regulation of regulated health professions to be credited to the fund, except that such percentage shall not be greater than five percent. Any money in the fund available for investment shall be invested by the state investment officer pursuant to sections 72-1237 to 72-1269.

Sec. 14. Each application shall be accompanied by an application fee of five hundred dollars to be submitted at the time the letter of intent is filed. All application fees shall be deposited in the Nebraska Regulation of Health Professions Fund. The application fee shall not be refundable, but the director may waive all or part of the fee if he or she finds it to be in the public interest to do so. Such a finding by the director may include, but shall not be limited to, circumstances in which the director determines that the application would be eligible for review and:

(1) The applicant group is an agency of state government;

(2) Members of the applicant group will not be materially affected by the implementation of the proposed regulation or change in scope of practice; or

(3) Payment of the application fee would impose unreasonable hardship on members of the applicant group.

Sec. 15. That section 71-6230, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

71-6230. Sections 71-6201 to 71-6230 The Nebraska Regulation of Health Professions Act shall terminate on July 1, 1988 December 1, 1993.

Sec. 16. That original sections 71-6201, 71-6203, 71-6217, 71-6221 to 71-6226, 71-6228, and 71-6230, Reissue Revised Statutes of Nebraska, 1943, are repealed.

Sec. 17. Since an emergency exists, this act shall be in full force and take effect, from and after its passage and approval, according to law.