

LEGISLATIVE BILL 819

Approved by the Governor April 13, 2000

Introduced by Jensen, 20

AN ACT relating to public health and welfare; to amend sections 20-162, 30-3402, 37-1254.06, 44-526, 44-771, 44-772, 44-782, 44-2806, 44-2827.01, 60-4,164.01, 60-6,201, 60-6,202, 60-6,204, 68-1019.02, 68-1202, 69-2507, 71-1,147.15, 71-2049, 71-2079, 71-2084, 71-20,112, 71-3608, 71-3613, 71-5033, 71-6012, 71-6016, 71-6021, 71-6023, 71-6037, 71-6044, 71-6049, 71-6051, 71-6052, 71-6615, 71-6826, 71-7702, 76-1304, 77-2702.14, 77-2702.15, 77-2704.12, 77-3504, 81-604.01, 81-2210, 81-2243, 81-3201, and 83-392, Reissue Revised Statutes of Nebraska, sections 28-326, 68-1038, 71-168.02, 71-1,147.08, 71-1,147.35, 71-1,341, 71-511, 71-533, 71-1637, 71-2048.01, 71-2097, 71-20,103, 71-20,115, 71-20,116, 71-2411, 71-5803.01, 71-5803.02, 71-5803.05, 71-5803.08 to 71-5803.11, 71-5803.13, 71-5803.15, 71-5869, 71-6043, 71-6050, 71-6602, 71-6721, 71-6725, 71-6735, 71-7102, 71-7901, 71-8219, and 81-651, Revised Statutes Supplement, 1998, and sections 28-414, 44-793, 68-1006.01, 71-185.01, 71-1,103, 71-1,142, 71-1,147.09, 71-1,147.10, 71-1,200, 71-507, 71-2601, 71-51,102, 71-6053, 71-7613, 71-8507, and 81-502, Revised Statutes Supplement, 1999; to adopt the Health Care Facility Licensure Act; to change and eliminate provisions relating to licensing and regulating health care facilities and services; to harmonize provisions; to provide operative dates; to repeal the original sections; and to outright repeal sections 71-1,147.01, 71-1,147.04 to 71-1,147.07, 71-1,147.12, 71-2017.03, 71-2017.04, 71-2017.06, 71-2018, 71-2020, 71-2021, 71-2021.02, 71-2022, 71-2023.01 to 71-2023.07, 71-2026 to 71-2029, 71-5901, 71-5902, 71-5904 to 71-5909, 71-6018, 71-6024 to 71-6036, 71-6609, 71-6614, 71-7801, 71-7802, and 71-7805, Reissue Revised Statutes of Nebraska, sections 71-1,147.03, 71-2017, 71-2017.07, 71-2021.01, 71-2023, 71-2024, 71-20,117, 71-5903, 71-7804, and 71-7806, Revised Statutes Supplement, 1998, sections 71-1,147.02, 71-1,147.11, 71-2017.01, 71-20,118, 71-20,119, and 71-7803, Revised Statutes Supplement, 1999, section 71-1,147.08, Revised Statutes Supplement, 1998, as amended by section 88 of this legislative bill, and sections 71-1,147.09 and 71-1,147.10, Revised Statutes Supplement, 1999, as amended by sections 89 and 90 of this legislative bill.

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

Section 1. Sections 1 to 62 of this act shall be known and may be cited as the Health Care Facility Licensure Act.

Sec. 2. The purpose of the Health Care Facility Licensure Act and the Nebraska Nursing Home Act is to protect the public health, safety, and welfare by providing for the licensure of health care facilities and health care services in the State of Nebraska and for the development, establishment, and enforcement of basic standards for such facilities and services.

Sec. 3. For purposes of the Health Care Facility Licensure Act, unless the context otherwise requires, the definitions found in sections 4 to 31 of this act shall apply.

Sec. 4. (1) Adult day service means a person or any legal entity which provides care and an array of social, medical, or other support services for a period of less than twenty-four consecutive hours in a community-based group program to persons who require or request such services due to age or functional impairment.

(2) Adult day service does not include services provided under the Developmental Disabilities Services Act.

Sec. 5. (1) Ambulatory surgical center means a facility (a) where surgical services are provided to persons not requiring hospitalization who are admitted to and discharged from such facility within the same working day and are not permitted to stay overnight at such facility, (b) which meets all applicable requirements for licensure as a health clinic under the Health Care Facility Licensure Act, and (c) which has qualified for a written agreement with the Health Care Financing Administration of the United States Department of Health and Human Services or its successor to participate in medicare as an ambulatory surgical center as defined in 42 C.F.R. 416 et seq. or which receives other third-party reimbursement for such services.

(2) Ambulatory surgical center does not include an office or clinic

used solely by a practitioner or group of practitioners in the practice of medicine, dentistry, or podiatry.

Sec. 6. (1) Assisted-living facility means a facility where shelter, food, and care are provided for remuneration for a period of more than twenty-four consecutive hours to four or more persons residing at such facility who require or request such services due to age, illness, or physical disability.

(2) Assisted-living facility does not include a home, apartment, or facility where (a) casual care is provided at irregular intervals or (b) a competent person residing in such home, apartment, or facility provides for or contracts for his or her own personal or professional services if no more than twenty-five percent of persons residing in such home, apartment, or facility receive such services.

Sec. 7. (1) Care means the exercise of concern or responsibility for the comfort, welfare, and habilitation of persons, including a minimum amount of supervision and assistance with or the provision of personal care, activities of daily living, health maintenance activities, or other supportive services.

(2) For purposes of this section:

(a) Activities of daily living means transfer, ambulation, exercise, toileting, eating, self-administered medication, and similar activities;

(b) Health maintenance activities means noncomplex interventions which can safely be performed according to exact directions, which do not require alteration of the standard procedure, and for which the results and resident responses are predictable; and

(c) Personal care means bathing, hair care, nail care, shaving, dressing, oral care, and similar activities.

Sec. 8. Center or group home for the developmentally disabled means a facility where shelter, food, and care, advice, counseling, diagnosis, treatment, or related services are provided for a period of more than twenty-four consecutive hours to four or more persons residing at such facility who have developmental disabilities.

Sec. 9. Critical access hospital means a facility (1) with up to fifteen acute care inpatient beds where care or treatment is provided on an outpatient basis or on an inpatient basis to persons for an average period of not more than ninety-six hours and emergency services are provided on a twenty-four-hour basis and (2) which has formal agreements with at least one hospital and other appropriate providers for services such as patient referral and transfer, communications systems, provision of emergency and nonemergency transportation, and backup medical and emergency services.

Sec. 10. Department means the Department of Health and Human Services Regulation and Licensure.

Sec. 11. Director means the Director of Regulation and Licensure.

Sec. 12. General acute hospital means a hospital with a duly constituted governing body where medical, nursing, surgical, anesthesia, laboratory, diagnostic radiology, pharmacy, and dietary services are provided on an inpatient or outpatient basis by the organized medical staff of such hospital.

Sec. 13. Health care facility means an ambulatory surgical center, an assisted-living facility, a center or group home for the developmentally disabled, a critical access hospital, a general acute hospital, a health clinic, a hospital, an intermediate care facility, an intermediate care facility for the mentally retarded, a long-term care hospital, a mental health center, a nursing facility, a pharmacy, a psychiatric or mental hospital, a public health clinic, a rehabilitation hospital, a skilled nursing facility, or a substance abuse treatment center.

Sec. 14. Health care practitioner facility means the residence, office, or clinic of a practitioner or group of practitioners credentialed under the Uniform Licensing Law or any distinct part of such residence, office, or clinic.

Sec. 15. Health care service means an adult day service, a home health agency, a hospice or hospice service, or a respite care service.

Sec. 16. (1) Health clinic means a facility where advice, counseling, diagnosis, treatment, surgery, care, or services relating to the preservation or maintenance of health are provided on an outpatient basis for a period of less than twenty-four consecutive hours to persons not residing or confined at such facility. Health clinic includes, but is not limited to, an ambulatory surgical center or a public health clinic.

(2) Health clinic does not include (a) a health care practitioner facility (i) unless such facility is an ambulatory surgical center, (ii) unless ten or more abortions, as defined in subdivision (1) of section 28-326, are performed during any one calendar week at such facility, or (iii) unless

hemodialysis or labor and delivery services are provided at such facility, or (b) a facility which provides only routine health screenings, health education, or immunizations.

(3) For purposes of this section:

(a) Public health clinic means the department, any county, city-county, or multicounty health department, or any private not-for-profit family planning clinic licensed as a health clinic;

(b) Routine health screenings means the collection of health data through the administration of a screening tool designed for a specific health problem, evaluation and comparison of results to referral criteria, and referral to appropriate sources of care, if indicated; and

(c) Screening tool means a simple interview or testing procedure to collect basic information on health status.

Sec. 17. Home health agency means a person or any legal entity which provides skilled nursing care or a minimum of one other therapeutic service as defined by the department on a full-time, part-time, or intermittent basis to persons in a place of temporary or permanent residence used as the person's home.

Sec. 18. Hospice or hospice service means a person or any legal entity which provides home care, palliative care, or other supportive services to terminally ill persons and their families.

Sec. 19. (1) Hospital means a facility where diagnosis, treatment, medical care, obstetrical care, nursing care, or related services are provided on an outpatient basis or on an inpatient basis for a period of more than twenty-four consecutive hours to persons who have an illness, injury, or deformity or to aged or infirm persons requiring or receiving convalescent care.

(2) Hospital includes a facility or part of a facility which provides space for a general acute hospital, a rehabilitation hospital, a long-term care hospital, a critical access hospital, or a psychiatric or mental hospital.

(3) Hospital does not include a health care practitioner facility in which persons do not receive care or treatment for a period of more than twenty-four consecutive hours.

Sec. 20. Intermediate care facility means a facility where shelter, food, and nursing care or related services are provided for a period of more than twenty-four consecutive hours to persons residing at such facility who are ill, injured, or disabled and do not require hospital or skilled nursing facility care.

Sec. 21. Intermediate care facility for the mentally retarded means a facility where shelter, food, and training or habilitation services, advice, counseling, diagnosis, treatment, care, nursing care, or related services are provided for a period of more than twenty-four consecutive hours to four or more persons residing at such facility who have mental retardation or related conditions, including epilepsy, cerebral palsy, or other developmental disabilities.

Sec. 22. Long-term care hospital means a hospital or any distinct part of a hospital that provides the care and services of an intermediate care facility, a nursing facility, or a skilled nursing facility.

Sec. 23. Mental health center means a facility where shelter, food, and counseling, diagnosis, treatment, care, or related services are provided for a period of more than twenty-four consecutive hours to persons residing at such facility who have a mental disease, disorder, or disability.

Sec. 24. Nursing facility means a facility where medical care, nursing care, rehabilitation, or related services and associated treatment are provided for a period of more than twenty-four consecutive hours to persons residing at such facility who are ill, injured, or disabled.

Sec. 25. (1) Pharmacy means (a) a facility advertised as a pharmacy, drug store, hospital pharmacy, dispensary, apothecary, or any combination of such titles, (b) a facility where the practice of pharmacy is carried on except as exempted in section 71-1,143, or (c) a facility used as a pick-up point or drop point, including kiosks, for prescriptions to be filled or where prescribed drugs or devices are made ready for delivery to the patient.

(2) Pharmacy does not include an emergency box located within an institution pursuant to the Emergency Box Drug Act.

Sec. 26. Psychiatric or mental hospital means a hospital that provides psychiatric services on an inpatient or outpatient basis to persons who have a mental disease, disorder, or disability.

Sec. 27. Rehabilitation hospital means a hospital that provides an integrated program of medical and other services for the rehabilitation of disabled persons.

Sec. 28. Respite care service means a person or any legal entity, not otherwise licensed under the Health Care Facility Licensure Act, which provides short-term care or related services on an intermittent basis to persons with special needs when the person's regular caregiver is unavailable to provide such care or services and such care or services are not provided at a health care facility licensed under the act.

Sec. 29. Skilled nursing facility means a facility where medical care, skilled nursing care, rehabilitation, or related services and associated treatment are provided for a period of more than twenty-four consecutive hours to persons residing at such facility who are ill, injured, or disabled.

Sec. 30. (1) Substance abuse treatment center means a facility, including any private dwelling, where shelter, food, and care, treatment, maintenance, or related services are provided in a group setting to persons who are substance abusers.

(2) Substance abuse treatment center includes programs and services that are provided on an outpatient basis primarily or exclusively to persons who are substance abusers but does not include services that can be rendered only by a physician or within a hospital.

(3) For purposes of this section:

(a) Substance abuse means the abuse of substances which have significant mood-changing or perception-changing capacities, which are likely to be physiologically or psychologically addictive, and the continued use of which may result in negative social consequences; and

(b) Abuse means the use of substances in ways that have or are likely to have significant adverse social consequences.

Sec. 31. Treatment means a therapy, modality, product, device, or other intervention used to maintain well being or to diagnose, assess, alleviate, or prevent a disability, injury, illness, disease, or other similar condition.

Sec. 32. Beginning on January 1, 2001, a health care facility or health care service shall not be established, operated, or maintained in this state without first obtaining a license issued by the department under the Health Care Facility Licensure Act, except that licensure under the act shall not be required for an adult day service, a pharmacy, or a respite care service until January 1, 2002. The department shall issue a license to health care facilities and health care services that satisfy the requirements for licensure under the act.

Sec. 33. (1) An applicant for an initial or renewal license to operate a health care facility or health care service required to be licensed under the Health Care Facility Licensure Act shall file a written application with the department. The application shall be accompanied by the license fee set pursuant to section 34 of this act and shall set forth the full name and address of the facility or service to be licensed, the full name and address of the owner of such facility or service, the names of all persons in control of the facility or service, and additional information as required by the department, including affirmative evidence of the applicant's ability to comply with rules and regulations adopted and promulgated under the act. The application shall include the applicant's social security number if the applicant is an individual. The social security number shall not be public record and may only be used for administrative purposes.

(2) The application shall be signed by (a) the owner, if the applicant is an individual or partnership, (b) two of its members, if the applicant is a limited liability company, (c) two of its officers, if the applicant is a corporation, or (d) the head of the governmental unit having jurisdiction over the facility or service to be licensed, if the applicant is a governmental unit.

Sec. 34. (1) Licensure activities under the Health Care Facility Licensure Act shall be funded by the General Fund and by license fees. An applicant for an initial or renewal license under section 33 of this act shall pay a license fee as provided in this section.

(2) License fees shall include a base fee of fifty dollars and an additional fee based on:

(a) Variable costs to the department of inspections, architectural plan reviews, and receiving and investigating complaints, including staff salaries, travel, and other similar direct and indirect costs;

(b) The number of beds available to persons residing at the health care facility;

(c) The program capacity of the health care facility or health care service; or

(d) Other relevant factors as determined by the department. Such additional fee shall be no more than one thousand dollars for an assisted-living facility, a hospital, an intermediate care facility, an

intermediate care facility for the mentally retarded, a nursing facility, or a skilled nursing facility and no more than five hundred dollars for all other health care facilities and health care services.

(3) If the licensure application is denied, the license fee shall be returned to the applicant, except that the department may retain up to twenty-five dollars as an administrative fee and may retain the entire license fee if an inspection has been completed prior to such denial.

(4) The department shall also collect the fee provided in subsection (1) of this section for reinstatement of a license that has lapsed or has been placed on probation, suspended, or revoked. The department shall collect a fee of ten dollars for a duplicate original license.

(5) The department shall adopt and promulgate rules and regulations for the establishment of license fees under this section.

(6) The department shall remit all license fees collected under this section to the State Treasurer for credit to the Department of Health and Human Services Regulation and Licensure Cash Fund. License fees collected under this section shall only be used for activities related to the licensure of health care facilities and health care services.

Sec. 35. (1) Except as otherwise provided in the Health Care Facility Licensure Act, licenses issued pursuant to the act shall expire one year after the date of issuance or on uniform annual dates established by the department.

(2) Licenses shall be issued only for the premises and persons named in the application and shall not be transferable or assignable. Licenses, license record information, and inspection reports shall be made available by the licensee for public inspection upon request and may be displayed in a conspicuous place on the licensed premises.

Sec. 36. (1) An applicant for licensure under the Health Care Facility Licensure Act shall obtain a separate license for each type of health care facility or health care service that the applicant seeks to operate. A single license may be issued for (a) a facility or service operating in separate buildings or structures on the same premises under one management, (b) an inpatient facility that provides services on an outpatient basis at multiple locations, or (c) a health clinic operating satellite clinics on an intermittent basis within a portion of the total geographic area served by such health clinic and sharing administration with such clinics.

(2) The department may issue one license document that indicates the various types of health care facilities or health care services for which the entity is licensed. The department may inspect any of the locations that are covered by the license. If an entity is licensed in multiple types of licensure for one location, the department shall conduct all required inspections simultaneously for all types of licensure unless the entity requests otherwise.

Sec. 37. A provisional license may be issued to a health care facility or health care service that substantially complies with requirements for licensure under the Health Care Facility Licensure Act and the rules and regulations adopted and promulgated under the act if the failure to fully comply with such requirements does not pose an imminent danger of death or physical harm to the persons residing in or served by such facility or service. Such provisional license shall be valid for a period of up to one year, shall not be renewed, and may be converted to a regular license upon a showing that the facility or service fully complies with the requirements for licensure under the act and rules and regulations.

Sec. 38. (1) The department may accept accreditation by a recognized independent accreditation body or public agency, which has standards that are at least as stringent as those of the State of Nebraska, as evidence that the health care facility or health care service complies with the rules, regulations, and standards adopted and promulgated under the Health Care Facility Licensure Act.

(2) A facility or service licensed pursuant to an accreditation or certification accepted by the department shall notify the department if such accreditation or certification has been sanctioned, modified, terminated, or withdrawn. After giving such notice, the facility or service may continue to operate unless the department determines that the facility or service no longer meets the qualifications for licensure under the act.

Sec. 39. (1) The department may waive any rule, regulation, or standard adopted and promulgated by the department relating to construction or physical plant requirements of a licensed health care facility or health care service upon proof by the licensee satisfactory to the department (a) that such waiver would not unduly jeopardize the health, safety, or welfare of the persons residing in or served by the facility or service, (b) that such rule, regulation, or standard would create an unreasonable hardship for the facility

or service, and (c) that such waiver would not cause the State of Nebraska to fail to comply with any applicable requirements of medicare or medicaid so as to make the state ineligible for the receipt of all funds to which it might otherwise be entitled.

(2) In evaluating the issue of unreasonable hardship, the department shall consider the following:

(a) The estimated cost of the modification or installation;

(b) The extent and duration of the disruption of the normal use of areas used by persons residing in or served by the facility or service resulting from construction work;

(c) The estimated period over which the cost would be recovered through reduced insurance premiums and increased reimbursement related to cost;

(d) The availability of financing; and

(e) The remaining useful life of the building.

(3) Any such waiver may be granted under such terms and conditions and for such period of time as provided in rules and regulations adopted and promulgated by the department.

Sec. 40. The department may inspect or provide for the inspection of any health care facility or health care service licensed under the Health Care Facility Licensure Act in such manner and at such times as provided in rules and regulations adopted and promulgated by the department. The department shall issue an inspection report and provide a copy of the report to the facility or service within ten working days after the completion of an inspection.

Sec. 41. The department may request the State Fire Marshal to inspect any applicant for licensure or any licensee for fire safety pursuant to section 81-502. The State Fire Marshal shall assess a fee for such inspection pursuant to section 81-505.01 payable by such applicant or licensee. The State Fire Marshal may delegate such authority to make such inspections to qualified local fire prevention personnel pursuant to section 81-502.

Sec. 42. In addition to or in lieu of the authority to inspect for purposes of licensure and renewal, the department may adopt and promulgate rules and regulations which permit the use of alternative methods for assessing the compliance by a health care facility or health care service with the Health Care Facility Licensure Act and the rules and regulations adopted and promulgated under the act.

Sec. 43. If the inspection report issued under section 40 of this act contains findings of noncompliance by a health care facility or health care service with any applicable provisions of the Health Care Facility Licensure Act or rules and regulations adopted under the act, the department shall review such findings within twenty working days after such inspection. If the findings are supported by the evidence, the department shall proceed pursuant to sections 46 to 55 of this act, except that if the findings indicate one or more violations that create no imminent danger of death or serious physical harm and no direct or immediate adverse relationship to the health, safety, or security of the persons residing in or served by the facility or service, the department may send a letter to the facility or service requesting a statement of compliance. The letter shall include a description of each such violation, a request that the facility or service submit a statement of compliance within ten working days, and a notice that the department may take further steps if the statement of compliance is not submitted. The statement of compliance shall indicate any steps which have been or will be taken to correct each violation and the period of time estimated to be necessary to correct each violation. If the facility or service fails to submit and implement a statement of compliance which indicates a good faith effort to correct the violations, the department may proceed pursuant to sections 46 to 55 of this act.

Sec. 44. (1) Any person may submit a complaint to the department and request investigation of an alleged violation of the Health Care Facility Licensure Act or rules and regulations adopted and promulgated under the act. The department shall review all complaints and determine whether to conduct an investigation. In making such determination, the department may consider factors such as:

(a) Whether the complaint pertains to a matter within the authority of the department to enforce;

(b) Whether the circumstances indicate that a complaint is made in good faith and is not malicious, frivolous, or vexatious;

(c) Whether the complaint is timely or has been delayed too long to justify present evaluation of its merit;

(d) Whether the complainant may be a necessary witness if action is

taken and is willing to identify himself or herself and come forward to testify if action is taken; or

(e) Whether the information provided or within the knowledge of the complainant is sufficient to provide a reasonable basis to believe that a violation has occurred or to secure necessary evidence from other sources.

(2) A complaint submitted to the department shall be confidential. A person submitting a complaint shall be immune from criminal or civil liability of any nature, whether direct or derivative, for submitting a complaint or for disclosure of documents, records, or other information to the department.

Sec. 45. A health care facility or health care service shall not discriminate or retaliate against a person residing in, served by, or employed at such facility or service who has initiated or participated in any proceeding authorized by the Health Care Facility Licensure Act or who has presented a complaint or provided information to the administrator of such facility or service, the Department of Health and Human Services, the Department of Health and Human Services Finance and Support, or the Department of Health and Human Services Regulation and Licensure. Such person may maintain an action for any type of relief, including injunctive and declaratory relief, permitted by law.

Sec. 46. (1) If the director determines that persons receiving care or treatment at a health care facility or by a health care service are in imminent danger of death or serious physical harm, he or she may temporarily suspend or temporarily limit the license of such facility or service and may order the immediate removal of such persons and the temporary closure of the facility or service pending further action by the department. The department shall also simultaneously institute proceedings for revocation, suspension, or limitation of the license. A hearing shall be held no later than ten days after the date of such temporary suspension or temporary limitation.

(2) A continuance of the hearing shall be granted by the department upon written request from the licensee. Such continuance shall not exceed thirty days. A temporary suspension or temporary limitation order by the director shall take effect when served upon the facility or service. A copy of the notice shall also be mailed to the holder of the license if the holder of such license is not actually involved in the daily operation of the facility or service. If the holder of the license is a corporation, a copy of the notice shall be sent to the corporation's registered agent.

(3) A temporary suspension or temporary limitation under this section shall not exceed ninety days. If a decision is not reached within that period, the temporary suspension or temporary limitation shall expire.

(4) Any person aggrieved by a decision of the department after a hearing as provided in this section may appeal under the Administrative Procedure Act.

Sec. 47. The department may deny or refuse to renew a license under the Health Care Facility Licensure Act to any health care facility or health care service that fails to meet the requirements for licensure provided in the act or in rules and regulations adopted and promulgated under the act, including (1) failing an inspection pursuant to section 40 of this act, (2) failing to meet a compliance assessment standard adopted under section 42 of this act, (3) having had a license revoked within the two-year period preceding application, or (4) any of the grounds listed in section 48 of this act.

Sec. 48. The department may take disciplinary action against a license issued under the Health Care Facility Licensure Act on any of the following grounds:

(1) Violation of any of the provisions of the Health Care Facility Licensure Act, the Nebraska Nursing Home Act, or the rules and regulations adopted and promulgated under such acts;

(2) Committing or permitting, aiding, or abetting the commission of any unlawful act;

(3) Conduct or practices detrimental to the health or safety of a person residing in, served by, or employed at the health care facility or health care service;

(4) A report from an accreditation body or public agency sanctioning, modifying, terminating, or withdrawing the accreditation or certification of the health care facility or health care service;

(5) Failure to allow an agent or employee of the Department of Health and Human Services, the Department of Health and Human Services Finance and Support, or the Department of Health and Human Services Regulation and Licensure access to the health care facility or health care service for the purposes of inspection, investigation, or other information collection activities necessary to carry out the duties of such departments;

(6) Discrimination or retaliation against a person residing in, served by, or employed at the health care facility or health care service who has submitted a complaint or information to the Department of Health and Human Services, the Department of Health and Human Services Finance and Support, or the Department of Health and Human Services Regulation and Licensure;

(7) Discrimination or retaliation against a person residing in, served by, or employed at the health care facility or health care service who has presented a grievance or information to the office of the state long-term care ombudsman;

(8) Failure to allow a state long-term care ombudsman or an ombudsman advocate access to the health care facility or health care service for the purposes of investigation necessary to carry out the duties of the office of the state long-term care ombudsman as specified in the rules and regulations adopted and promulgated by the Department of Health and Human Services;

(9) Violation of the Emergency Box Drug Act;

(10) Failure to file a report required by section 71-168.02;

(11) Violation of the Medication Aide Act; or

(12) Failure to file a report of suspected abuse or neglect as required by sections 28-372 and 28-711.

Sec. 49. (1) The department may impose any one or a combination of the following types of disciplinary action against the license of a health care facility or health care service:

(a) A fine not to exceed ten thousand dollars per violation;

(b) A prohibition on admissions or readmissions, a limitation on enrollment, or a prohibition or limitation on the provision of care or treatment;

(c) A period of probation not to exceed two years during which the facility or service may continue to operate under terms and conditions fixed by the order of probation;

(d) A period of suspension not to exceed three years during which the facility or service may not operate; and

(e) Revocation which is a permanent termination of the license and the licensee may not apply for a license for a minimum of two years after the effective date of the revocation.

(2) Any fine imposed and unpaid under the Health Care Facility Licensure Act shall constitute a debt to the State of Nebraska which may be collected in the manner of a lien foreclosure or sued for and recovered in any proper form of action in the name of the State of Nebraska in the district court of the county in which the facility or service is located. The department shall, within thirty days after receipt, remit fines to the State Treasurer for credit to the permanent school fund.

Sec. 50. (1) In determining what type of disciplinary action to impose, the department shall consider:

(a) The gravity of the violation, including the probability that death or serious physical or mental harm will result, the severity of the actual or potential harm, and the extent to which the provisions of applicable statutes, rules, and regulations were violated;

(b) The reasonableness of the diligence exercised by the health care facility or health care service in identifying or correcting the violation;

(c) Any previous violations committed by the facility or service;

and

(d) The financial benefit to the facility or service of committing or continuing the violation.

(2) The department may adopt and promulgate rules and regulations which set forth specific violations which will result in a particular disciplinary action, including the use of scope and severity determinations.

(3) If the licensee fails to correct a violation or to comply with a particular type of disciplinary action, the department may take additional disciplinary action as described in section 49 of this act.

Sec. 51. (1) If the department determines to deny, refuse renewal of, or take disciplinary action against a license, the department shall send to the applicant or licensee, by certified mail to the last address shown on the records of the department, a notice setting forth the determination, the particular reasons for the determination, including a specific description of the nature of the violation and the statute, rule, or regulation violated, and the type of disciplinary action which is pending. The denial, refusal to renew, or disciplinary action shall become final fifteen days after the mailing of the notice unless the applicant or licensee, within such fifteen-day period, makes a written request for an informal conference or a hearing pursuant to section 52 of this act.

(2) A copy of the notice in subsection (1) of this section shall

also be mailed to the holder of the license if the holder of such license is not actually involved in the daily operation of the facility or service. If the holder of the license is a corporation, a copy of the notice shall be sent to the corporation's registered agent.

Sec. 52. Within fifteen days after service of a notice under section 51 of this act, an applicant or a licensee shall notify the director in writing that the applicant or licensee (1) desires to contest the notice and request an informal conference with a representative of the department in person or by other means at the request of the applicant or licensee, (2) desires to contest the notice and request a hearing, or (3) does not contest the notice. If the director does not receive such notification within such fifteen-day period, the action of the department shall be final.

Sec. 53. (1) The director shall assign a representative of the department, other than the individual who did the inspection upon which the notice is based, to hold an informal conference with the applicant or licensee within thirty days after receipt of a request made under section 52 of this act. Within twenty working days after the conclusion of the conference, the representative shall affirm, modify, or dismiss the notice. The representative shall state in writing the specific reasons for affirming, modifying, or dismissing the notice and shall immediately transmit copies of the statement to the director and the applicant or licensee. The applicant's or licensee's copy of such statement shall be sent by certified mail to the last address shown in the records of the department. If the applicant or licensee desires to contest the affirmed or modified notice, the applicant or licensee shall notify the director in writing within five working days after receiving such statement that the applicant or licensee requests a hearing.

(2) If an applicant or a licensee successfully demonstrates during an informal conference or a hearing that the deficiencies should not have been cited in the notice, the deficiencies shall be removed from the notice and any sanction imposed solely as a result of those cited deficiencies shall be rescinded.

Sec. 54. (1) If the applicant or licensee requests a hearing under section 52 of this act, the department shall hold a hearing and give the applicant or licensee the right to present such evidence as may be proper. On the basis of such evidence, the director shall affirm, modify, or set aside the determination. A copy of such decision setting forth the findings of facts and the particular reasons upon which the decision is based shall be sent by either registered or certified mail to the applicant or licensee. The decision shall become final thirty days after the copy is mailed unless the applicant or licensee, within such thirty-day period, appeals the decision under section 55 of this act.

(2) The procedure governing hearings authorized by this section shall be in accordance with rules and regulations adopted and promulgated by the department. A full and complete record shall be kept of all proceedings. Witnesses may be subpoenaed by either party and shall be allowed fees at a rate prescribed by rule and regulation.

Sec. 55. Any party to a decision of the department under the Health Care Facility Licensure Act may appeal such decision. The appeal shall be in accordance with the Administrative Procedure Act.

Sec. 56. (1) A license issued under the Health Care Facility Licensure Act that has lapsed for nonpayment of fees is eligible for reinstatement at any time by applying to the department and paying the applicable fee as provided in section 34 of this act.

(2) A license that has been disciplined by being placed on probation or suspension is eligible for reinstatement at the end of the period of such probation or suspension upon successful completion of an inspection and payment of the applicable renewal fee provided in section 34 of this act.

(3) A license that has been disciplined by being placed on probation or suspension may be reinstated prior to the completion of the term of such probation or suspension as provided in this subsection. Upon petition from a licensee and after consideration of materials submitted with such petition, the director may order an inspection or other investigation of the licensee. On the basis of material submitted by the licensee and the results of any inspection or investigation by the department, the director shall determine whether to grant full reinstatement of the license, to modify the probation or suspension, or to deny the petition for reinstatement. The director's decision shall become final thirty days after mailing the decision to the licensee unless the licensee requests a hearing within such thirty-day period. Any requested hearing shall be held according to rules and regulations of the department for administrative hearings in contested cases. Any party to the decision shall have a right to judicial review under the Administrative Procedure Act.

(4) A license that has been disciplined by being revoked is not eligible for relicensure until two years after the date of such revocation. A reapplication for an initial license may be made at the end of such two-year period.

(5) The department may adopt and promulgate rules and regulations to carry out this section.

Sec. 57. (1) To protect the health, safety, and welfare of the public and to insure to the greatest extent possible the efficient, adequate, and safe practice of health care in any health care facility or health care service licensed under the Health Care Facility Licensure Act, the department shall adopt, promulgate, and enforce rules, regulations, and standards with respect to the different types of health care facilities and health care services, except nursing facilities and skilled nursing facilities, designed to further the accomplishment of the purposes of the act. Such rules, regulations, and standards shall be modified, amended, or rescinded from time to time in the public interest by the department.

(2) The department, with the advice of the Nursing Home Advisory Council, shall adopt, promulgate, and enforce rules, regulations, and standards with respect to nursing facilities and skilled nursing facilities. Such rules, regulations, and standards shall be in compliance with the Nebraska Nursing Home Act. Such rules, regulations, and standards shall be modified, amended, or rescinded from time to time in the public interest by the department with the advice of the Nursing Home Advisory Council.

Sec. 58. Any person who establishes, operates, or maintains a health care facility or health care service subject to the Health Care Facility Licensure Act without first obtaining a license as required under the act or who violates any of the provisions of the act shall be guilty of a Class I misdemeanor. Each day such facility or service operates after a first conviction shall be considered a subsequent offense.

Sec. 59. The department may maintain an action in the name of the state for an injunction against any person for establishing, operating, or maintaining a health care facility or health care service subject to the Health Care Facility Licensure Act without first obtaining a license as required by the act. In charging any defendant in a complaint in such action, it shall be sufficient to charge that such defendant did, upon a certain day and in a certain county, establish, operate, or maintain a health care facility or health care service without obtaining a license to do so, without alleging any further or more particular facts concerning the same.

Sec. 60. Section 71-20,115, Revised Statutes Supplement, 1998, is amended to read:

~~71-20,115.~~ For purposes of this section and ~~sections~~ section 61 of this act: ~~71-20,116 and 71-20,117:~~

(1) Activities of daily living means transfer, ambulation, exercise, toileting, eating, self-administered medication, and similar activities;

(2) Assisted-living facility has the same meaning as in section ~~71-2017.01~~ 6 of this act;

(3) Chemical restraint means a psychopharmacologic drug that is used for discipline or convenience and is not required to treat medical symptoms;

(4) Complex nursing interventions means interventions which require nursing judgment to safely alter standard procedures in accordance with the needs of the resident, which require nursing judgment to determine how to proceed from one step to the next, or which require a multidimensional application of the nursing process;

(5) Designee means a person holding a durable power of attorney for health care, a guardian, or a person appointed by a court to manage the personal affairs of a resident of a facility other than the facility;

(6) Health maintenance activities means noncomplex interventions which can safely be performed according to exact directions, which do not require alteration of the standard procedure, and for which the results and resident responses are predictable;

(7) Personal care means bathing, hair care, nail care, shaving, dressing, oral care, and similar activities;

(8) Physical restraint means any manual method or physical or mechanical device, material, or equipment attached or adjacent to the resident's body that he or she cannot remove easily and that restricts freedom of movement or normal access to his or her own body; and

(9) Stable or predictable means that a resident's clinical and behavioral status and nursing care needs are determined to be (a) nonfluctuating and consistent or (b) fluctuating in an expected manner with planned interventions, including an expected deteriorating condition.

Sec. 61. Section 71-20,116, Revised Statutes Supplement, 1998, is amended to read:

~~71-20,116.~~ (1) Assisted living promotes resident self-direction and participation in decisions which emphasize independence, individuality, privacy, dignity, and residential surroundings. No facility or organization shall hold itself out as an assisted-living facility or as providing assisted-living services unless the facility or organization is licensed as an assisted-living facility under sections 71-2017 to 71-2029.

(2) An assisted-living facility shall complete criminal background checks on each member of the direct care staff of the facility.

(3) To be eligible for admission to an assisted-living facility, a person shall be in need of or wish to have available room, board, assistance with or provision of personal care, activities of daily living, or health maintenance activities or supervision due to age, infirmity, or physical disability. The administrator of the facility shall have the discretion regarding admission or retention of residents subject to the provisions of this section. No assisted-living facility shall admit or retain an individual who requires complex nursing interventions or whose condition is not stable or predictable unless:

(a) The resident, if the resident has sufficient mental ability to understand the situation and make a rational decision as to his or her needs or care and is not a minor, the resident's designee, and the resident's physician or the registered nurse agree that admission or retention of the resident is appropriate;

(b) The resident or his or her designee is responsible for arranging for the resident's care through appropriate private duty personnel, a licensed home health agency, or a licensed hospice; ~~agency;~~ and

(c) The resident's care does not compromise the facility operations or create a danger to others in the facility.

(4) An assisted-living facility shall assure that each resident does not require complex nursing interventions and that each resident is stable or predictable or is suitable for admission under subsection (3) of this section. All health maintenance activities shall be performed in accordance with the Nurse Practice Act and the rules and regulations adopted and promulgated under the act.

(5) Chemical and physical restraints are prohibited in an assisted-living facility.

(6) For purposes of the Life Safety Code under section 81-502, an assisted-living facility shall be classified as (a) residential board and care if the facility meets the residential board and care classification requirements of the Life Safety Code or (b) limited care if the facility meets the limited care classification requirements of the Life Safety Code.

Sec. 62. (1) A license for a health care facility or a health care service issued prior to the operative date of this section under sections 71-2017 to 71-2029, 71-20,115 to 71-20,119, 71-6018, 71-6024 to 71-6036, 71-6609, 71-6614, and 71-7801 to 71-7806 shall be valid and effective for the term of the license unless revoked or its effectiveness is otherwise terminated as provided by law and shall be deemed a license issued under the Health Care Facility Licensure Act.

(2) All rules, regulations, and orders of the department adopted prior to the operative date of this section under sections 71-2017 to 71-2029, 71-20,115 to 71-20,119, 71-6018, 71-6024 to 71-6036, 71-6609, 71-6614, and 71-7801 to 71-7806 shall continue to be effective until revised, amended, repealed, or nullified pursuant to law.

(3) No suit, action, or other proceeding, judicial or administrative, lawfully commenced prior to the operative date of this section under sections 71-2017 to 71-2029, 71-20,115 to 71-20,119, 71-6018, 71-6024 to 71-6036, 71-6609, 71-6614, and 71-7801 to 71-7806 shall abate by reason of the enactment of the Health Care Facility Licensure Act.

(4) This section terminates one year after the operative date of this section.

Sec. 63. Section 20-162, Reissue Revised Statutes of Nebraska, is amended to read:

20-162. For purposes of sections 20-161 to 20-166, unless the context otherwise requires:

(1) Complaint shall mean any oral or written allegation by a person with a developmental disability or a mentally ill individual, the parent or guardian of such persons, a state agency, or any other responsible named individual or entity to the effect that the person with developmental disabilities or the mentally ill individual is being subjected to injury or deprivation with regard to his or her health, safety, welfare, rights, or level of care;

(2) Developmental disability shall mean a severe chronic mental or physical disability as defined in the Developmental Disabilities Assistance

and Bill of Rights Act, 42 U.S.C. 6000 et seq., as amended;

(3) Facility for mentally ill individuals shall mean any place within Nebraska where a mentally ill individual is an inpatient or a resident and that is organized to provide treatment, shelter, food, care, or supervision including, but not limited to, those facilities described in the Health Care Facility Licensure Act Chapter 71, articles 19 and 20, and sections 71-1901 to 71-1917, 83-107.01, and 83-108;

(4) Facility for persons with developmental disabilities shall mean a facility or a specified portion of a facility designed primarily for the delivery of one or more services to persons with one or more developmental disabilities including, but not limited to, those facilities described in the Health Care Facility Licensure Act Chapter 71, articles 19 and 20, and sections 71-1901 to 71-1917, 83-107.01, and 83-108 whenever a person with a developmental disability is residing in such facility;

(5) Mentally ill individual shall mean an individual who has a significant mental illness or emotional impairment as determined by a mental health professional qualified under the laws, rules, and regulations of this state and who is an inpatient or resident in a facility for mentally ill individuals;

(6) Protection and advocacy system shall mean the entity designated pursuant to the Developmental Disabilities Assistance and Bill of Rights Act, 42 U.S.C. 6000 et seq., as amended;

(7) Records shall mean all information and data obtained, collected, or maintained by a facility for persons with developmental disabilities or a facility for mentally ill individuals in the course of providing services to such persons which are reasonably related to the complaint to be investigated; and

(8) Services for persons with developmental disabilities shall mean services as defined in the Developmental Disabilities Assistance and Bill of Rights Act, 42 U.S.C. 6000 et seq., as amended.

Sec. 64. Section 28-326, Revised Statutes Supplement, 1998, is amended to read:

28-326. For purposes of sections 28-325 to 28-345, unless the context otherwise requires:

(1) Abortion means the use or prescription of any instrument, medicine, drug, or other substance or device intentionally to terminate the pregnancy of a woman known to be pregnant with an intention other than to increase the probability of a live birth, to preserve the life or health of the child after live birth, or to remove a dead unborn child, and which causes the premature termination of the pregnancy;

(2) Hospital means those institutions licensed by the Department of Health and Human Services Regulation and Licensure pursuant to ~~sections 71-2017 to 71-2029~~ the Health Care Facility Licensure Act;

(3) Physician means any person licensed to practice medicine in this state as provided in sections 71-102 to 71-110;

(4) Pregnant means that condition of a woman who has unborn human life within her as the result of conception;

(5) Conception means the fecundation of the ovum by the spermatozoa;

(6) Viability means that stage of human development when the unborn child is potentially able to live more than merely momentarily outside the womb of the mother by natural or artificial means;

(7) Emergency situation means that condition which, on the basis of the physician's good faith clinical judgment, so complicates the medical condition of a pregnant woman as to necessitate the immediate abortion of her pregnancy to avert her death or for which a delay will create serious risk of substantial impairment of a major bodily function;

(8) Probable gestational age of the unborn child means what will with reasonable probability, in the judgment of the physician, be the gestational age of the unborn child at the time the abortion is planned to be performed; and

(9) Partial-birth abortion means an abortion procedure in which the person performing the abortion partially delivers vaginally a living unborn child before killing the unborn child and completing the delivery. For purposes of this subdivision, the term partially delivers vaginally a living unborn child before killing the unborn child means deliberately and intentionally delivering into the vagina a living unborn child, or a substantial portion thereof, for the purpose of performing a procedure that the person performing such procedure knows will kill the unborn child and does kill the unborn child.

Sec. 65. Section 28-414, Revised Statutes Supplement, 1999, is amended to read:

28-414. (1)(a) Except as otherwise provided in this subsection or

section 28-412 or when administered directly by a practitioner to an ultimate user, a controlled substance listed in Schedule II of section 28-405 shall not be dispensed without the written prescription bearing the signature of a practitioner. A prescription for a controlled substance listed in Schedule II of section 28-405 shall not be refilled.

(b) In emergency situations as defined by rule and regulation of the department, a controlled substance listed in Schedule II of section 28-405 may be dispensed pursuant to an authorized transmitted copy of a written, signed prescription bearing the word "emergency" or pursuant to an oral prescription reduced to writing in accordance with subdivision (3)(b) of this section and filed by a pharmacist.

(c) In nonemergency situations:

(i) A controlled substance listed in Schedule II of section 28-405 may be dispensed pursuant to an authorized transmitted copy of a written, signed prescription if the original written, signed prescription is presented to the pharmacist for review before the controlled substance is dispensed, except as provided in subdivision (1)(c)(ii) or (1)(c)(iii) of this section;

(ii) A narcotic drug listed in Schedule II of section 28-405 may be dispensed pursuant to an authorized transmitted copy of a written, signed prescription (A) to be compounded for direct parenteral administration to a patient for the purpose of home infusion therapy or (B) for administration to a patient in a hospice licensed under the ~~Hospice~~ Hospice Health Care Facility Licensure Act or certified under Title XVIII of the federal Social Security Act, as amended, and bearing the words "hospice patient";

(iii) A controlled substance listed in Schedule II of section 28-405 may be dispensed pursuant to an authorized transmitted copy of a written, signed prescription for administration to a resident of a long-term care facility; and

(iv) For purposes of subdivisions (1)(c)(ii) and (1)(c)(iii) of this section, an authorized transmitted copy of a written, signed prescription shall serve as the original written prescription and shall be maintained in accordance with subdivision (3)(a) of this section.

(d)(i) A prescription for a controlled substance listed in Schedule II of section 28-405 may be partially filled if the pharmacist does not supply the full quantity prescribed and he or she makes a notation of the quantity supplied on the face of the prescription. The remaining portion of the prescription may be filled within seventy-two hours of the first partial filling. The pharmacist shall notify the prescribing practitioner if the remaining portion of the prescription is not or cannot be filled within such period. No further quantity may be supplied after such period without a new prescription.

(ii) A prescription for a controlled substance listed in Schedule II of section 28-405 written for a patient in a long-term care facility or for a patient with a medical diagnosis documenting a terminal illness may be partially filled. Such prescription shall bear the words "terminally ill" or "long-term care facility patient" on its face. If there is any question whether a patient may be classified as having a terminal illness, the pharmacist shall contact the prescribing practitioner prior to partially filling the prescription. Both the pharmacist and the prescribing practitioner have a corresponding responsibility to assure that the controlled substance is for a terminally ill patient. For each partial filling, the dispensing pharmacist shall record on the back of the prescription or on another appropriate record, uniformly maintained and readily retrievable, the date of the partial filling, quantity dispensed, remaining quantity authorized to be dispensed, and the identification of the dispensing pharmacist. The total quantity of controlled substances listed in Schedule II which are dispensed in all partial fillings shall not exceed the total quantity prescribed. A prescription for a Schedule II controlled substance for a patient in a long-term care facility or a patient with a medical diagnosis documenting a terminal illness is valid for sixty days from the date of issuance or until discontinuance of the prescription, whichever occurs first.

(2)(a) Except as otherwise provided in this subsection or when administered directly by a practitioner to an ultimate user, a controlled substance listed in Schedule III, IV, or V of section 28-405 shall not be dispensed without a written or oral prescription. Such prescription is valid for six months after the date of issuance. Practitioner authorization is required to refill such prescription. Such prescriptions shall not be refilled more than five times within six months after the date of issuance. Original prescription information for any controlled substance listed in Schedule III, IV, or V of section 28-405 may be transferred between pharmacies for purposes of refill dispensing pursuant to subsection (5) of this section.

(b) A controlled substance listed in Schedule III, IV, or V of

section 28-405 may be dispensed pursuant to an authorized transmitted copy of a written, signed prescription. The authorized transmitted copy of a written, signed prescription shall serve as the original written prescription for purposes of this ~~subdivision~~ subsection and shall be maintained in accordance with the provisions of subdivision (3)(c) of this section.

(c) A prescription for a controlled substance listed in Schedule III, IV, or V of section 28-405 may be partially filled if (i) each partial filling is recorded in the same manner as a refilling, (ii) the total quantity dispensed in all partial fillings does not exceed the total quantity prescribed, and (iii) each partial filling is dispensed within six months after the prescription was issued.

(3)(a) Prescriptions for all controlled substances listed in Schedule II of section 28-405 shall be kept in a separate file by the dispensing practitioner and shall be maintained for a minimum of five years. The practitioner shall make all such files readily available to the department and law enforcement for inspection without a search warrant.

(b) All prescriptions for controlled substances listed in Schedule II of section 28-405 shall contain the name and address of the patient, the name and address of the prescribing practitioner, the Drug Enforcement Administration number of the prescribing practitioner, the date of issuance, and the prescribing practitioner's signature. The practitioner filling such prescription shall write the date of filling and his or her own signature on the face of the prescription. If the prescription is for an animal, it shall also state the name and address of the owner of the animal and the species of the animal.

(c) Prescriptions for all controlled substances listed in Schedule III, IV, or V of section 28-405 shall be filed separately from other prescriptions in a single file by the dispensing practitioner and shall be maintained for a minimum of five years. The practitioner shall make all such files readily available to the department and law enforcement for inspection without a search warrant.

(d) All prescriptions for controlled substances listed in Schedule III, IV, or V of section 28-405 shall contain the name and address of the patient, the name and address of the prescribing practitioner, the Drug Enforcement Administration number of the prescribing practitioner, the date of issuance, and the prescribing practitioner's signature. If the prescription is for an animal, it shall also state the owner's name and address and species of the animal.

(e) A registrant who is the owner of any controlled substance listed in Schedule I or II of section 28-405 may transfer such controlled substance to another registrant as provided by law or by rule and regulation of the department.

(f) Before dispensing any controlled substance listed in Schedule II, III, IV, or V of section 28-405 the dispensing practitioner shall affix a label to the container in which the controlled substance is dispensed. Such label shall bear the name and address of the pharmacy or dispensing practitioner, the name of the patient, the date of filling, the consecutive number of the prescription under which it is recorded in the practitioner's prescription files, the name of the prescribing practitioner, and the directions for use of the controlled substance. Unless the prescribing practitioner writes "do not label" or words of similar import on the original written prescription or so designates in an oral prescription, such label shall also bear the name of the controlled substance.

(4) For purposes of this section, authorized transmitted copy means a paper copy of a written, signed prescription produced by an electronic or electromagnetic transmission or other means as authorized by rule and regulation of the department upon recommendation of the Board of Pharmacy.

(5) Original prescription information for any controlled substances listed in Schedule III, IV, or V of section 28-405 and other prescription drugs or devices not listed in section 28-405 may be transferred between pharmacies for the purpose of refill dispensing on a one-time basis. Pharmacies electronically accessing a real-time, on-line data base may transfer up to the maximum refills permitted by law and as authorized by the prescribing practitioner on the face of the prescription.

Sec. 66. Section 30-3402, Reissue Revised Statutes of Nebraska, is amended to read:

30-3402. For purposes of sections 30-3401 to 30-3432:

(1) Adult shall mean any person who is nineteen years of age or older or who is or has been married;

(2) Attending physician shall mean the physician, selected by or assigned to a principal, who has primary responsibility for the care and treatment of such principal;

(3) Attorney in fact shall mean an adult properly designated and authorized under sections 30-3401 to 30-3432 to make health care decisions for a principal pursuant to a power of attorney for health care and shall include a successor attorney in fact;

(4) Health care shall mean any treatment, procedure, or intervention to diagnose, cure, care for, or treat the effects of disease, injury, and degenerative conditions;

(5) Health care decision shall include consent, refusal of consent, or withdrawal of consent to health care. Health care decision shall not include (a) the withdrawal or withholding of routine care necessary to maintain patient comfort, (b) the withdrawal or withholding of the usual and typical provision of nutrition and hydration, or (c) the withdrawal or withholding of life-sustaining procedures or of artificially administered nutrition or hydration, except as provided by sections 30-3401 to 30-3432;

(6) Health care provider shall mean an individual or facility licensed, certified, or otherwise authorized or permitted by law to administer health care in the ordinary course of business or professional practice and shall include all facilities defined in ~~section 71-2017.01~~ the Health Care Facility Licensure Act;

(7) Incapable shall mean the inability to understand and appreciate the nature and consequences of health care decisions, including the benefits of, risks of, and alternatives to any proposed health care or the inability to communicate in any manner an informed health care decision;

(8) Life-sustaining procedure shall mean any medical procedure, treatment, or intervention that (a) uses mechanical or other artificial means to sustain, restore, or supplant a spontaneous vital function and (b) when applied to a person suffering from a terminal condition or who is in a persistent vegetative state, serves only to prolong the dying process. Life-sustaining procedure shall not include routine care necessary to maintain patient comfort or the usual and typical provision of nutrition and hydration;

(9) Persistent vegetative state shall mean a medical condition that, to a reasonable degree of medical certainty as determined in accordance with currently accepted medical standards, is characterized by a total and irreversible loss of consciousness and capacity for cognitive interaction with the environment and no reasonable hope of improvement;

(10) Power of attorney for health care shall mean a power of attorney executed in accordance with sections 30-3401 to 30-3432 which authorizes a designated attorney in fact to make health care decisions for the principal when the principal is incapable;

(11) Principal shall mean an adult who, when competent, confers upon another adult a power of attorney for health care;

(12) Reasonably available shall mean that a person can be contacted with reasonable efforts by an attending physician or another person acting on behalf of the attending physician;

(13) Terminal condition shall mean an incurable and irreversible medical condition caused by injury, disease, or physical illness which, to a reasonable degree of medical certainty, will result in death regardless of the continued application of medical treatment including life-sustaining procedures; and

(14) Usual and typical provision of nutrition and hydration shall mean delivery of food and fluids orally, including by cup, eating utensil, bottle, or drinking straw.

Sec. 67. Section 37-1254.06, Reissue Revised Statutes of Nebraska, is amended to read:

37-1254.06. (1) Any physician, registered nurse, other trained person employed by a licensed ~~institution or health care facility or health care service~~ defined in ~~section 71-2017.01~~ the Health Care Facility Licensure Act, a clinical laboratory certified pursuant to the Nebraska Clinical Laboratories Certification Act, the federal Clinical Laboratory Improvement Act of 1967, as amended, or Title XVIII or XIX of the federal Social Security Act, as amended, to withdraw human blood for scientific or medical purposes, or a hospital shall be an agent of the State of Nebraska when performing the act of withdrawing blood at the request of a peace officer pursuant to section 37-1254.02. The state shall be liable in damages for any illegal or negligent acts or omissions of such agents in performing the act of withdrawing blood. The agent shall not be individually liable in damages or otherwise for any act done or omitted in performing the act of withdrawing blood at the request of a peace officer pursuant to such section except for acts of willful, wanton, or gross negligence of the agent or of persons employed by such agent.

(2) Any person listed in subsection (1) of this section withdrawing a blood specimen for purposes of section 37-1254.02 shall, upon request, furnish to any law enforcement agency or the person being tested a certificate

stating that such specimen was taken in a medically acceptable manner. The certificate shall be signed under oath before a notary public and shall be admissible in any proceeding as evidence of the statements contained in the certificate. The form of the certificate shall be prescribed by the Department of Health and Human Services Regulation and Licensure and such forms shall be made available to the persons listed in subsection (1) of this section.

Sec. 68. Section 44-526, Reissue Revised Statutes of Nebraska, is amended to read:

44-526. For purposes of the Standardized Health Claim Form Act:

(1) Ambulatory surgical facility shall mean a facility, not a part of a hospital, which provides surgical treatment to patients not requiring hospitalization and which is licensed as a health clinic as defined by section ~~71-2017.01~~ 16 of this act but shall not include the offices of private physicians or dentists whether for individual or group practice;

(2) Health care shall mean any treatment, procedure, or intervention to diagnose, cure, care for, or treat the effects of disease or injury or congenital or degenerative condition;

(3) Health care practitioner shall mean an individual or group of individuals in the form of a partnership, limited liability company, or corporation licensed, certified, or otherwise authorized or permitted by law to administer health care in the course of professional practice and shall include the health care professions and occupations which are regulated in Chapter 71;

(4) Hospital shall mean a hospital as defined by section ~~71-2017.01~~ 19 of this act except state hospitals administered by the Department of Health and Human Services;

(5) Institutional care providers shall mean all facilities licensed or otherwise authorized or permitted by law to administer health care in the ordinary course of business and shall include all health care facilities defined in ~~section 71-2017.01~~ the Health Care Facility Licensure Act;

(6) Issuer shall mean an insurance company, fraternal benefit society, health maintenance organization, third-party administrator, or other entity reimbursing the costs of health care expenses;

(7) Medicaid shall mean the medical assistance program pursuant to sections 68-1018 to 68-1025;

(8) Medicare shall mean Title XVIII of the federal Social Security Act, 42 U.S.C. 1395 et seq., as amended; and

(9) Uniform claim form shall mean the claim forms and electronic transfer procedures developed pursuant to section 44-527.

Sec. 69. Section 44-771, Reissue Revised Statutes of Nebraska, is amended to read:

44-771. Hospital shall mean an institution licensed as a hospital by the Department of Health and Human Services Regulation and Licensure and ~~described in subdivision (2) of section 71-2017.01~~ defined in section 19 of this act.

Sec. 70. Section 44-772, Reissue Revised Statutes of Nebraska, is amended to read:

44-772. Substance abuse treatment center shall mean an institution licensed as a substance abuse treatment center by the Department of Health and Human Services Regulation and Licensure and ~~described~~ defined in section ~~71-2017.01~~ 30 of this act, which provides a program for the inpatient or outpatient treatment of alcoholism pursuant to a written treatment plan approved and monitored by a physician and which is affiliated with a hospital under a contractual agreement with an established system for patient referral.

Sec. 71. Section 44-782, Reissue Revised Statutes of Nebraska, is amended to read:

44-782. No insurance company, health maintenance organization, or other health insurance provider shall deny payment for treatment of mental or nervous disorders under a policy, contract, certificate, or other evidence of coverage issued or delivered in Nebraska on the basis that the hospital or state institution licensed as a hospital by the Department of Health and Human Services Regulation and Licensure and ~~described in subdivision (2) of section 71-2017.01~~ defined in section 19 of this act providing such treatment is publicly funded and charges are reduced or no fee is charged depending on the patient's ability to pay.

Sec. 72. Section 44-793, Revised Statutes Supplement, 1999, is amended to read:

44-793. (1) On or after January 1, 2000, notwithstanding section 44-3,131, any health insurance plan delivered, issued, or renewed in this state (a) if coverage is provided for treatment of mental health conditions other than alcohol or substance abuse, (i) shall not establish any rate, term,

or condition that places a greater financial burden on an insured for access to treatment for a serious mental illness than for access to treatment for a physical health condition and (ii) if an out-of-pocket limit is established for physical health conditions, shall apply such out-of-pocket limit as a single comprehensive out-of-pocket limit for both physical health conditions and mental health conditions, or (b) if no coverage is to be provided for treatment of mental health conditions, shall provide clear and prominent notice of such noncoverage in the plan.

(2) If a health insurance plan provides coverage for serious mental illness, the health insurance plan shall cover health care rendered for treatment of serious mental illness (a) by a mental health professional, (b) by a person authorized by the rules and regulations of the Department of Health and Human Services Regulation and Licensure to provide treatment for mental illness, (c) in a mental health center as defined in section ~~71-2017.01~~ 23 of this act, or (d) in any other health care facility licensed ~~institution or facility authorized in section 71-2017.01~~ under the Health Care Facility Licensure Act that provides a program for the treatment of a mental health condition pursuant to a written plan. The issuer of a health insurance plan may require a health care provider under this subsection to enter into a contract as a condition of providing benefits.

(3) The Director of Insurance may disapprove any plan that the director determines to be inconsistent with the purposes of this section.

Sec. 73. Section 44-2806, Reissue Revised Statutes of Nebraska, is amended to read:

44-2806. Hospital shall mean a public or private institution licensed pursuant to ~~sections 71-2017 to 71-2029~~ the Health Care Facility Licensure Act.

Sec. 74. Section 44-2827.01, Reissue Revised Statutes of Nebraska, is amended to read:

44-2827.01. (1) Any general acute hospital as defined in ~~subdivision (3) of section 71-2017.01~~ section 12 of this act or a psychiatric or mental hospital as defined in ~~subdivision (7) of such section~~ section 26 of this act operated by the Board of Regents of the University of Nebraska or any physician employed by the Board of Regents of the University of Nebraska may, in addition to the methods of establishing financial responsibility provided in section 44-2827, establish financial responsibility by a risk-loss trust.

(2) In order to establish financial responsibility through the use of a risk-loss trust, the risk-loss trust shall be approved in writing by the director. Such approval shall expire on the last day of April in each year and shall be renewed annually thereafter if the risk-loss trust continues to comply with the requirements of the Nebraska Hospital-Medical Liability Act and any rules and regulations adopted and promulgated thereunder.

(3) The director shall approve the use of a risk-loss trust to establish financial responsibility if he or she determines from a review of the plan of operation or feasibility study for the risk-loss trust that (a) the risk-loss trust will comply with all of the applicable requirements of the act, (b) the risk-loss trust has a financial plan which provides for adequate funding and adequate reserves to establish and maintain financial responsibility, and (c) the risk-loss trust has a plan of management designed to provide for its competent operation and management.

(4) Any risk-loss trust shall be established and maintained only on an occurrence basis, shall maintain reserves for payment of claims, and shall process and act upon claims in accordance with guidelines acceptable for Nebraska domestic insurance companies. The funds, or any part thereof, of any risk-loss trust may be invested as authorized under the Insurers Investment Act for any domestic property and casualty insurance company.

(5) Any risk-loss trust shall file with the director, on or before March 1 of each year, a financial statement under oath for the year ending December 31 immediately preceding which shall include an actuarial or loss reserve specialist's opinion. The trust shall annually be audited by an independent accountant, and such audit shall be filed with the director.

(6) The director may examine the business affairs, records, and assets of such risk-loss trust to assure that it will be able to establish and maintain financial responsibility. Any examination conducted by the director or his or her authorized representative shall be at the expense of the risk-loss trust.

(7) If the director finds after notice to the Board of Regents of the University of Nebraska and a hearing that the risk-loss trust is not maintaining financial responsibility, he or she may order the board to take such action as is necessary to establish financial responsibility and upon failure by the board to comply therewith may revoke approval of such trust.

(8) If any hospital or physician establishes financial

responsibility as provided in subsection (1) of this section, the annual surcharge amount which shall be levied against the board pursuant to section 44-2829 shall be established annually by the director after giving consideration to the following factors:

(a) The surcharge rate for hospitals and physicians set by the director pursuant to such section;

(b) The average rates charged by insurers of Nebraska hospitals and physicians;

(c) Variations in coverage provisions, liability limits, or deductibles between insurance provided by private insurers and the coverage provided by the risk-loss trust; and

(d) The loss experience of the board.

(9) The director may adopt and promulgate reasonable rules and regulations necessary and proper to carry out this section.

Sec. 75. Section 60-4,164.01, Reissue Revised Statutes of Nebraska, is amended to read:

60-4,164.01. (1) Any physician, registered nurse, other trained person employed by a licensed ~~institution or~~ health care facility or health care service defined in ~~section 71-2017.01~~ the Health Care Facility Licensure Act, a clinical laboratory certified pursuant to the Nebraska Clinical Laboratories Certification Act, the federal Clinical Laboratory Improvement Act of 1967, as amended, or Title XVIII or XIX of the federal Social Security Act, as amended, to withdraw human blood for scientific or medical purposes, or a hospital shall be an agent of the State of Nebraska when performing the act of withdrawing blood at the request of a peace officer pursuant to section 60-4,164. The state shall be liable in damages for any illegal or negligent acts or omissions of such agents in performing the act of withdrawing blood. The agent shall not be individually liable in damages or otherwise for any act done or omitted in performing the act of withdrawing blood at the request of a peace officer pursuant to such section except for acts of willful, wanton, or gross negligence of the agent or of persons employed by such agent.

(2) Any person listed in subsection (1) of this section withdrawing a blood specimen for purposes of section 60-4,164 shall, upon request, furnish to any law enforcement agency or the person being tested a certificate stating that such specimen was taken in a medically acceptable manner. The certificate shall be signed under oath before a notary public and shall be admissible in any proceeding as evidence of the statements contained in the certificate. The form of the certificate shall be prescribed by the Department of Health and Human Services Regulation and Licensure and such forms shall be made available to the persons listed in subsection (1) of this section.

Sec. 76. Section 60-6,201, Reissue Revised Statutes of Nebraska, is amended to read:

60-6,201. (1) Any test made under section 60-6,197, if made in conformity with the requirements of this section, shall be competent evidence in any prosecution under a state statute or city or village ordinance involving operating a motor vehicle while under the influence of alcoholic liquor or drugs or involving driving or being in actual physical control of a motor vehicle when the concentration of alcohol in the blood or breath is in excess of allowable levels.

(2) Any test made under section 60-6,211.02, if made in conformity with the requirements of this section, shall be competent evidence in any prosecution involving operating or being in actual physical control of a motor vehicle in violation of section 60-6,211.01.

(3) To be considered valid, tests of blood, breath, or urine made under section 60-6,197 or 60-6,211.02 shall be performed according to methods approved by the Department of Health and Human Services Regulation and Licensure and by an individual possessing a valid permit issued by such department for such purpose, except that a physician, registered nurse, or other trained person employed by a licensed ~~institution or~~ health care facility or health care service which is defined in ~~section 71-2017.01~~ the Health Care Facility Licensure Act or clinical laboratory certified pursuant to the Nebraska Clinical Laboratories Certification Act, the federal Clinical Laboratory Improvement Act of 1967, as amended, or Title XVIII or XIX of the federal Social Security Act to withdraw human blood for scientific or medical purposes, acting at the request of a peace officer, may withdraw blood for the purpose of a test to determine the alcohol concentration or the presence of drugs and no permit from the department shall be required for such person to withdraw blood pursuant to such an order. The department may approve satisfactory techniques or methods to perform such tests and may ascertain the qualifications and competence of individuals to perform such tests and issue permits which shall be subject to termination or revocation at the discretion

of the department.

(4) A permit fee may be established by regulation by the department which shall not exceed the actual cost of processing the initial permit. Such fee shall be charged annually to each permitholder. The fees shall be used to defray the cost of processing and issuing the permits and other expenses incurred by the department in carrying out this section. The fee shall be remitted to the State Treasurer for credit to the Department of Health and Human Services Regulation and Licensure Cash Fund as a laboratory service fee.

(5) Relevant evidence shall not be excluded in any prosecution under a state statute or city or village ordinance involving operating a motor vehicle while under the influence of alcoholic liquor or drugs or involving driving or being in actual physical control of a motor vehicle when the concentration of alcohol in the blood, breath, or urine is in excess of allowable levels on the ground that the evidence existed or was obtained outside of this state.

Sec. 77. Section 60-6,202, Reissue Revised Statutes of Nebraska, is amended to read:

60-6,202. (1) Any physician, registered nurse, other trained person employed by a licensed ~~institution or health care facility or health care service~~ defined in ~~section 71-2017.01~~ the Health Care Facility Licensure Act, a clinical laboratory certified pursuant to the Nebraska Clinical Laboratories Certification Act, the federal Clinical Laboratory Improvement Act of 1967, as amended, or Title XVIII or XIX of the federal Social Security Act, as amended, to withdraw human blood for scientific or medical purposes, or a hospital shall be an agent of the State of Nebraska when performing the act of withdrawing blood at the request of a peace officer pursuant to sections 60-6,197 and 60-6,211.02. The state shall be liable in damages for any illegal or negligent acts or omissions of such agents in performing the act of withdrawing blood. The agent shall not be individually liable in damages or otherwise for any act done or omitted in performing the act of withdrawing blood at the request of a peace officer pursuant to such sections except for acts of willful, wanton, or gross negligence of the agent or of persons employed by such agent.

(2) Any person listed in subsection (1) of this section withdrawing a blood specimen for purposes of section 60-6,197 or 60-6,211.02 shall, upon request, furnish to any law enforcement agency or the person being tested a certificate stating that such specimen was taken in a medically acceptable manner. The certificate shall be signed under oath before a notary public and shall be admissible in any proceeding as evidence of the statements contained in the certificate. The form of the certificate shall be prescribed by the Department of Health and Human Services Regulation and Licensure and such forms shall be made available to the persons listed in subsection (1) of this section.

Sec. 78. Section 60-6,204, Reissue Revised Statutes of Nebraska, is amended to read:

60-6,204. Any person arrested for any offense involving the operation or actual physical control of a motor vehicle while under the influence of alcoholic liquor or drugs shall be required to submit to a chemical test or tests of his or her blood, breath, or urine as provided in section 60-6,197 without the preliminary breath test if the arresting peace officer does not have available the necessary equipment for administering a breath test or if the person is unconscious or is otherwise in a condition rendering him or her incapable of testing by a preliminary breath test. Only a physician, registered nurse, or other trained person employed by a licensed ~~institution or health care facility or health care service~~ which is defined in section 71-2017.01 the Health Care Facility Licensure Act or a clinical laboratory certified pursuant to the Nebraska Clinical Laboratories Certification Act, the federal Clinical Laboratory Improvement Act of 1967, as amended, or Title XVIII or XIX of the federal Social Security Act to withdraw human blood for scientific or medical purposes, acting at the request of a peace officer, may withdraw blood for the purpose of determining the concentration of alcohol or the presence of drugs, but this limitation shall not apply to the taking of a urine or breath specimen.

Sec. 79. Section 68-1006.01, Revised Statutes Supplement, 1999, is amended to read:

68-1006.01. The Department of Health and Human Services shall include in the standard of need for eligible aged, blind, and disabled persons at least fifty dollars per month for a personal needs allowance if such persons reside in an alternative living arrangement.

For purposes of this section, an alternative living arrangement shall include board and room, a ~~licensed~~ boarding home, a certified adult family home, a licensed assisted-living facility, a licensed group home for

children or child-caring agency, a licensed center for the developmentally disabled, and a long-term care facility.

Sec. 80. Section 68-1019.02, Reissue Revised Statutes of Nebraska, is amended to read:

68-1019.02. For the fiscal year beginning July 1, 1993, the Department of Social Services and, on or after January 1, 1997, the Department of Health and Human Services Finance and Support may initiate the following limits as to amount, duration, and scope of services or goods recipients may receive under the medical assistance program:

(1) Chiropractic services for all eligible groups: Limit the number of manual manipulations to eighteen treatments in a five-month period and limit coverage of stabilization of care to one visit per month;

(2) Podiatric services for all eligible groups: Reduce payment by twelve percent for certain surgical procedures if done in a hospital outpatient setting rather than in the office of a podiatrist;

(3) Occupational therapy, physical therapy, and speech, hearing, and language therapy for adults: Limit coverage of therapy provided by home health agencies and emphasize an increase in independent therapy by these health care providers;

(4) Limit amount of payments for ventilator-dependent recipients to the cost of care of average institutional costs and limit other in-home nursing costs to the highest case-mix level per diem for nursing facilities;

(5) Dental services for adults: Eliminate coverage of cast partial dentures and eliminate coverage of partial dentures except to replace front teeth;

(6) Visual care: All routine eye exams to be billed at the intermediate level of care, set maximum payment levels for eyeglass lenses rather than pay laboratory invoice costs, establish medical necessity criteria for eyeglass tints and UV coating, and establish a selection of frame styles coverable;

(7) Durable medical equipment: Reduce payment levels for equipment and supplies, simplify policies and procedures for converting durable medical equipment rental to purchase, and eliminate future coverage of external powered prosthetic devices;

(8) Hearing aids: Reduce hearing aid dispensing fees;

(9) Further expand the mandate to use bioequivalent generic drugs;

(10) Transportation services: Eliminate transportation to non-medicaid-coverable services except for transportation to adult day care facilities services as defined in section 4 of this act; reimbursements and lodging when provided through a hospital shall be included as a medical transportation service under the medical assistance program; and set taxi reimbursement at seventy-five percent of customary charge; and

(11) Eliminate coverage of mileage and conference fees for home-based service providers providing outpatient psychiatric services for adults.

Sec. 81. Section 68-1038, Revised Statutes Supplement, 1998, is amended to read:

68-1038. For purposes of sections 68-1038 to 68-1043:

(1) Assets means property which is not exempt, under rules and regulations of the director, from consideration in determining eligibility for medical assistance;

(2) Community spouse monthly income allowance means the amount of income determined by the department in accordance with section 1924 of the federal Social Security Act, as amended, Public Law 100-360, 42 U.S.C. 1396r-5;

(3) Community spouse resource allowance means the amount of assets determined in accordance with section 1924 of the federal Social Security Act, as amended, Public Law 100-360, 42 U.S.C. 1396r-5. For purposes of 42 U.S.C. 1396r-5(f)(2)(A)(i), the amount specified by the state shall be twelve thousand dollars;

(4) Department means the Department of Health and Human Services;

(5) Director means the Director of Health and Human Services;

(6) Home and community-based services means services furnished under home and community-based waivers as defined in Title XIX of the federal Social Security Act, as amended, 42 U.S.C. 1396;

(7) Medical assistance means assistance provided pursuant to the program established by section 68-1018;

(8) Qualified applicant means a person (a) who applies for medical assistance on or after July 9, 1988, (b) who is under care in a state-licensed hospital, skilled nursing facility, intermediate care facility, intermediate care facility for the mentally retarded, nursing facility, assisted-living facility, or center for the developmentally disabled, as such terms are

defined in ~~section 71-2017.01~~ the Health Care Facility Licensure Act, or an adult family home certified by the department or is receiving home and community-based services, and (c) whose spouse is not under such care or receiving such services and is not applying for or receiving medical assistance;

(9) Qualified recipient means a person (a) who has applied for medical assistance before July 9, 1988, and is eligible for such assistance, (b) who is under care in a facility certified to receive medical assistance funds under sections 68-1018 to 68-1036 or is receiving home and community-based services, and (c) whose spouse is not under such care or receiving such services and is not applying for or receiving medical assistance; and

(10) Spouse means the spouse of a qualified applicant or qualified recipient.

Sec. 82. Section 68-1202, Reissue Revised Statutes of Nebraska, is amended to read:

68-1202. Social services may be provided on behalf of recipients with payments for such social services made directly to vendors. Social services shall include those mandatory and optional services to former, present, or potential social services recipients provided for under the federal Social Security Act, as amended, and described by the State of Nebraska in the approved State Plan for Services. Such services may include, but shall not be limited to, foster care for children, child care, family planning, treatment for alcoholism and drug addiction, treatment for persons with mental retardation, health-related services, protective services for children, homemaker services, employment services, foster care for adults, protective services for adults, transportation services, home management and other functional education services, housing improvement services, legal services, ~~day care for adults~~ adult day services, home delivered or congregate meals, and educational services.

Sec. 83. Section 69-2507, Reissue Revised Statutes of Nebraska, is amended to read:

69-2507. ~~Except for plastic bottles and rigid plastic containers used by the health care facilities defined in section 71-2017.01, the~~ The Plastic Container Coding Act shall apply to plastic bottles and rigid plastic containers manufactured or distributed on or after January 1, 1994. ~~The act shall apply to plastic bottles and rigid plastic containers used by such health care facilities on and after January 1, 1997.~~

Sec. 84. Section 71-168.02, Revised Statutes Supplement, 1998, is amended to read:

71-168.02. (1) A health care facility licensed under ~~section 71-2017.01~~ the Health Care Facility Licensure Act or a peer review organization or professional association of a health care profession regulated under the Advanced Registered Nurse Practitioner Act, the Emergency Medical Services Act, the Licensed Practical Nurse-Certified Act, the Nebraska Certified Nurse Midwifery Practice Act, the Nebraska Cosmetology Act, the Nurse Practice Act, the Occupational Therapy Practice Act, the Uniform Controlled Substances Act, the Uniform Licensing Law, the Wholesale Drug Distributor Licensing Act, or sections 71-3702 to 71-3715, 71-4701 to 71-4719, or 71-6053 to 71-6068 shall report to the department, on a form and in the manner specified by the department by rule and regulation, any facts known to them, including, but not limited to, the identity of the practitioner and patient, when the facility, organization, or association:

(a) Has made payment due to adverse judgment, settlement, or award of a professional liability claim against it or a licensee, certificate holder, or registrant, including settlements made prior to suit, arising out of the acts or omissions of the licensee, certificate holder, or registrant; or

(b) Takes action adversely affecting the privileges or membership of a licensee, certificate holder, or registrant in such facility, organization, or association due to alleged incompetence, professional negligence, unprofessional conduct, or physical, mental, or chemical impairment.

The report shall be made within thirty days after the date of the action or event.

(2) A report made to the department under this section shall be confidential and treated in the same manner as complaints and investigative files under subsection (7) of section 71-168.01. The facility, organization, association, or person making such report shall be completely immune from criminal or civil liability of any nature, whether direct or derivative, for filing a report or for disclosure of documents, records, or other information to the department under this section. The reports and information shall be subject to the investigatory and enforcement provisions of the regulatory

provisions listed in subsection (1) of this section. Nothing in this subsection shall be construed to require production of records protected by section 25-12,123, 71-2048, or 71-7903 except as otherwise provided in any of such sections.

(3) For purposes of this section, the department shall accept reports made to it under the Nebraska Hospital-Medical Liability Act or in accordance with national practitioner data bank requirements of the federal Health Care Quality Improvement Act of 1986, as amended, and may require a supplemental report to the extent such reports do not contain the information required by rules and regulations of the department.

Sec. 85. Section 71-185.01, Revised Statutes Supplement, 1999, is amended to read:

71-185.01. (1) For purposes of this section, practitioner's facility shall mean a facility in which a licensed dentist practices his or her profession, other than a facility licensed pursuant to ~~Chapter 71, article 20~~ the Health Care Facility Licensure Act.

(2) The department shall adopt and promulgate rules and regulations which are approved by the State Board of Health for practitioners' facilities in order to insure that such facilities are safe and sanitary and use precautions necessary to prevent the creation and spread of infectious and contagious diseases. Based upon a formal complaint, the department or its employees may inspect any practitioner's facility in this state to insure compliance with such regulations.

(3) Within thirty days after an inspection of a practitioner's facility which the department or its employees find to be in violation of its rules and regulations, the department shall notify the Board of Dentistry of its findings in writing. The department shall file a petition for disciplinary action pursuant to section 71-150 if the violation of the rules and regulations is not corrected within thirty days after the licensee has received notice of such violation. The department shall send a written progress report of its inspection and actions taken to the board.

(4) It shall be considered unprofessional conduct for a licensee to practice in a facility that does not comply with the rules and regulations regarding sanitary practitioners' facilities.

Sec. 86. Section 71-1,103, Revised Statutes Supplement, 1999, is amended to read:

71-1,103. The following classes of persons shall not be construed to be engaged in the unauthorized practice of medicine:

- (1) Persons rendering gratuitous services in cases of emergency;
- (2) Persons administering ordinary household remedies;
- (3) The members of any church practicing its religious tenets, except that they shall not prescribe or administer drugs or medicines, perform surgical or physical operations, nor assume the title of or hold themselves out to be physicians or surgeons, and such members shall not be exempt from the quarantine laws of this state;
- (4) Students of medicine and surgery who are studying in an accredited school or college of medicine and who gratuitously prescribe for and treat disease under the supervision of a licensed physician;
- (5) Physicians and surgeons of the United States Armed Forces or Public Health Service or United States Department of Veterans Affairs when acting in the line of such duty in this state;
- (6) Physicians and surgeons who are graduates of an accredited school or college of medicine with the degree of Doctor of Medicine and licensed in another state when incidentally called into this state for consultation with a physician and surgeon licensed in this state;
- (7) Physicians and surgeons who are graduates of an accredited school or college of medicine with the degree of Doctor of Medicine and who reside in a state bordering this state and who are duly licensed under the laws thereof to practice medicine and surgery but who do not open an office or maintain or appoint a place to meet patients or to receive calls within this state unless they are performing services described in subdivision (7) of section 71-1,102;
- (8) Persons providing or instructing as to use of braces, prosthetic appliances, crutches, contact lenses, and other lenses and devices prescribed by a doctor of medicine licensed to practice while working under the direction of such physician;
- (9) Dentists practicing their profession when licensed and practicing in accordance with sections 71-183 to 71-191;
- (10) Optometrists practicing their profession when licensed and practicing under and in accordance with sections 71-1,133 to 71-1,136;
- (11) Osteopathic physicians practicing their profession if licensed and practicing under and in accordance with sections 71-1,137 and 71-1,141;

(12) Chiropractors practicing their profession if licensed and practicing under sections 71-177 to 71-182;

(13) Podiatrists practicing their profession when licensed and practicing under and in accordance with sections 71-173 to 71-176;

(14) Psychologists practicing their profession when licensed and practicing under and in accordance with sections 71-1,206.01 to 71-1,206.35;

(15) Advanced registered nurse practitioners and certified registered nurse anesthetists practicing their profession when licensed and practicing under and in accordance with the Advanced Registered Nurse Practitioner Act;

(16) Any person licensed or certified under the laws of this state to practice a limited field of the healing art, not specifically named in this section, when confining themselves strictly to the field for which they are licensed or certified, not assuming the title of physician, surgeon, or physician and surgeon, and not professing or holding themselves out as qualified to prescribe drugs in any form or to perform operative surgery;

(17) Physicians and surgeons who are duly licensed to practice medicine and surgery in another state who have been recommended by the secretary of the board of examiners in the state of licensure and who have been granted temporary practice rights by the Board of Medicine and Surgery, with the approval of the department, for a period not to exceed three months in any twelve-month period;

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

(19) Any other trained person employed by a licensed ~~institution or health care facility or health care service which is~~ defined in ~~section 71-2017.01~~ the Health Care Facility Licensure Act or clinical laboratory certified pursuant to the Nebraska Clinical Laboratories Certification Act, the federal Clinical Laboratory Improvement Act of 1967, as amended, or Title XVIII or XIX of the federal Social Security Act to withdraw human blood for scientific or medical purposes.

Every act or practice falling within the practice of medicine and surgery as defined not specially excepted in this section shall constitute the practice of medicine and surgery and may be performed in this state only by those licensed by law to practice medicine in Nebraska.

Sec. 87. Section 71-1,142, Revised Statutes Supplement, 1999, is amended to read:

71-1,142. For purposes of sections 71-1,142 to 71-1,147.61 and elsewhere in the Uniform Licensing Law, unless the context otherwise requires:

(1) Practice of pharmacy means (a) the interpretation and evaluation of prescription orders, (b) the compounding, dispensing, and labeling of drugs and devices, except labeling by a manufacturer, packer, or distributor of nonprescription drugs and commercially packaged legend drugs and devices, (c) the participation in drug selection, drug utilization review, drug source selection, and drug administration, (d) the proper and safe storage of drugs and devices and the maintenance of proper records therefor, (e) patient counseling, (f) the provision of pharmaceutical care, and (g) the offering or performing of those acts, services, operations, or transactions necessary in the conduct, operation, management, and control of pharmacy. The active practice of pharmacy means the performance of the functions set out in this subdivision by a pharmacist as his or her principal or ordinary occupation;

(2) Administration means the direct application of a drug or device by injection, inhalation, ingestion, or other means to the body of a patient;

(3) Board means the Board of Pharmacy;

(4) Caregiver means any person acting as an agent on behalf of a patient or any person aiding and assisting a patient;

(5) Compounding means the preparation, mixing, or assembling of a drug or device (a) as the result of a practitioner's prescription order or initiative occurring in the course of professional practice based upon the relationship between the practitioner, patient, and pharmacist or (b) for the purpose of, or incident to, research, teaching, or chemical analysis and not for sale or dispensing. Compounding includes the preparation of drugs or devices in anticipation of prescription orders based upon routine, regularly observed prescribing patterns;

(6) Deliver or delivery means the actual, constructive, or attempted transfer of a drug or device from one person to another, whether or not for consideration;

(7) Department means the Department of Health and Human Services Regulation and Licensure;

(8) Device means an instrument, apparatus, implement, machine, contrivance, implant, in vitro reagent, or other similar or related article, including any component part or accessory, which is prescribed by a medical practitioner and dispensed by a pharmacist or other person authorized by law to do so;

(9) Dialysis drug or device distributor means a manufacturer or wholesaler who provides dialysis drugs, solutions, supplies, or devices, to persons with chronic kidney failure for self-administration at the person's home or specified address, upon the order of a medical practitioner;

(10) Dialysis drug or device distributor worker means a person working for a dialysis drug or device distributor operating with a drug dispensing permit who has completed the approved training and has demonstrated proficiency to perform the task or tasks of assembling, labeling, or delivering a patient order;

(11) Dispense or dispensing means the preparation and delivery of a drug or device pursuant to a lawful order of a medical practitioner in a suitable container appropriately labeled for subsequent administration to or use by a patient or other individual entitled to receive the drug or device;

(12) Distribute means the delivery of a drug or device other than by administering or dispensing;

(13) Drug dispensing permit means a permit issued by the department upon the recommendation of the board to a public health clinic or a dialysis drug or device distributor which allows for the dispensing of drugs and devices in the formulary approved pursuant to section 71-1,147.48;

(14) Person means an individual, corporation, partnership, limited liability company, association, or other legal entity;

(15) 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, 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;

(16) Pharmaceutical care means the provision of drug therapy for the purpose of achieving therapeutic outcomes that improve a patient's quality of life. Such outcomes include (a) the cure of disease, (b) the elimination or reduction of a patient's symptomatology, (c) the arrest or slowing of a disease process, or (d) the prevention of a disease or symptomatology. Pharmaceutical care includes the process through which the pharmacist works in concert with the patient and his or her caregiver, physician, or other professionals in designing, implementing, and monitoring a therapeutic plan that will produce specific therapeutic outcomes for the patient;

(17) Pharmacist means any person who (a) is licensed by the State of Nebraska to practice pharmacy or (b) is primarily responsible for providing pharmaceutical care as defined in subdivision (16) of this section;

(18) Pharmacy means (a) any establishment, place, or location advertised as a pharmacy, drug store, hospital pharmacy, dispensary, apothecary, or any combination of such titles or any establishment where the practice of pharmacy is carried on except as exempted in section 71-1,143 and (b) any establishment, place, or location used as a pick-up point or drop point, including kiosks, for prescriptions to be filled or where prescribed drugs or devices are made ready for delivery to the patient, but does not include an emergency box located within an institution pursuant to the provisions of the Emergency Box Drug Act;

(19) Drugs, medicines, and medicinal substances means (a) articles recognized in the official United States Pharmacopoeia, the Homeopathic Pharmacopoeia of the United States, the official National Formulary, or any supplement to any of them, (b) articles intended for use in the diagnosis, cure, mitigation, treatment, or prevention of diseases in humans or animals, (c) articles, except food, intended to affect the structure or any function of the body of a human or an animal, (d) articles intended for use as a component of any articles specified in subdivision (a), (b), or (c) of this subdivision, except any device or its components, parts, or accessories, and (e) prescription drugs as defined in subdivision (25) of this section;

(20) Medical practitioner means any licensed physician, surgeon, podiatrist, dentist, or other person licensed to write prescriptions intended for treatment or prevention of disease or to affect body function in humans or animals;

(21) Patient counseling means the verbal communication by a pharmacist, in a manner reflecting dignity and the right of the patient to a reasonable degree of privacy, of information to the patient or caregiver in order to improve therapeutic outcomes by maximizing proper use of prescribed drugs and devices and also includes the duties set out in subsection (2) of section 71-1,147.35;

(22) Pharmacist in charge means a pharmacist licensed by the State of Nebraska to practice pharmacy who has been designated on a pharmacy permit or designated by a public or private hospital licensed by the department as being responsible for the practice of pharmacy in the pharmacy for which such permit is issued or such hospital's inpatient pharmacy and who shall work within the physical confines of such pharmacy for a majority of the hours per week that the pharmacy is open for business averaged over a twelve-month period or thirty hours per week, whichever is less;

(23) Pharmacy intern means (a) a student currently enrolled in an accredited college or school of pharmacy or (b) a graduate of an accredited college or school of pharmacy serving his or her internship, such internship to expire not later than fifteen months after the date of graduation or at the time of professional licensure, whichever comes first. Such pharmacy intern may compound and dispense drugs or devices and fill prescriptions only in the presence of and under the immediate personal supervision of a licensed pharmacist. Such licensed pharmacist shall either be (i) the person to whom the pharmacy permit is issued or a person in the actual employ of the permittee or (ii) the pharmacist in charge designated by a public or private institution licensed as a hospital by the department which is not required to obtain a permit pursuant to section 71-1,147.01 prior to January 1, 2002, or a license as a pharmacy on or after such date or a person in the actual employ of such institution;

(24) Pharmacy technician means an individual at least eighteen years of age who is a high school graduate or officially recognized by the State Department of Education as possessing the equivalent degree of education, who has never been convicted of any drug-related misdemeanor or felony, and who, under the written control procedures and guidelines of an employing pharmacy and having received onsite training pursuant to subsection (4) of section 71-1,147.33, may perform those functions which do not require the exercise of professional judgment in assisting a pharmacist in connection with the preparation, compounding, dispensing, and distribution of drugs or devices under the supervision of a licensed pharmacist on duty in the facility when such functions are subject to verification;

(25) Prescription drug or legend drug means (a) a drug which under federal law is required, prior to being dispensed or delivered, to be labeled with either of the following statements: (i) Caution: Federal law prohibits dispensing without prescription; or (ii) Caution: Federal law restricts this drug to use by or on the order of a licensed veterinarian or (b) a drug which is required by any applicable federal or state law or regulation to be dispensed on prescription only or is restricted to use by medical practitioners only;

(26) Prescription order or prescription means a lawful written or verbal order of a medical practitioner for a drug or device but does not include an order for a drug or device which is dispensed for administration to a patient during the patient's stay in a hospital;

(27) Nonprescription drugs means nonnarcotic medicines or drugs which may be sold without a prescription and which are prepackaged for use by the consumer and labeled in accordance with the requirements of the laws and regulations of this state and the federal government;

(28) Public health clinic worker means a person in a public health clinic operating with a drug dispensing permit who has completed the approved training and has demonstrated proficiency to perform the task of dispensing authorized refills of oral contraceptives;

(29) Public health clinic means the department, any county, city-county, or multicounty health department, or any private not-for-profit family planning clinic licensed as a health clinic as defined in section ~~71-2017.01~~ 16 of this act;

(30) Supervision means the immediate personal guidance and direction by the licensed pharmacist on duty in the facility of the performance by a pharmacy technician of authorized activities or functions subject to verification by such pharmacist, except that when a pharmacy technician performs authorized activities or functions to assist a pharmacist on duty in the facility when the prescribed drugs or devices will be administered by a licensed staff member or consultant or by a licensed physician assistant to persons who are patients or residents of a health care facility licensed pursuant to sections 71-2017 to 71-2029 the Health Care Facility Licensure Act, the activities or functions of such pharmacy technician shall only be subject to verification by a pharmacist on duty in the facility;

(31) Verification means the confirmation by the supervising pharmacist of the accuracy and completeness of the acts, tasks, or functions undertaken by a pharmacy technician to assist the pharmacist in the practice of pharmacy. Verification by the supervising pharmacist shall be documented

prior to the time when the drug or device is dispensed; and

(32) Written control procedures and guidelines means the document prepared by an employing pharmacy and approved by the board which specifies the manner in which the qualifications of pharmacy technicians employed by the pharmacy are determined, the manner in which the training of such technicians is conducted and their basic level of competency is confirmed, the manner in which supervision is provided, the manner in which the functions of pharmacy technicians are verified, and a protocol governing the use of pharmacy technicians and the functions which they may perform.

Sec. 88. Section 71-1,147.08, Revised Statutes Supplement, 1998, is amended to read:

71-1,147.08. (1) Except as otherwise provided in section 71-1,147.01, a person desiring to open a new pharmacy shall file an application for a permit not less than thirty days prior to the contemplated opening date. Before a permit may be granted for the operation of a new pharmacy, an inspection shall be made by a duly qualified representative of the board to determine whether all of the requirements for such a permit have been fulfilled. If all of the requirements have been fulfilled, the department shall issue a permit for the operation of the new pharmacy. The fee for such permit, to accompany the application, shall be two hundred dollars.

(2) Any person desiring to open a new pharmacy who is not required to obtain a permit under section 71-1,147.01 shall file an application for initial inspection at least thirty days prior to the contemplated opening date. Upon satisfactory completion of the inspection the department shall issue the pharmacy an initial inspection certificate. The pharmacy shall post such certificate in a conspicuous place within view of the public. The fee for such certificates issued on the basis of an inspection shall be two hundred dollars. Within six months after May 10, 1983, the department shall issue an initial certificate to each pharmacy existing on May 10, 1983, which was initially inspected prior to such date and which was not required to obtain a permit pursuant to section 71-1,147.01.

(3) Any public or private hospital pharmacy which does not display an initial inspection certificate issued pursuant to subsection (2) of this section shall be subject to a six-month suspension of the license of the public or private hospital.

(4) The department shall, except as provided in subsection (5) of this section, inspect each pharmacy in the state at least once every year. The department shall have primary authority to inspect pharmacies of public and private hospitals licensed by the department and shall coordinate routine inspections of pharmacies in hospitals licensed by the department. The board or its representatives shall immediately report any suspected violation of the minimum pharmacy standard to the department which shall take remedial action. Such violation, if proved, shall be grounds for denial, suspension, or revocation of the license of the hospital under ~~section 71-2023~~ sections 47 and 48 of this act.

(5) The department may, upon recommendation by the board, accept the inspection of a hospital pharmacy conducted by the Joint Commission on the Accreditation of Hospitals in lieu of the inspection required pursuant to subsection (4) of this section if the Director of Regulation and Licensure determines that the commission standards are equal to or more stringent than the standards of the department.

(6) The department shall charge an annual inspection fee for each pharmacy inspected pursuant to subsection (4) or (5) of this section which does not possess a permit issued pursuant to section 71-1,147.07. Such fee shall be one hundred dollars and shall be paid into the Nebraska Pharmaceutical Fund.

Sec. 89. Section 71-1,147.09, Revised Statutes Supplement, 1999, is amended to read:

71-1,147.09. To protect the health, safety, and welfare of the public, to ensure to the greatest extent possible the accurate, efficient, and safe practice of pharmacy, to ensure that prescribed drugs and devices conform to the orders authorizing their dispensing or administration, and to implement sections 28-1437 to 28-1439.01, 71-1,142 to 71-1,147.36, 71-2401 to 71-2405, and 71-2501 to 71-2512, the Mail Service Prescription Drug Act, the Nebraska Drug Product Selection Act, and the Uniform Controlled Substances Act, the department, upon the recommendation of the board, shall adopt and promulgate rules and regulations:

(1) For the enforcement of sections 71-1,142 to 71-1,147.36;

(2) To establish minimum requirements regarding adequate facilities for the safe storage of narcotic drugs and other drugs requiring refrigeration or other special storage;

(3) For equipment, facilities, and utilities for the prescription department;

(4) To establish minimum standards governing sanitation, orderliness, cleanliness, library requirements, ventilation, and prescription and other record keeping;

(5) To establish minimum standards governing the definition and application of computers or other electronic record systems in pharmacy;

(6) To establish minimum standards for the practice of nuclear pharmacy;

(7) To establish minimum standards for the dispensing of drugs or devices in unit-dose and modified unit-dose containers;

(8) To establish minimum standards for compounding, dispensing, and administering sterile products;

(9) To establish minimum standards governing the inspection of pharmacies to demonstrate compliance with sections 28-1437 to 28-1439.01, 71-1,142 to 71-1,147.36, 71-2401 to 71-2405, and 71-2501 to 71-2512, the Nebraska Drug Product Selection Act, and the Uniform Controlled Substances Act and such rules and regulations as are adopted and promulgated by the department pursuant to such sections and acts. Such standards shall include, but not be limited to: (a) Criteria for successful completion of an opening inspection; (b) criteria for successful completion of an annual inspection; and (c) criteria for the issuance of a written warning notice listing specific violations to which the permittee shall respond in writing to the department, by the date stated on the warning notice, stating that the violations listed in the warning notice have been corrected;

(10) To establish minimum standards governing patient counseling, patient information, and communications to a patient;

(11) To establish standards governing pharmacy interns and pharmacy technicians. In establishing standards for the number of pharmacy interns or pharmacy technicians that a pharmacist may supervise, the department shall consider the following: (a) History of the use of such personnel; (b) current literature discussing safety, productivity, and expense associated with the use of pharmacy technicians; (c) requirements in surrounding states for pharmacy intern supervision; and (d) such other factors as the department deems relevant to protect the public safety;

(12) To establish minimum standards for the terms and provisions of the written control procedures and guidelines required by subsection (4) of section 71-1,147.33 as they relate to the qualifications, onsite training, functions, and supervision of pharmacy technicians;

(13) To establish standards and guidelines for the identification of pharmacy technicians as such while they are performing duties in a pharmacy; and

(14) To establish minimum standards and guidelines for the documentation of the verification of the acts, tasks, or functions of pharmacy technicians.

The minimum standards and requirements for the practice of pharmacy and for public or private hospital pharmacies licensed by the department shall be consistent with the minimum requirements and standards established by the department under ~~sections 71-2017 to 71-2029~~ the Health Care Facility Licensure Act.

Sec. 90. Section 71-1,147.10, Revised Statutes Supplement, 1999, is amended to read:

71-1,147.10. (1) The department shall deny an application for a permit to conduct a pharmacy, revoke or suspend a permit to conduct a pharmacy, refuse renewal of a permit to conduct a pharmacy, deny an application for a license to operate a hospital, revoke or suspend the license of a hospital, or refuse renewal of a hospital license on any of the following grounds:

(a) Conviction of any crime involving moral turpitude;

(b) Obtaining a pharmacy permit or an inspection certificate by false representation or fraud;

(c) Operating a pharmacy or hospital pharmacy without a licensed pharmacist responsible for the practice of pharmacy;

(d) The compounding and dispensing of drugs or devices or the filling of a prescription by a person other than a licensed pharmacist or by a pharmacy intern, without the presence of and the immediate personal supervision of a licensed pharmacist except as provided in sections 71-1,147.33 and 71-1,147.53;

(e) A conviction of a violation of sections 71-1,142 to 71-1,147.61 or of a felony or, if a natural person, the revocation or suspension of a license to practice pharmacy in this state;

(f) Unprofessional conduct which shall include, but not be limited

to:

(i) Misrepresentation or fraud in the conduct of a pharmacy or hospital pharmacy;

(ii) Aiding or abetting an unlicensed person to practice pharmacy;

(iii) The dispensing over the counter without a prescription of a drug or device which under state or federal law or regulation is prohibited from being dispensed without a prescription or the renewal of such a prescription without the authorization of the prescriber;

(iv) The dispensing of a different drug or device in place of the drug or device ordered or prescribed without the express permission of the person ordering or prescribing the same;

(v) Any fraudulent act in drug product selection whereby the purchaser is charged for the prescribed brand rather than the selected product which is deemed to be chemically and therapeutically equivalent;

(vi) Failure to account for significant, substantial shortages or overages of controlled substances; or

(vii) Use of pharmacy technicians in violation of section 71-1,147.33;

(g) Violation of the rules and regulations governing the practice of pharmacy as adopted and promulgated under authority of section 71-1,147.09 by the department; and

(h) Suggesting, soliciting, ordering, assisting, or abetting a pharmacist in the commission of any of the offenses set forth in sections 71-147 and 71-148.

(2) Nothing contained in this section shall be construed to prohibit any hospital licensed by the department from establishing rules and regulations regarding the method by which medical staff members shall agree to order or prescribe drugs or devices for patients of such hospitals.

(3) If the department determines to deny, revoke, suspend, or refuse renewal of the license of a hospital pursuant to this section, the procedures for such action in ~~sections 71-2023 to 71-2029~~ the Health Care Facility Licensure Act shall be followed.

(4) If the department determines to deny an application for a permit to or to revoke, suspend, or refuse renewal of a permit to conduct a pharmacy, it shall send to the applicant or permittee, by certified mail, a notice setting forth the particular reasons for the determination. The denial, suspension, revocation, or refusal of renewal shall become final thirty days after the mailing of the notice unless the applicant or permittee, within such thirty-day period, requests a hearing in writing. The applicant or permittee shall be given a fair hearing before the department and may present such evidence as may be proper. On the basis of such evidence the determination involved shall be affirmed or set aside, and a copy of such decision setting forth the finding of facts and the particular reasons upon which it is based shall be sent by certified mail to the applicant or permittee. The decision shall become final thirty days after a copy of such decision is mailed unless the applicant or permittee within such thirty-day period appeals the decision pursuant to section 71-1,147.12. The procedure governing hearings authorized by this section shall be in accordance with rules and regulations adopted and promulgated by the department. A full and complete record shall be kept of all proceedings. Witnesses may be subpoenaed by either party and shall be allowed a fee at a rate prescribed by the rules and regulations adopted and promulgated by the department.

(5) The proceeding shall be summary in its nature and triable as an equity action. Affidavits may be received in evidence in the discretion of the Director of Regulation and Licensure. The department shall have the power to administer oaths, to subpoena witnesses and compel their attendance, and to issue subpoenas duces tecum and require the production of books, accounts, and documents in the same manner and to the same extent as the district courts of the state. Depositions may be used by either party. Upon the completion of any hearing, the director shall have the authority through entry of an order to exercise in his or her discretion any or all of the following powers:

(a) Issue a censure against the permittee;

(b) Place the permittee on probation;

(c) Place a limitation or limitations on the permit and upon the right of the permittee to operate a pharmacy to the extent, scope, or type of operation for such time and under such conditions as the director finds necessary and proper. The director shall consult with the board in all instances prior to issuing an order of limitation;

(d) Impose a civil penalty not to exceed twenty thousand dollars;

(e) Enter an order of suspension of the permit;

(f) Enter an order of revocation of the permit; and

(g) Dismiss the action.

(6) The permittee shall not operate a pharmacy after a permit is revoked or during the time for which the permit is suspended. If a permit is suspended, the suspension shall be for a definite period of time to be fixed by the director. Such permit shall be automatically reinstated upon the expiration of such period if the current renewal fees have been paid. If such permit is revoked, such revocation shall be permanent, except that at any time after the expiration of two years, application may be made for reinstatement of any permittee whose permit has been revoked. Such application shall be addressed to the director but may not be received or filed by him or her unless accompanied by a written recommendation of reinstatement by the board. The amount of the civil penalty, if any, shall be based on the severity of the violation. If any violation is a repeated or continuing violation, each violation or each day a violation continues shall constitute a separate violation for the purpose of computing the applicable civil penalty, if any. The department may adopt and promulgate the necessary rules and regulations concerning notice and hearing of such application.

(7) Any civil penalty assessed and unpaid under this section shall constitute a debt to the State of Nebraska which may be collected in the manner of a lien foreclosure or sued for and recovered in a proper form of action in the name of the state in the district court of the county in which the violator resides or owns property. The department shall within thirty days after receipt remit any collected civil penalty to the State Treasurer for credit to the permanent school fund.

(8) The Attorney General, upon the recommendation of the board, shall initiate criminal proceedings pursuant to section 71-167 against any pharmacy technician or public health clinic worker or dialysis drug or device distributor worker who knowingly performs tasks or functions which require the expertise or professional judgment of a pharmacist. When appropriate, the Attorney General, upon the recommendation of the board, shall initiate corresponding criminal charges against pharmacists, pharmacy owners, or other persons who knowingly permit any pharmacy technician or public health clinic worker or dialysis drug or device distributor worker to perform professional duties which require the expertise or professional judgment of a pharmacist.

Sec. 91. Section 71-1,147.15, Reissue Revised Statutes of Nebraska, is amended to read:

71-1,147.15. It shall be unlawful to distribute, dispense, or vend any drug by automatic or vending machine, ~~except~~ ~~PROVIDED~~, that this prohibition shall not apply to ~~institutions~~ duly health care facilities licensed under the provisions of sections 71-2017 to 71-2029 Health Care Facility Licensure Act.

Sec. 92. Section 71-1,147.35, Revised Statutes Supplement, 1998, is amended to read:

71-1,147.35. (1)(a) Prior to the dispensing or the delivery of each new or refill prescription 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 physician 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 department upon the recommendation of the board, and consistent with the following:

- (i) Compendia which shall consist of the following:
 - (A) American Hospital Formulary Service Drug Information;
 - (B) United States Pharmacopeia-Dispensing Information; and

- (C) American Medical Association Drug Evaluations; and
- (ii) The peer-reviewed medical literature.

(2)(a) Prior to the dispensing or delivery of each new or refill 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;
- (ii) The route of administration, dosage form, dosage, and duration of therapy;
- (iii) Special directions and precautions for preparation, administration, and use by the patient;
- (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 counseling provided for in subdivision (a) of 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 counseling provided for in subdivision (a) of this subsection but shall not be used as a substitute for such counseling. If written information is provided, it shall also include all information found on the prescription label.

(e) Nothing in this subsection shall be construed to require a pharmacist to provide the counseling called for by subdivision (a) of this subsection when:

- (i) The patient or caregiver refuses such counseling;
- (ii) The pharmacist, in his or her professional judgment, determines that such counseling may be detrimental to the patient's care or to the relationship between the patient and his or her physician;
- (iii) The patient is a patient or resident of a health care facility or health care service licensed pursuant to sections 71-2017 to 71-2029 under the Health Care Facility Licensure Act to whom prescribed drugs or devices are administered by a licensed or certified staff member or consultant or a certified physician's assistant; or
- (iv) The medical practitioner duly authorized to prescribe drugs or devices specifies manually on the face of the written prescription or by telephonic communication on each prescription that there shall be no patient counseling unless he or she is contacted prior to such counseling. The pharmacist shall note "Contact Before Counseling" on the face of the prescription if such is communicated orally by the prescribing medical practitioner.

Sec. 93. Section 71-1,200, Revised Statutes Supplement, 1999, is amended to read:

71-1,200. Any insurer shall report to the department, on a form and in the manner specified by the department by rule and regulation, any facts known to the insurer, including, but not limited to, the identity of the practitioner and patient, when the insurer:

- (1) Has reasonable grounds to believe that a practitioner has committed a violation of the regulatory provisions governing the profession of such practitioner;
- (2) Has made payment due to an adverse judgment, settlement, or award resulting from a professional liability claim against the insurer, a health care facility or health care service as defined in ~~section 71-2017.01~~ the Health Care Facility Licensure Act, or a practitioner, including settlements made prior to suit, arising out of the acts or omissions of the practitioner;
- (3) Takes an adverse action affecting the coverage provided by the insurer to a practitioner due to alleged incompetence, negligence, unethical or unprofessional conduct, or physical, mental, or chemical impairment. For purposes of this section, adverse action shall not include raising a practitioner's rates for professional liability coverage unless it is based upon grounds that would be reportable and no prior report has been made to the department; or

(4) Has been requested by the department to provide information.

The report shall be made within thirty days after the date of the action, event, or request. Nothing in this section or section 71-1,199 shall be construed to require an insurer to report based on information gained due to the filing by a practitioner or on behalf of a practitioner of a claim for payment under his or her health insurance policy.

Sec. 94. Section 71-1,341, Revised Statutes Supplement, 1998, is amended to read:

71-1,341. For purposes of sections 71-1,340 to 71-1,342:

(1) Credentialing means the grant of authority or approval by the state to health care practitioners, facilities, and providers who provide health care or related services through licensure, certification, registration, approval of provider status, enrollment in a program for reimbursement, and other similar activities;

(2) Department means the Department of Health and Human Services Regulation and Licensure;

(3) Director means the Director of Regulation and Licensure;

(4) Facility means an entity a health care facility or health care service licensed under section 71-2017.01 the Health Care Facility Licensure Act to provide health care;

(5) Health care practitioner means an individual licensed, certified, or otherwise authorized by law to administer health care in the course of professional practice; and

(6) Provider means a person providing health care services under an agreement with the state and its contractors for payment for those services.

Sec. 95. Section 71-507, Revised Statutes Supplement, 1999, is amended to read:

71-507. For purposes of sections 71-507 to 71-513:

(1) Alternate facility means a facility other than a health care facility that receives a patient transported to the facility by an emergency services provider;

(2) Department means the Department of Health and Human Services Regulation and Licensure;

(3) Designated physician means the physician representing the emergency services provider as identified by name, address, and telephone number on the significant exposure report form. The designated physician shall serve as the contact for notification in the event an emergency services provider believes he or she has had significant exposure to an infectious disease or condition. Each emergency services provider shall designate a physician as provided in subsection (2) of section 71-509;

(4) Emergency services provider means an out-of-hospital emergency care provider certified pursuant to the Emergency Medical Services Act, a sheriff, a deputy sheriff, a police officer, a state highway patrol officer, a funeral director, a firefighter, and a person rendering emergency care gratuitously as described in section 25-21,186;

(5) Funeral director means a person licensed under section 71-1302 or an employee of such a person with responsibility for transport or handling of a deceased human;

(6) Funeral establishment means a business licensed under section 71-1327;

(7) Health care facility has the meaning found in ~~subdivisions (2), (10), (11), and (20) of section 71-2017.01~~ sections 19, 20, 24, and 29 of this act or any facility that receives patients of emergencies who are transported to the facility by emergency services providers;

(8) Infectious disease or condition means hepatitis B, meningococcal meningitis, active pulmonary tuberculosis, human immunodeficiency virus, diphtheria, plague, hemorrhagic fevers, rabies, and such other diseases as the department may by rule and regulation specify;

(9) Patient means an individual who is sick, injured, wounded, deceased, or otherwise helpless or incapacitated;

(10) Patient's attending physician means the physician having the primary responsibility for the patient as indicated on the records of a health care facility;

(11) Provider agency means any law enforcement agency, fire department, emergency medical service, funeral establishment, or other entity which employs or directs emergency services providers;

(12) Responsible person means an individual who has been designated by an alternate facility to carry out the facility's responsibilities under sections 71-507 to 71-513. A responsible person may be designated on a case-by-case basis;

(13) Significant exposure means a situation in which the body fluids, including blood, saliva, urine, respiratory secretions, or feces, of a

patient have entered the body of an emergency services provider through a body opening including the mouth or nose, a mucous membrane, or a break in skin from cuts or abrasions, from a contaminated needlestick or scalpel, from intimate respiratory contact, or through any other situation when the patient's body fluids may have entered the emergency services provider's body or when an airborne pathogen may have been transmitted from the patient to the emergency services provider; and

(14) Significant exposure report form means the form used by the emergency services provider to document information necessary for notification of significant exposure to an infectious disease or condition.

Sec. 96. Section 71-511, Revised Statutes Supplement, 1998, is amended to read:

71-511. (1) Information concerning any patient or test results obtained under sections 71-507 to 71-513 shall be maintained as confidential by the health care facility or alternate facility that received or tested the patient, the designated physician, the patient's attending physician, the emergency services provider, and the provider agency except as provided by ~~such sections and sections 71-503.01 and 71-2017~~ the Health Care Facility Licensure Act and sections 71-503.01 and 71-507 to 71-513 and the rules and regulations adopted and promulgated pursuant to such act and sections. Such information shall not be made public upon subpoena, search warrant, discovery proceedings, or otherwise except as provided by such act and sections.

(2) The information described in subsection (1) of this section may be released with the written consent of the patient or, if the patient is deceased or incapable of giving informed consent, with the written consent of his or her next of kin, legal guardian, or personal representative of his or her estate.

Sec. 97. Section 71-533, Revised Statutes Supplement, 1998, is amended to read:

71-533. For purposes of sections 71-533 to 71-538:

(1) Department means the Department of Health and Human Services Regulation and Licensure;

(2) Exposure-prone invasive procedure means a procedure which presents a recognized risk of percutaneous injury to a health care worker which is likely to result in the health care worker's blood contacting the patient's body cavity, subcutaneous tissues, or mucous membranes. Characteristics of exposure-prone invasive procedures include digital palpation of a needle tip in a body cavity or the simultaneous presence of the health care worker's fingers and a needle or other sharp instrument or object in a poorly visualized or highly confined anatomic site; and

(3) Health care worker means an individual who furnishes direct patient care:

(a) Under a license, certificate, or registration issued by this state;

(b) Under the auspices of a health care facility licensed under ~~sections 71-2017 to 71-2029~~ the Health Care Facility Licensure Act or an individual described in subdivision (3)(a) of this section; or

(c) In the course of a training or educational program.

Sec. 98. Section 71-1637, Revised Statutes Supplement, 1998, is amended to read:

71-1637. (1) Any city by its mayor and council or by its commission, any village by its village board, any county by its board of supervisors or commissioners, or any township by its electors shall have power to employ a visiting community nurse, a home health nurse, or a home health agency defined in ~~subdivision (17) of section 71-2017.01~~ section 17 of this act and the rules and regulations adopted and promulgated ~~pursuant to such section~~ under the Health Care Facility Licensure Act. Such nurses or home health agency shall do and perform such duties as the city, village, county, or township, by their officials and electors, shall prescribe and direct. The city, village, county, or township shall have the power to levy a tax, not exceeding three and five-tenths cents on each one hundred dollars on the taxable valuation of the taxable property of such city, village, county, or township, for the purpose of paying the salary and expenses of such nurses or home health agency. The levy shall be subject to sections 77-3442 and 77-3443. The city, village, county, or township shall have the power to constitute and empower such nurses or home health agency with police power to carry out the order of such city, village, county, or township.

(2) The governing body of any city, village, county, or township may contract with any visiting nurses association, licensed hospital home health agency, or other licensed home health agency, including those operated by the Department of Health and Human Services, to perform the duties contemplated in subsection (1) of this section, subject to the supervision of the governing

body, and may pay the expense of such contract out of the general funds of the city, village, county, or township.

(3) Nothing in this section shall be construed to allow any city, village, county, township, nurse, or home health agency to (a) avoid the requirements of individual licensure, (b) perform any service beyond the scope of practice of licensure or beyond the limits of licensure prescribed by ~~subdivision (17) of section 71-2017.01~~ the Health Care Facility Licensure Act, or (c) violate any rule or regulation adopted and promulgated by the Department of Health and Human Services, the Department of Health and Human Services Regulation and Licensure, or the Department of Health and Human Services Finance and Support.

Sec. 99. Section 71-2048.01, Revised Statutes Supplement, 1998, is amended to read:

71-2048.01. Any hospital required to be licensed ~~pursuant to section 71-2018~~ under the Health Care Facility Licensure Act shall not deny clinical privileges to physicians and surgeons, podiatrists, osteopathic physicians, osteopathic physicians and surgeons, licensed psychologists, or dentists solely by reason of the license held by the practitioner. Each such hospital shall establish reasonable standards and procedures to be applied when considering and acting upon an application for medical staff membership and privileges. Once an application is determined to be complete by the hospital and is verified in accordance with such standards and procedures, the hospital shall notify the applicant of its initial recommendation regarding membership and privileges within one hundred twenty days.

Sec. 100. Section 71-2049, Reissue Revised Statutes of Nebraska, is amended to read:

71-2049. Except for state hospitals administered by the Department of Health and Human Services, ~~each hospital and each ambulatory surgical center and each hospital~~, as such terms are defined in ~~section 71-2017.01~~ sections 5 and 19 of this act, shall, upon written request of a patient or third-party payor on behalf of a patient, include in such patient's or payor's bill an itemized list of all expenses such patient incurred during his or her stay at such ~~hospital or ambulatory surgical center or hospital~~. Such expenses shall include, but not be limited to, the cost of (1) X-rays, (2) laboratory fees, (3) respiratory therapy services, (4) oxygen, (5) pharmaceuticals, (6) take-home drugs, (7) chargeable medical supplies, (8) central service supplies, (9) medical equipment, (10) room and board, and (11) all additional charges incurred by the patient. The right to request such information shall be clearly and conspicuously stated in each patient's or payor's bill. The patient or payor shall receive a copy of the itemized bill within fourteen days after the ~~hospital or ambulatory surgical center or hospital~~ receives the request. Such request shall be made by the patient or payor within twenty-eight days after the date of discharge.

Upon receipt of an itemized list, a patient or payor may request and the ~~hospital or ambulatory surgical center or hospital~~ shall provide an explanation of any or all expenses or services included on the itemized list. The patient or payor shall make a request for such explanation within twenty-eight days of receipt of an itemized list. The patient or payor shall receive the explanation within fourteen days after the ~~hospital or ambulatory surgical center or hospital~~ receives the request.

Any person who violates this section shall be guilty of a Class IV misdemeanor.

Sec. 101. Section 71-2079, Reissue Revised Statutes of Nebraska, is amended to read:

71-2079. For purposes of sections 71-2078 to 71-2082:

(1) Hospital shall have the meaning found in ~~section 71-2017.01~~ 19 of this act; and

(2) Hospital uniform billing form shall mean the Health Care Financing Administration claim form number 1450 mandated for the medicare program pursuant to sections 1814(a)(2) and 1871 of the federal Social Security Act, as amended, developed by the National Uniform Billing Committee and commonly referred to as the uniform billing claim form number 92.

Sec. 102. Section 71-2084, Reissue Revised Statutes of Nebraska, is amended to read:

71-2084. For purposes of sections 71-2084 to 71-2096:

(1) Department means the Department of Health and Human Services Regulation and Licensure;

(2) Director means the Director of Regulation and Licensure; and

(3) Health care facility means ~~an institution~~ a health care facility subject to licensing under sections 71-2017 to 71-2029 the Health Care Facility Licensure Act.

Sec. 103. Section 71-2097, Revised Statutes Supplement, 1998, is

amended to read:

71-2097. For purposes of sections 71-2097 to 71-20,101:

(1) Civil penalties include any remedies required under federal law and include the imposition of monetary penalties;

(2) Federal regulations for participation in the medicaid program means the regulations found in 42 C.F.R. parts 442 and 483, as amended, for participation in the medicaid program under Title XIX of the federal Social Security Act, as amended; and

(3) Nursing facility means any ~~nursing facility or~~ intermediate care facility ~~or nursing facility~~, as defined in ~~section 71-2017.01~~ sections 20 and 24 of this act, which receives federal and state funds under Title XIX of the federal Social Security Act, as amended.

Sec. 104. Section 71-20,103, Revised Statutes Supplement, 1998, is amended to read:

71-20,103. For purposes of the Nonprofit Hospital Sale Act:

(1) Department means the Department of Health and Human Services Regulation and Licensure;

(2) Hospital has the definition meaning found in ~~subdivision (3) of section 71-2017.01~~ section 19 of this act;

(3) Acquisition means any acquisition by a person or persons of an ownership or controlling interest in a hospital, whether by purchase, merger, lease, gift, or otherwise, which results in a change of ownership or control of twenty percent or greater or which results in the acquiring person or persons holding a fifty percent or greater interest in the ownership or control of a hospital, but acquisition does not include the acquisition of an ownership or controlling interest in a hospital owned by a nonprofit corporation if the transferee (a) is a nonprofit corporation having a substantially similar charitable health care purpose as the transferor or is a governmental entity, (b) is exempt from federal income tax under section 501(c)(3) of the Internal Revenue Code or as a governmental entity, and (c) will maintain representation from the affected community on the local board; and

(4) Person has the meaning found in section 71-5803.12.

Sec. 105. Section 71-20,112, Reissue Revised Statutes of Nebraska, is amended to read:

71-20,112. No license to operate a hospital may be issued or renewed by the department pursuant to ~~Chapter 71, article 20, the Health Care Facility Licensure Act~~ or any other state statute, and a license which has been issued shall be subject to revocation or suspension, if:

(1) There is an acquisition of a hospital without first having received the approval of the department under the Nonprofit Hospital Sale Act;

(2) There is an acquisition of a hospital without the approval of the Attorney General, if the Attorney General determines to review the application under the act;

(3) There is an acquisition of a hospital and the Attorney General disapproves the acquisition and there is a judicial determination under the Uniform Declaratory Judgments Act that the acquisition is not in the public interest; or

(4) The hospital is not fulfilling its commitment under section 71-20,109 or is not following procedures of safeguards committed to under subdivision (3) of such section.

This section does not limit the right to a hearing under ~~section 71-2023~~ section 54 of this act or the right of appeal for a hospital from such decision as provided in ~~Chapter 71, article 20~~ section 55 of this act.

Sec. 106. Section 71-2411, Revised Statutes Supplement, 1998, is amended to read:

71-2411. For purposes of the Emergency Box Drug Act:

(1) Authorized personnel shall mean any medical doctor, doctor of osteopathy, registered nurse, licensed practical nurse, pharmacist, or physician's assistant;

(2) Department shall mean the Department of Health and Human Services Regulation and Licensure;

(3) Drug shall mean any prescription drug or legend drug defined under section 71-1,142, any nonprescription drug as defined under section 71-1,142, any controlled substance as defined under section 28-405, or any device as defined under section 71-1,142;

(4) Emergency box drugs shall mean drugs required to meet the immediate therapeutic needs of patients when the drugs are not available from any other authorized source in time to sufficiently prevent risk of harm to such patients by the delay resulting from obtaining such drugs from such other authorized source;

(5) Institution shall mean a ~~skilled nursing facility~~, an

intermediate care facility, an intermediate care facility for the mentally retarded, a mental health center, ~~and~~ a nursing facility, and a skilled nursing facility, as such terms are defined ~~under section 71-2017.01~~ in sections 20, 21, 23, 24, and 29 of this act;

(6) Institutional pharmacy shall mean the physical portion of an institution engaged in the compounding, dispensing, and labeling of drugs which is operating pursuant to a permit issued prior to January 1, 2002, by the Department of Health and Human Services Regulation and Licensure under section 71-1,147.03 as it existed prior to such date or pursuant to a license issued on or after such date by the department under the Health Care Facility Licensure Act;

(7) Multiple dose vial shall mean any bottle in which more than one dose of a liquid drug is stored or contained; and

(8) Supplying pharmacist shall mean the pharmacist in charge of an institutional pharmacy or a pharmacist who provides emergency box drugs to an institution pursuant to the Emergency Box Drug Act. Supplying pharmacist shall not include any agent or employee of the supplying pharmacist who is not a pharmacist.

Sec. 107. Section 71-2601, Revised Statutes Supplement, 1999, is amended to read:

71-2601. The State Board of Health shall consist of seventeen members to be appointed by the Governor with the consent of a majority of the members of the Legislature. Two members shall be licensed to practice medicine and surgery in this state, one member shall be licensed to practice dentistry in this state, one member shall be licensed to practice optometry in this state, one member shall be licensed to practice veterinary medicine in this state, one member shall be licensed to practice pharmacy in this state, two members shall be licensed to practice nursing in this state, one member shall be licensed to practice osteopathic medicine and surgery or as an osteopathic physician in this state, one member shall be licensed to practice podiatry in this state, one member shall be licensed to practice chiropractic in this state, one member shall be licensed to practice physical therapy in this state, one member shall be a professional engineer in this state, one member shall be an administrator of a hospital in this state which is licensed ~~pursuant to sections 71-2017 to 71-2029 under the Health Care Facility Licensure Act,~~ one member shall be a credentialed mental health professional, and two members shall be public members who at all times are public-spirited citizens of Nebraska interested in the health of the people of the State of Nebraska and not less than twenty-one years of age. The Governor shall also be an ex officio member of such board but shall be permitted to vote on matters before the board only when necessary to break a tie.

Sec. 108. Section 71-3608, Reissue Revised Statutes of Nebraska, is amended to read:

71-3608. No person having communicable tuberculosis who in his or her home or elsewhere obeys the rules and regulations and orders of the Department of Health and Human Services for the control of tuberculosis or who voluntarily accepts hospitalization or treatment in a health care facility ~~mentioned in subdivision (1) of section 71-2017~~ which is licensed and approved for such use under the Health Care Facility Licensure Act by the Department of Health and Human Services Regulation and Licensure and obeys the rules and regulations and orders of the Department of Health and Human Services for the control of communicable tuberculosis shall be committed under the provisions of sections 71-3601 to 71-3612.

Sec. 109. Section 71-3613, Reissue Revised Statutes of Nebraska, is amended to read:

71-3613. The Department of Health and Human Services shall have and may exercise the following powers and duties in its administration of sections 71-3601 to 71-3612:

(1) To contract with qualified hospitals or other health care facilities ~~mentioned in subdivision (1) of section 71-2017~~ which are licensed and approved for such use under the Health Care Facility Licensure Act by the Department of Health and Human Services Regulation and Licensure for the purpose of caring for, maintaining, and treating patients committed under the provisions of sections 71-3601 to 71-3612, and for those other persons having communicable tuberculosis who voluntarily agree to and accept care and treatment in such a health care facility on either an inpatient or an outpatient basis;

(2) To inspect and supervise to the extent necessary the facilities, operations, and administration of those health care facilities under contract to or otherwise receiving support from the Department of Health and Human Services for the purpose of providing care, treatment, or maintenance for persons infected with communicable tuberculosis;

(3) To provide visiting nursing services to those persons having communicable tuberculosis who are being treated on an outpatient basis;

(4) To adopt rules and regulations, and issue orders based thereon, relative to reports and statistics on tuberculosis from counties and the care, treatment, and maintenance of persons having tuberculosis, especially of those in the communicable or contagious stage thereof; and

(5) To set standards by rule and regulation for the types and level of medical care and treatment to be used by those health care facilities caring for tuberculous persons and to set standards by rule and regulation governing contracts mentioned in subdivision (1) of this section dealing with such matters as program standards, maximum and minimum costs and rates, administrative procedures to be followed and reports to be made, and arbitration by third parties, except that no such contract or contracts shall be longer than one year in duration or involve amounts in excess of the funds appropriated therefor.

Sec. 110. Section 71-5033, Reissue Revised Statutes of Nebraska, is amended to read:

71-5033. Mental health, drug abuse, and alcoholism programs, services, and facilities funded in whole or in part by the governing board shall submit their budget requests to the comptroller. The comptroller shall review such requests and attach his or her recommendations thereto and submit them to the governing board. Each private provider of services shall submit to the governing board a detail audit for all money received under the provisions of sections 71-5016 to 71-5040, 83-1009, and 83-1009.01, except that in the case of services provided by a hospital licensed under the ~~provisions of section 71-2020~~ Health Care Facility Licensure Act, a copy of the hospital's most recently submitted annual Medicare Cost Report may be provided to the governing board in lieu of the submission of a detail audit.

Sec. 111. Section 71-51,102, Revised Statutes Supplement, 1999, is amended to read:

71-51,102. (1) For purposes of this section:

(a) Automated external defibrillator means a device that:

(i) Is capable of recognizing the presence or absence of ventricular fibrillation or rapid ventricular tachycardia and is capable of determining, without intervention of an operator, whether defibrillation should be performed; and

(ii) Automatically charges and requests delivery of an electrical impulse to an individual's heart when it has identified a condition for which defibrillation should be performed;

(b) Health care facility means ~~an institution subject to licensing under sections 71-2017 to 71-2029~~ a health care facility as defined in section 13 of this act; and

(c) Health care professional means any person who is licensed, certified, or registered by the Department of Health and Human Services Regulation and Licensure and who is authorized within his or her scope of practice to use an automated external defibrillator.

(2) No person other than a health care professional shall use an automated external defibrillator for emergency care or treatment unless:

(a) The user of the defibrillator has received appropriate training in the use of the defibrillator as established by the Department of Health and Human Services Regulation and Licensure; and

(b) The defibrillator is maintained and tested according to the manufacturer's guidelines.

(3) Except for the action or omission of a health care professional acting in such capacity or in a health care facility, no person who delivers emergency care or treatment using an automated external defibrillator as prescribed in subsection (2) of this section shall be liable in any civil action to respond in damages as a result of his or her acts of commission or omission arising out of and in the course of rendering such care or treatment in good faith. Nothing in this subsection shall be deemed to (a) grant immunity for any willful, wanton, or grossly negligent acts of commission or omission or (b) limit the immunity provisions for certain health care professionals as provided in section 71-5194.

Sec. 112. Section 71-5803.01, Revised Statutes Supplement, 1998, is amended to read:

71-5803.01. Acute care bed means a bed in a hospital that is or will be licensed under ~~Chapter 71, article 20, the Health Care Facility Licensure Act~~ for acute care services or a bed that is part of a hospital or unit of a hospital that is excluded from the prospective payment system under Title XVIII of the federal Social Security Act, as amended, as a rehabilitation hospital or rehabilitation unit.

Sec. 113. Section 71-5803.02, Revised Statutes Supplement, 1998, is

amended to read:

71-5803.02. Ambulatory surgical center has the same meaning as in section ~~71-2017.01 5~~ of this act.

Sec. 114. Section 71-5803.05, Revised Statutes Supplement, 1998, is amended to read:

71-5803.05. Assisted-living facility has the same meaning as in section ~~71-2017.01 6~~ of this act.

Sec. 115. Section 71-5803.08, Revised Statutes Supplement, 1998, is amended to read:

71-5803.08. Hospital has the same meaning as in section ~~71-2017.01 19~~ of this act.

Sec. 116. Section 71-5803.09, Revised Statutes Supplement, 1998, is amended to read:

71-5803.09. Intermediate care facility has the same meaning as in section ~~71-2017.01 20~~ of this act and includes an intermediate care facility for the mentally retarded which has the same meaning as in section ~~71-2017.01 21~~ of this act.

Sec. 117. Section 71-5803.10, Revised Statutes Supplement, 1998, is amended to read:

71-5803.10. Long-term care bed means a bed in a health care facility that is or will be licensed under ~~Chapter 71, article 20, the Health Care Facility Licensure Act~~ as a skilled nursing facility, intermediate care facility, nursing facility, or long-term care hospital. ~~bed.~~ Long-term care beds do not include residential care beds, domiciliary beds, or swing beds. For purposes of this section, swing beds means beds which may be used by a hospital for acute or long-term care in a facility located in an area which is not designated as urban by the United States Bureau of the Census and which has up to one hundred beds, excluding beds for newborns and intensive-care-type inpatient units.

Sec. 118. Section 71-5803.11, Revised Statutes Supplement, 1998, is amended to read:

71-5803.11. Nursing facility has the same meaning as in section ~~71-2017.01 24~~ of this act.

Sec. 119. Section 71-5803.13, Revised Statutes Supplement, 1998, is amended to read:

71-5803.13. Rehabilitation bed means a bed in a health care facility that is or will be licensed under ~~Chapter 71, article 20, the Health Care Facility Licensure Act~~ if the bed is in an inpatient facility which is operated for the primary purpose of assisting in the rehabilitation of disabled persons through an integrated program of medical and other services which are provided under professional supervision and ~~that if the bed is part of a hospital or unit of a hospital that is excluded from the prospective payment system under Title XVIII of the federal Social Security Act as a rehabilitation hospital or rehabilitation unit.~~

Sec. 120. Section 71-5803.15, Revised Statutes Supplement, 1998, is amended to read:

71-5803.15. Skilled nursing facility has the same meaning as in section ~~71-2017.01 29~~ of this act.

Sec. 121. Section 71-5869, Revised Statutes Supplement, 1998, is amended to read:

71-5869. (1) A license or permit which has been issued by the department ~~pursuant to Chapter 71, article 20, under the Health Care Facility Licensure Act~~ or any other state statute to a health care facility which engaged in an activity identified as requiring a certificate of need under the Nebraska Health Care Certificate of Need Act without having first obtained a certificate of need or which engaged in an activity prohibited under the act is subject to revocation or suspension. Nothing contained in this section shall limit the rights of appeal of a health care facility from such decision as provided in ~~Chapter 71, article 20 the Health Care Facility Licensure Act.~~

(2) No license or permit may be issued or renewed by the department ~~pursuant to Chapter 71, article 20, under the Health Care Facility Licensure Act~~ or any other state statute, nor may any type of approval be granted to any health care facility which engaged in an activity identified as requiring a certificate of need under the Nebraska Health Care Certificate of Need Act without having first obtained a certificate of need or which engaged in an activity prohibited under the act.

Sec. 122. Section 71-6012, Reissue Revised Statutes of Nebraska, is amended to read:

71-6012. Nursing home shall mean a nursing ~~home~~ facility or a skilled nursing facility as defined in section ~~71-2017.03 24~~ or 29 of this act.

Sec. 123. Section 71-6016, Reissue Revised Statutes of Nebraska, is

amended to read:

71-6016. License shall mean a license to operate a nursing home issued pursuant to Chapter 71, article 20 under the Health Care Facility Licensure Act.

Sec. 124. Section 71-6021, Reissue Revised Statutes of Nebraska, is amended to read:

71-6021. (1) Notwithstanding the provisions of sections 71-6019 and 71-6020, the administrator of a nursing home may refuse access to the nursing home to any person if the presence of such person in the nursing home would be injurious to the health and safety of a resident or would threaten the security of the property of a resident or the nursing home or if the person seeks access to the nursing home for commercial purposes. Any person refused access to a nursing home may, within thirty days of such refusal, request a hearing by the department. The wrongful refusal of a nursing home to grant access to any person as required in sections 71-6019 and 71-6020 shall constitute a violation of the Nebraska Nursing Home Act. A nursing home may appeal any citation issued pursuant to this section in the manner provided in sections ~~71-6029 to 71-6031~~ 52 to 55 of this act.

(2) Nothing in sections 71-6019 to 71-6021 shall be construed to prevent (a) an employee of the Department of Health and Human Services, the Department of Health and Human Services Regulation and Licensure, or the Department of Health and Human Services Finance and Support, acting in his or her official capacity, from entering a nursing home for any inspection authorized by the act or any rule or regulation adopted and promulgated pursuant thereto or (b) a state long-term care ombudsman or an ombudsman advocate, acting in his or her official capacity, from entering a nursing home to conduct an investigation authorized by any rules and regulations promulgated by the Department of Health and Human Services.

Sec. 125. Section 71-6023, Reissue Revised Statutes of Nebraska, is amended to read:

71-6023. (1) The notice required by subsection (2) of section 71-6022 shall contain:

- (a) The stated reason for the proposed transfer or discharge;
- (b) The effective date of the proposed transfer or discharge; and
- (c) In not less than twelve-point type, the text of section ~~71-6035~~

45 of this act.

(2) A copy of the notice required by subsection (2) of section 71-6022 shall be transmitted to the resident and the resident's representative, if a representative has been designated.

Sec. 126. (1) Unless a waiver is granted pursuant to subsection (2) of this section, a nursing facility shall use the services of (a) a licensed registered nurse for at least eight consecutive hours per day, seven days per week and (b) a licensed registered nurse or licensed practical nurse on a twenty-four-hour basis seven days per week. Except when waived under subsection (2) of this section, a nursing facility shall designate a licensed registered nurse or licensed practical nurse to serve as a charge nurse on each tour of duty. The Director of Nursing Services shall be a licensed registered nurse, and this requirement shall not be waived. The Director of Nursing Services may serve as a charge nurse only when the nursing facility has an average daily occupancy of sixty or fewer residents.

(2) The department may waive either the requirement that a nursing facility or long-term care hospital certified under Title XIX of the federal Social Security Act, as amended, use the services of a licensed registered nurse for at least eight consecutive hours per day, seven days per week, or the requirement that a nursing facility or long-term care hospital certified under Title XIX of the federal Social Security Act, as amended, use the services of a licensed registered nurse or licensed practical nurse on a twenty-four-hour basis seven days per week, including the requirement for a charge nurse on each tour of duty, if:

(a)(i) The facility or hospital demonstrates to the satisfaction of the department that it has been unable, despite diligent efforts, including offering wages at the community prevailing rate for the facilities or hospitals, to recruit appropriate personnel;

(ii) The department determines that a waiver of the requirement will not endanger the health or safety of individuals staying in the facility or hospital; and

(iii) The department finds that, for any periods in which licensed nursing services are not available, a licensed registered nurse or physician is obligated to respond immediately to telephone calls from the facility or hospital; or

(b) The Department of Health and Human Services Finance and Support has been granted any waiver by the federal government of staffing standards

for certification under Title XIX of the federal Social Security Act, as amended, and the requirements of subdivisions (a)(ii) and (iii) of this subsection have been met.

(3) The Department of Health and Human Services Finance and Support shall apply for such a waiver from the federal government to carry out subdivision (1)(b) of this section.

(4) A waiver granted under this section shall be subject to annual review by the department. As a condition of granting or renewing a waiver, a facility or hospital may be required to employ other qualified licensed personnel. The department may grant a waiver under this section if it determines that the waiver will not cause the State of Nebraska to fail to comply with any of the applicable requirements of medicaid so as to make the state ineligible for the receipt of all funds to which it might otherwise be entitled.

(5) The department shall provide notice of the granting of a waiver to the office of the state long-term care ombudsman and to the Nebraska Advocacy Services or any successor designated for the protection of and advocacy for persons with mental illness or mental retardation. A nursing facility granted a waiver shall provide written notification to each resident of the facility or, if appropriate, to the guardian, legal representative, or immediate family of the resident.

Sec. 127. (1) Unless a waiver is granted pursuant to subsection (2) of this section, a skilled nursing facility shall use the services of (a) a licensed registered nurse for at least eight consecutive hours per day, seven days per week and (b) a licensed registered nurse or licensed practical nurse on a twenty-four-hour basis seven days per week. Except when waived under subsection (2) of this section, a skilled nursing facility shall designate a licensed registered nurse or licensed practical nurse to serve as a charge nurse on each tour of duty. The Director of Nursing Services shall be a licensed registered nurse, and this requirement shall not be waived. The Director of Nursing Services may serve as a charge nurse only when the skilled nursing facility has an average daily occupancy of sixty or fewer residents.

(2) The department may waive the evening and night staffing requirements for skilled nursing facilities or for long-term care hospitals certified under Title XVIII of the federal Social Security Act, as amended, except the requirement that the Director of Nursing Services be a licensed registered nurse, if:

(a) The facility or hospital demonstrates to the satisfaction of the department that it has been unable, despite diligent efforts, to hire enough licensed registered nurses and licensed practical nurses to fulfill such requirements. For purposes of this subdivision, diligent efforts include, but are not limited to, offering wages equal to or greater than the community prevailing wage rate being paid such nurses at nursing facilities;

(b) The department determines that a waiver of the requirement will not endanger the health or safety of residents of the facility or hospital; and

(c) The department finds that, for any period in which staffing requirements cannot be met, a licensed registered nurse or a physician is obligated to respond immediately to telephone calls from the facility or hospital.

A waiver granted under this subsection shall be subject to annual review by the department. As a condition of granting or renewing a waiver, a facility or hospital may be required to employ other qualified licensed personnel.

(3) The department may waive the requirement that a skilled nursing facility or long-term care hospital certified under Title XVIII of the federal Social Security Act, as amended, provide a licensed registered nurse on duty at the facility or hospital for more than forty hours per week if:

(a) The facility or hospital is located in a nonurban area where the supply of skilled nursing facility services is not sufficient to meet the needs of individuals residing in the area;

(b) The facility or hospital has one full-time licensed registered nurse who is regularly on duty at the facility or hospital forty hours per week; and

(c) The facility or hospital (i) has only patients whose physicians have indicated through orders or admission or progress notes that the patients do not require the services of a licensed registered nurse or a physician for more than forty hours per week or (ii) has made arrangements for a licensed registered nurse or a physician to spend time at the facility or hospital, as determined necessary by the physician, to provide the necessary services on days when the regular, full-time licensed registered nurse is not on duty.

A waiver may be granted under this subsection for a period of up to

one year by the department.

Sec. 128. Section 71-6037, Reissue Revised Statutes of Nebraska, is amended to read:

71-6037. Sections 71-6008 to 71-6037 and sections 126 and 127 of this act shall be known and may be cited as the Nebraska Nursing Home Act.

~~Any reference to sections 71-6008 to 71-6037 or the Nebraska Nursing Home Act shall be construed to include sections 71-6017.01 and 71-6023.01.~~

Sec. 129. Section 71-6043, Revised Statutes Supplement, 1998, is amended to read:

71-6043. As used in sections ~~71-2024 and~~ 71-6043 to 71-6052, unless the context otherwise requires:

(1) Council shall mean the Nursing Home Advisory Council as established by sections ~~71-2024 and~~ 71-6043 to 71-6052;

(2) Department shall mean the Department of Health and Human Services Regulation and Licensure; and

(3) Nursing home shall mean a nursing facility or a skilled nursing facility as defined in section 24 or 29 of this act. ~~a home for the aged or infirm as provided in sections 71-2017 to 71-2029.~~

Sec. 130. Section 71-6044, Reissue Revised Statutes of Nebraska, is amended to read:

71-6044. There is hereby established a Nursing Home Advisory Council to advise and assist the department in carrying out the administration of the ~~provisions of sections 71-2017 to 71-2029~~ Health Care Facility Licensure Act and the rules, regulations, and standards adopted and promulgated pursuant thereto, as the same apply to nursing homes.

Sec. 131. Section 71-6049, Reissue Revised Statutes of Nebraska, is amended to read:

71-6049. Members of the council shall serve without compensation but shall be entitled to receive reimbursement for their reasonable expenses incurred in connection with their duties as members of such council from the Nebraska ~~Nursing Home~~ Health Care Association or the Nebraska Association of Homes for the Aging or such other association or group of nursing home licensees as voluntarily agrees to provide reimbursement for such expenses. No funds or state money shall be drawn upon to pay the expenses of administering sections ~~71-2024 and~~ 71-6043 to 71-6052.

Sec. 132. Section 71-6050, Revised Statutes Supplement, 1998, is amended to read:

71-6050. (1) The council shall advise and make recommendations to the department on all matters pertaining to the licensure and regulation of nursing homes in this state, and in furtherance of such powers, the council shall:

(a) Study, review, and make recommendations from time to time to the department for rules and standards governing the licensing and operation of nursing homes in this state;

(b) Recommend procedures to the department in making inspections, reviewing applications, conducting hearings, and performing other duties of the department relative to nursing homes;

(c) Assist the department in the formulation of minimum standards and regulations for nursing homes in this state; and

(d) Perform such other duties as may be necessary to carry out the purposes and intent of sections ~~71-2024 and~~ 71-6043 to 71-6052.

(2) The council shall advise the Department of Health and Human Services Finance and Support and the Director of Finance and Support regarding the awarding of grants or making of loan guarantees under sections 71-7613 and 71-7614.

Sec. 133. Section 71-6051, Reissue Revised Statutes of Nebraska, is amended to read:

71-6051. The council may study the operation and activities of any person, firm, association, or corporation suspected of operating a nursing home without first having obtained a license therefor. If the council ~~shall obtain~~ obtains information concerning violations of the ~~provisions of sections 71-2017 to 71-2029~~ Health Care Facility Licensure Act, such information shall be furnished to the department for appropriate action. The department shall make a complete report to the council on the progress and results of the appropriate action taken.

Sec. 134. Section 71-6052, Reissue Revised Statutes of Nebraska, is amended to read:

71-6052. It is the purpose and intent of ~~sections 71-2024 and 71-6043 to 71-6052 and~~ the Nebraska Nursing Home Act and sections 71-6043 to 71-6052 that licensing and regulation of nursing homes in this state shall be governed by ~~sections 71-2017 to 71-2029 and 71-6043 to 71-6052 and~~ the Health Care Facility Licensure Act, the Nebraska Nursing Home Act, and sections

71-6043 to 71-6052.

Sec. 135. Section 71-6053, Revised Statutes Supplement, 1999, is amended to read:

71-6053. For the purpose of sections 71-6053 to 71-6068, unless the context otherwise requires:

(1) Accredited institution means a postsecondary educational institution approved by the board;

(2) Active license means a license issued by the board to an administrator who meets the continuing education requirements of section 71-6060 and who submits the fee required by section 71-6061;

(3) Administrator or nursing home administrator means any individual who meets the education and training requirements of section 71-6054 and is responsible for planning, organizing, directing, and controlling the operation of a home for the aged or infirm, a nursing home, or an integrated system or who in fact performs such functions, whether or not such functions are shared by one or more other persons. Notwithstanding this subdivision or any other provision of law, the administrator of an intermediate care facility for the mentally retarded may be either a licensed nursing home administrator or a qualified mental retardation professional;

(4) Administrator-in-training means a person who is undergoing training to become a nursing home administrator and is directly supervised in a home for the aged or infirm or nursing home by a certified preceptor;

(5) Board means the Board of Examiners in Nursing Home Administration;

(6) Certified preceptor means a person who is currently licensed by the State of Nebraska as a nursing home administrator, has three years of experience as a nursing home administrator, has practiced within the last two years in a home for the aged or infirm or a nursing home, and is approved by the board to supervise an administrator-in-training or a person in a mentoring program;

(7) Core educational requirements means courses necessary for licensure as a nursing home administrator and includes courses in patient care and services, social services, financial management, administration, and rules, regulations, and standards relating to the operation of a health care facility;

(8) Degree or advanced degree means a baccalaureate, master's, or doctorate degree from an accredited institution and which includes studies in the core educational requirements;

(9) Degree or advanced degree in health care means a baccalaureate, master's, or doctorate degree from an accredited institution in health care, health care administration, or services;

(10) Department means the Department of Health and Human Services Regulation and Licensure;

(11) Home for the aged or infirm or nursing home means any institution or facility licensed as ~~such a nursing facility or a skilled nursing facility~~ by the department pursuant to ~~sections 71-2017 to 71-2029~~ the Health Care Facility Licensure Act, 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;

(12) Integrated system means a health and human services organization offering different levels of licensed care or treatment on the same premises;

(13) Internship means that aspect of the educational program of the associate degree in long-term care administration which allows for practical experience in a home for the aged or infirm or nursing home and occurs under the supervision of a certified preceptor;

(14) License means permission to engage in nursing home administration which would otherwise be unlawful in this state in the absence of such permission and which is granted to individuals who meet prerequisites and qualifications that allow them to perform nursing home administration tasks and use the title nursing home administrator;

(15) Nursing degree means a degree or diploma in nursing from an accredited program of professional nursing approved by the Board of Nursing;

(16) Previous work experience means at least two years working full time in a nursing home or home for the aged or infirm or previous work experience in health care administration; and

(17) Previous work experience in health care administration means at least two years working full time as an administrator or director of nursing of a hospital with a long-term care unit or assisted-living facility or director of nursing in a nursing home or home for the aged or infirm.

Sec. 136. Section 71-6602, Revised Statutes Supplement, 1998, is

amended to read:

71-6602. As used in sections 71-6601 to 71-6615, unless the context otherwise requires:

(1) Activities of daily living shall mean assistance with ambulation, toileting, feeding, and similar activities;

(2) Basic therapeutic care shall mean basic health care procedures, including, but not limited to, measuring vital signs, applying hot and cold applications and nonsterile dressings, and assisting with, but not administering, internal and external medications which are normally self-administered. Basic therapeutic care shall not include health care procedures which require the exercise of nursing or medical judgment;

(3) Department shall mean the Department of Health and Human Services Regulation and Licensure;

(4) Home health agency shall mean a home health agency as defined in section ~~71-2017.01~~ 17 of this act;

(5) Home health aide shall mean a person who is employed by a home health agency to provide personal care, assistance with the activities of daily living, and basic therapeutic care to patients of the home health agency;

(6) Personal care shall mean bathing, hair care, nail care, shaving, dressing, oral care, and similar activities;

(7) Supervised practical training shall mean training in a laboratory or other setting in which the trainee demonstrates knowledge while performing tasks on an individual under the direct supervision of a registered nurse or licensed practical nurse; and

(8) Vital signs shall mean temperature, pulse, respiration, and blood pressure.

Sec. 137. Section 71-6615, Reissue Revised Statutes of Nebraska, is amended to read:

71-6615. Sections 71-6601 to ~~71-6615~~ 71-6612 shall not apply to any volunteers working on behalf of a hospice licensed under the ~~Hospice Health Care Facility~~ Licensure Act who, as part of their volunteer duties, provide home health care.

Sec. 138. Section 71-6721, Revised Statutes Supplement, 1998, is amended to read:

71-6721. For purposes of the Medication Aide Act:

(1) Ability to take medications independently means the individual is physically capable of (a) the act of taking or applying a dose of a medication, (b) taking or applying the medication according to a specific prescription or recommended protocol, and (c) observing and monitoring himself or herself for desired effect, side effects, interactions, and contraindications of the medication and taking appropriate actions based upon those observations;

(2) Administration of medication includes, but is not limited to (a) providing medications for another person according to the five rights, (b) recording medication provision, and (c) observing, monitoring, reporting, and otherwise taking appropriate actions regarding desired effects, side effects, interactions, and contraindications associated with the medication;

(3) Caretaker means a parent, foster parent, family member, friend, or legal guardian who provides care for an individual;

(4) Child care facility means an entity or a person licensed under sections 71-1908 to 71-1917;

(5) Competent individual means an adult who is the ultimate recipient of medication and who has the capability and capacity to make an informed decision about taking medications;

(6) Department means the Department of Health and Human Services Regulation and Licensure;

(7) Direction and monitoring means the acceptance of responsibility for observing and taking appropriate action regarding any desired effects, side effects, interactions, and contraindications associated with the medication by a (a) competent individual for himself or herself, (b) caretaker, or (c) licensed health care professional;

(8) Facility means ~~an entity~~ a health care facility or health care service as defined in section ~~71-2017.01~~ 13 or 15 of this act or an entity or person certified by the Department of Health and Human Services Regulation and Licensure or the Department of Health and Human Services Finance and Support to provide home and community-based services;

(9) Five rights means getting the right drug to the right recipient in the right dosage by the right route at the right time;

(10) Health care professional means an individual for whom administration of medication is included in the scope of practice;

(11) Home means the residence of an individual but does not include

any facility or school;

(12) Intermediate care facility for the mentally retarded has the definition found in section ~~71-2017.01~~ 21 of this act;

(13) Informed decision means a decision made knowingly, based upon capacity to process information about choices and consequences, and made voluntarily;

(14) Medication means any prescription or nonprescription drug intended for treatment or prevention of disease or to affect body function in humans;

(15) Medication aide means an individual who is listed on the medication aide registry operated by the Department of Health and Human Services Regulation and Licensure;

(16) Nonprescription drug has the definition found in section 71-1,142;

(17) Nursing home means any facility or a distinct part of any facility that provides care as defined in ~~subdivision (6), (10), (11), or (20) of section 71-2017.01~~ sections 20, 22, 24, and 29 of this act;

(18) Prescription drug has the definition found in section 71-1,142;

(19) Provision of medication means the component of the administration of medication that includes giving or applying a dose of a medication to an individual and includes helping an individual in giving or applying such medication to himself or herself;

(20) PRN means an administration scheme in which a medication is not routine, is taken as needed, and requires assessment for need and effectiveness;

(21) Recipient means a person who is receiving medication;

(22) Routine, with reference to medication, means the frequency of administration, amount, strength, and method are specifically fixed; and

(23) School means an entity or person meeting the requirements for a school set by Chapter 79.

Sec. 139. Section 71-6725, Revised Statutes Supplement, 1998, is amended to read:

71-6725. (1) The minimum competencies for a medication aide, a person licensed to operate a child care facility or a staff member of a child care facility, or a staff member of a school shall include (a) maintaining confidentiality, (b) complying with a recipient's right to refuse to take medication, (c) maintaining hygiene and current accepted standards for infection control, (d) documenting accurately and completely, (e) providing medications according to the five rights, (f) having the ability to understand and follow instructions, (g) practicing safety in application of medication procedures, (h) complying with limitations and conditions under which a medication aide may provide medications, and (i) having an awareness of abuse and neglect reporting requirements and any other areas as shall be determined by rules or regulations.

(2) The Department of Health and Human Services Regulation and Licensure shall adopt and promulgate rules and regulations setting minimum standards for competencies listed in subsection (1) of this section and methods for competency assessment of medication aides. The Department of Health and Human Services shall adopt and promulgate rules and regulations setting methods for competency assessment of the person licensed to operate a child care facility or staff of child care facilities. The State Department of Education shall adopt and promulgate rules and regulations setting methods for competency assessment of the school staff member.

(3) A medication aide (except one who is employed by a nursing home, an intermediate care facility for the mentally retarded, or an assisted-living facility), a person licensed to operate a child care facility or a staff member of a child care facility, or a staff member of a school shall not be required to take a course. The medication aide shall be assessed to determine that the medication aide has the competencies listed in subsection (1) of this section.

(4) A medication aide providing services in an assisted-living facility as defined in section ~~71-2017.01~~ 6 of this act shall be required to have successfully completed a twenty-hour course on the competencies listed in subsection (1) of this section and competency standards established through rules and regulations as provided for in subsection (2) of this section. Competency assessment shall include passing an examination developed and administered by the Department of Health and Human Services Regulation and Licensure. Criteria for establishing a passing standard for the examination shall be established in rules and regulations.

(5) A medication aide providing services in a nursing home or an intermediate care facility for the mentally retarded shall be required to have completed a forty-hour course on the competencies listed in subsection (1) of

this section and competency standards established through rules and regulations as provided for in subsection (2) of this section. Competency assessment shall include passing an examination developed and administered by the department. Criteria for establishing a passing standard for the examination shall be established in rules and regulations. Before providing services in a nursing home or an intermediate care facility for the mentally retarded, a medication aide who has previously met the requirements of subsection (4) of this section shall be required to complete an additional twenty-hour course. This twenty-hour course, together with the twenty-hour course set forth in subsection (4) of this section shall be equivalent to the forty-hour course set forth in this subsection. Medication aides providing services in nursing homes or intermediate care facilities for the mentally retarded shall also meet the requirements set forth in section 71-6039.

Sec. 140. Section 71-6735, Revised Statutes Supplement, 1998, is amended to read:

71-6735. A facility shall be subject to discipline under the Health Care Facility Licensure Act ~~the Nebraska Nursing Home Act or sections 71-2017 to 71-2029~~ or other relevant statutes for violation of the Medication Aide Act or the rules and regulations. A school shall be subject to discipline under Chapter 79 for violation of the ~~act~~ Medication Aide Act or the applicable rules and regulations. A child care facility shall be subject to discipline under sections 71-1908 to 71-1917 for violation of the act or the rules and regulations.

Sec. 141. Section 71-6826, Reissue Revised Statutes of Nebraska, is amended to read:

71-6826. If the department denies, suspends, or revokes a certificate, the department shall notify the certificate holder in writing. Any person aggrieved by the decision may request a hearing. The methods and procedures for notification and conduct of a hearing and the provisions for finality of the department's decision shall be identical to those pertaining to denial, suspension, or revocation of a license for the operation of health care facilities under ~~section 71-2023~~ the Health Care Facility Licensure Act. Any decision to deny, suspend, or revoke a certificate may be appealed, and the appeal shall be in accordance with the Administrative Procedure Act. When the department's denial, suspension, or revocation is final, the laboratory shall cease to operate until it applies for and receives a new certificate pursuant to sections 71-6819 or 71-6820 to 71-6822.

Sec. 142. Section 71-7102, Revised Statutes Supplement, 1998, is amended to read:

71-7102. For purposes of the Critical Incident Stress Management Act:

- (1) Committee means the Interagency Management Committee;
- (2) Council means the Critical Incident Stress Management Council;
- (3) Critical incident means a traumatic or crisis situation;
- (4) Critical incident stress means a strong emotional, cognitive, or physical reaction which has the potential to interfere with normal functioning, including physical and emotional illness, loss of interest in the job, personality changes, marital discord, and loss of ability to function;
- (5) Emergency service agency means any law enforcement agency, fire department, emergency medical service, dispatcher, rescue service, hospital as defined in section ~~71-2017.01~~ 19 of this act, or other entity which provides emergency response services;
- (6) Emergency service personnel includes law enforcement personnel, firefighters, emergency medical services personnel, and hospital personnel; and
- (7) Program means the Critical Incident Stress Management Program.

Sec. 143. Section 71-7613, Revised Statutes Supplement, 1999, is amended to read:

71-7613. (1) For purposes of this section:

(a) Alternatives to nursing facility care means those services included in the program of home and community-based waiver services for aged persons or adults or children with disabilities under the medical assistance program established pursuant to section 68-1018;

(b) Conversion means (i) the remodeling of existing space and, if necessary, the construction of additional space required to accommodate assisted-living facility services or other alternatives to nursing facility care or (ii) new construction of an assisted-living facility or other alternative to nursing facility care if existing nursing facility beds are no longer licensed and the Department of Health and Human Services Finance and Support determines that new construction is more cost effective than the conversion of existing space; and

(c) Nursing facility means (i) a facility licensed as a nursing

facility, or a skilled nursing facility, or an intermediate care facility as such terms are defined in ~~section 71-2017.01~~ sections 24 and 29 of this act, (ii) a long-term care hospital or a distinct part of a hospital, as such terms are defined in ~~section 71-2017.01~~ sections 19 and 22 of this act, which is primarily devoted to providing the care and services enumerated in ~~subdivision (10), (11), or (20) of section 71-2017.01~~ sections 24 and 29 of this act, or (iii) a hospital as defined in ~~section 71-2017.01~~ 19 of this act which is eligible to have swing beds. ~~but nursing facility does not include an intermediate care facility for the mentally retarded as defined in section 71-2017.01.~~ For purposes of this subdivision, swing beds means beds which may be used for acute or long-term care in a facility under Title XVIII of the federal Social Security Act, as amended, located in an area which is not designated as urban by the United States Bureau of the Census and with up to fifty beds, excluding beds for newborns and intensive-care-type inpatient units.

(2) The Department of Health and Human Services Finance and Support, with the advice of the Policy Cabinet created in section 81-3009 and the Nursing Home Advisory Council, shall award grants or make guarantees of loans from the Nursing Facility Conversion Cash Fund for capital or one-time expenditures, including, but not limited to, startup and training expenses and operating losses for the first year, to any nursing facility which has been approved for at least three years as a provider under the medical assistance program established pursuant to section 68-1018 to convert all or a portion of the facility licensed to provide such care to a licensed assisted-living facility or to other types of alternatives to nursing facility care.

(3) During each calendar year in which grants or loan guarantees are available under this section, the department, with the advice of the Policy Cabinet and the Nursing Home Advisory Council, shall award grants or make guarantees of loans first to governmental nursing facilities, second to nonprofit nursing facilities, and then to other nursing facilities. A nongovernmental nursing facility shall only be eligible for a grant or loan guarantee for conversion to assisted-living services if it is located in underserved areas as determined by the department and if no governmental nursing facility can or is willing to be converted. To be eligible for a grant or loan guarantee under this section, the nongovernmental nursing facilities shall provide twenty percent of the total cost of any conversion. The department shall establish policies and procedures for certification of the required matching funds. A hospital as defined in ~~section 71-2017.01~~ 19 of this act which is eligible to have swing beds shall only be eligible for a grant or loan guarantee for conversion to assisted-living services within the current annual calendar established by the department under this subsection if such hospital has first notified in writing all other nursing facilities within a twenty-mile radius of such hospital of the intent to submit a proposal for such a grant or loan guarantee within the current annual calendar and no nursing facility so notified responds in writing to the hospital within thirty days after such notice that it intends to submit a proposal in the current annual calendar. Such hospital shall file a copy of the intent to submit a proposal with the department and shall file a copy of any response from another nursing facility with the department. If a nursing facility responds to a hospital notice that the nursing facility intends to submit a proposal for such a grant or loan guarantee but does not, within the current annual calendar, submit such a proposal or if it submits and then withdraws such a proposal, the hospital shall be eligible for a grant or loan guarantee for conversion to assisted-living services either within the current annual calendar or within the next annual calendar unless another nursing facility within a twenty-mile radius of the hospital has responded that the nursing facility intends to submit a proposal in the current annual calendar and submits such a proposal on a timely basis and does not withdraw the proposal from consideration. The department shall annually establish a calendar for receiving and evaluating proposals and awarding grants or making loan guarantees.

(4) No grant or loan guarantee application shall be approved by the department unless (a) the applicant can demonstrate that (i) conversion of the nursing facility or portion of the facility to an assisted-living facility or other alternatives to nursing facility care will offer efficient and economical care to individuals requiring long-term care services in the area, (ii) assisted-living services or other alternatives to nursing facility care are unlikely to be available in the area for individuals eligible for services under the medical assistance program established pursuant to section 68-1018, and (iii) the resulting reduction in the availability of nursing facility services is not expected to cause undue hardship on those individuals requiring nursing facility services, and (b) the department can demonstrate

that the conversion will result in a lower reimbursement rate under the medical assistance program established under section 68-1018 from the State of Nebraska to the applicant. No grant shall be awarded or loan guarantee made unless the applicant agrees to maintain a minimum occupancy rate by individuals eligible for services under the medical assistance program established pursuant to section 68-1018 and, in the event the applicant or its successor in interest ceases to operate an assisted-living facility or other alternative to nursing facility care during the ten-year period after the date the applicant began operation of its facility as an assisted-living facility or other alternative to nursing facility care, to refund to the Nursing Facility Conversion Cash Fund, on an amortized basis, the amount of the grant or loan guarantee. In addition to other remedies provided by law, the department may deduct the amount of any refund due from a recipient of grant or loan guarantee funds from any money owed by the department to such recipient or the recipient's successor in interest.

(5) The department shall adopt and promulgate rules and regulations which establish (a) an application process for grants or loan guarantees, (b) criteria for nursing facilities to receive funding, including, but not limited to, minimum occupancy rates, allowable costs, and refund methods, (c) criteria for the rates and amounts of funding, and (d) other procedures as the department deems necessary for the proper administration of this section.

(6) This section does not create an entitlement to any funds available for grants or loan guarantees under this section, and the department may award grants or make loan guarantees to the extent funds are available and, within its discretion, to the extent such applications are approved.

(7) Nongovernmental recipients of grants and loan guarantees under this section shall annually submit cost reports to the department regarding the conversion project for a period of ten years after the date the recipient began operation of its facility as an assisted-living facility or other alternative to nursing facility care. The department shall develop the cost report which shall include, but not be limited to, revenue, costs, loans undertaken by the facility, fixed assets of the facility, a balance sheet, and a profit and loss statement.

(8) The department shall provide annual reports to the Governor and the Legislature concerning grants awarded or loan guarantees made under this section. Each report shall include the number of applicants and approved applicants, an overview of the various grants awarded or loan guarantees made, and detailed reports of the cost of each project funded by a grant or loan guarantee and information received under subsection (7) of this section.

(9) It is the intent of the Legislature to review projects which receive grants or loan guarantees under this section to ensure that the goal to provide alternatives to traditional long-term care services is being met and that an adequate number of nursing facility services remain to meet the needs of Nebraskans. After January 1, 2002, no money shall be allocated for conversion of nursing facilities to assisted-living facilities or other alternatives to nursing facility care under this section without reaffirmation of this program by the Legislature. Money allocated for the purpose of conversion before January 1, 2002, may be awarded to eligible applicants.

Sec. 144. Section 71-7702, Reissue Revised Statutes of Nebraska, is amended to read:

71-7702. For purposes of the Health Care Facility-Provider Cooperation Act:

(1) Community planning shall mean a plan which identifies (a) health-care-related resources, facilities, and services within the community, (b) the health care needs of the community, (c) gaps in services, (d) duplication of services, and (e) ways to meet health care needs;

(2) Cooperative agreement shall mean an agreement among two or more health care facilities or other providers for the sharing, allocation, or referral of patients, personnel, instructional programs, equipment, support services and facilities, or medical, diagnostic, or laboratory facilities or procedures or other services traditionally offered or purchased by health care facilities or other providers;

(3) Department shall mean the Department of Health and Human Services Regulation and Licensure;

(4) Health care facility shall mean:

(a) Any facility required to be licensed under ~~sections 71-2017 to 71-2029~~ the Health Care Facility Licensure Act or, if in another state, licensed in such state; and

(b) Any parent of a health care facility, health care facility subsidiary, or health care facility affiliate that provides medical or medically related diagnostic and laboratory services or engages in ancillary activities supporting those services; and

(5) Provider shall mean any person licensed to provide health care services under Chapter 71 and engaged in the practice of medicine and surgery, osteopathic medicine, pharmacy, optometry, podiatry, physical therapy, or nursing.

Sec. 145. Section 71-7901, Revised Statutes Supplement, 1998, is amended to read:

71-7901. Any health clinic as defined in section ~~71-2017.01~~ 16 of this act and any other organization or association of health practitioners or providers licensed pursuant to Chapter 71 may cause a peer review committee to be formed and operated or may contract with an outside peer review committee for the purpose of reviewing, from time to time, the medical care provided by such health clinic, organization, or association and for assisting individual practitioners or providers practicing in such clinics, organizations, or associations in maintaining and providing a high standard of medical care.

Sec. 146. Section 71-8219, Revised Statutes Supplement, 1998, is amended to read:

71-8219. Hospital means a health care facility licensed ~~pursuant to sections 71-2017 to 71-2029~~ under the Health Care Facility Licensure Act or a comparable health care facility operated by the federal government or located and licensed in another state.

Sec. 147. Section 71-8507, Revised Statutes Supplement, 1999, is amended to read:

71-8507. A health care facility licensed ~~pursuant to sections 71-2017 to 71-2029~~ under the Health Care Facility Licensure Act that receives reimbursement under the Nebraska Telehealth Act for telehealth consultations shall establish quality of care protocols and patient confidentiality guidelines to ensure that such consultations meet the requirements of the act and acceptable patient care standards.

Sec. 148. Section 76-1304, Reissue Revised Statutes of Nebraska, is amended to read:

76-1304. Unless the method of disposition is adopted for the purpose of evasion of the provisions of sections 76-1301 to 76-1315, such provisions shall not apply to offers or dispositions of an interest in land by a purchaser of subdivided lands for his or her own account in a single or isolated transaction, nor shall such provisions apply to the following:

(1) Offers or dispositions of evidences of indebtedness secured by a mortgage or deed of trust of real estate;

(2) Offers or dispositions of securities or units of interest issued by a real estate investment trust regulated under any state or federal statute;

(3) The sale or lease of real estate under or pursuant to court order;

(4) The disposition in any manner whatsoever of any unit of public housing under the administrative jurisdiction of a local public housing authority;

(5) Offers or dispositions of securities currently registered with the Director of Banking and Finance and under the provisions of the Securities Act of Nebraska; and

(6) Homes for the aged or infirm or nursing homes licensed as nursing facilities by the Department of Health and Human Services Regulation and Licensure ~~pursuant to sections 71-2017 to 71-2029~~ under the Health Care Facility Licensure Act.

Sec. 149. Section 77-2702.14, Reissue Revised Statutes of Nebraska, is amended to read:

77-2702.14. (1) Retailer shall mean:

(a) Any seller engaged in the business of making sales subject to tax under section 77-2703 or in the business of making sales subject to tax under section 77-2703 at auction of property owned by the person or others. Retailer shall mean, in the case of sales at auction when the person collecting the proceeds of the auction is not the auctioneer or an agent or employee of the auctioneer, the person collecting the proceeds of the auction, other than the owner of the property, together with his or her principal, if any, and retailer shall not include the auctioneer in such case;

(b) Every person who has elected to be considered a retailer pursuant to subdivision (1) of section 77-2702.05; and

(c) Every person operating, organizing, or promoting a flea market, craft show, fair, or similar event.

(2) Retailer shall not mean:

(a) Any person who leases or rents films when an admission tax is charged under the Nebraska Revenue Act of 1967 or railroad rolling stock interchanged pursuant to the provisions of the federal Interstate Commerce Act;

(b) Any person engaged in the business of furnishing rooms in a facility licensed under the ~~provisions of Chapter 71, article 20, Health Care Facility Licensure Act~~ in which rooms, lodgings, or accommodations are regularly furnished for a consideration or a facility operated by an educational institution established under Chapter 79 or Chapter 85 in which rooms are regularly used to house students for a consideration for periods in excess of thirty days; or

(c) Any person making sales at a flea market, craft show, fair, or similar event who does not have a sales tax permit and who has arranged to pay sales taxes collected to the person operating, organizing, or promoting such event.

Sec. 150. Section 77-2702.15, Reissue Revised Statutes of Nebraska, is amended to read:

77-2702.15. Sale shall mean any transfer of title or possession or segregation in contemplation of transfer of title or possession, exchange, barter, lease, or rental, conditional or otherwise, in any manner or by any means, of property for a consideration. Sale shall include, but not be limited to:

(1) The producing, fabricating, processing, printing, or imprinting of property for a consideration for consumers who furnish either directly or indirectly the materials used in the producing, fabricating, processing, printing, or imprinting;

(2) The furnishing and distributing of property for a consideration by social clubs and fraternal organizations to their members or others;

(3) The furnishing, preparing, or serving for a consideration of food, meals, or drinks;

(4) A transaction whereby the possession of property is transferred but the seller retains the title as security for the payment of the price;

(5) A transfer for a consideration of the title or possession of property which has been produced, fabricated, or printed to the special order of the customer; and

(6) The renting or furnishing for periods of less than thirty days of any room or rooms, lodgings, or accommodations in any hotel, motel, inn, tourist camp, tourist cabin, or any other place, except a health care facility licensed under the ~~provisions of Chapter 71, article 20, Health Care Facility Licensure Act~~ in which rooms, lodgings, or accommodations are regularly furnished for a consideration or a facility operated by an educational institution established under Chapter 79 or Chapter 85 in which rooms are regularly used to house students for a consideration for periods in excess of thirty days.

Sec. 151. Section 77-2704.12, Reissue Revised Statutes of Nebraska, is amended to read:

77-2704.12. (1) Sales and use taxes shall not be imposed on the gross receipts from the sale, lease, or rental of and the storage, use, or other consumption in this state of purchases by any organization created exclusively for religious purposes, any nonprofit organization providing services exclusively to the blind, any private educational institution established under sections 79-1601 to 79-1607, any private college or university established under sections 85-1101 to 85-1111, any hospital, health clinic when two or more hospitals or the parent corporations of the hospitals own or control the health clinic for the purpose of reducing the cost of health services or when the health clinic receives funds under the Urban Health Initiative Program or the Rural Health Initiative Program of the United States Public Health Service, skilled nursing facility, intermediate care facility, or nursing facility licensed under ~~sections 71-2017 to 71-2029~~ the Health Care Facility Licensure Act and organized not for profit, any nonprofit organization providing services primarily for home health care purposes, any licensed child-caring agency, or any licensed child placement agency.

(2) Any organization listed in subsection (1) of this section shall apply for an exemption on forms provided by the Tax Commissioner. The application shall be approved and a numbered certificate of exemption received by the applicant organization in order to be exempt from the sales and use tax.

(3) The appointment of purchasing agents shall be recognized for the purpose of altering the status of the construction contractor as the ultimate consumer of property which is physically annexed to the structure and which subsequently belongs to the owner of the organization or institution. The appointment of purchasing agents shall be in writing and occur prior to having any property annexed to real estate in the construction, improvement, or repair. The contractor who has been appointed as a purchasing agent may apply for a refund of or use as a credit against a future use tax liability the tax paid on inventory items annexed to real estate in the construction,

improvement, or repair of a project for a licensed not-for-profit institution.

(4) Any organization listed in subsection (1) of this section which enters into a contract of construction, improvement, or repair upon property annexed to real estate without first issuing a purchasing agent authorization to a contractor or repairperson prior to property being annexed to real estate in the project may apply to the Tax Commissioner for a refund of any sales and use tax paid by the contractor or repairperson on the property physically annexed to real estate in the construction, improvement, or repair.

(5) Any person purchasing, storing, using, or otherwise consuming property in the performance of any construction, improvement, or repair by or for any institution enumerated in subsection (1) of this section which is licensed upon completion although not licensed at the time of construction or improvement, which property is annexed to real estate and which subsequently belongs to the owner of the institution, shall pay any applicable sales or use tax thereon. Upon becoming licensed and receiving a numbered certificate of exemption, the institution organized not for profit shall be entitled to a refund of the amount of taxes so paid in the performance of such construction, improvement, or repair and shall submit whatever evidence is required by the Tax Commissioner sufficient to establish the total sales and use tax paid upon the property physically annexed to real estate in the construction, improvement, or repair.

Sec. 152. Section 77-3504, Reissue Revised Statutes of Nebraska, is amended to read:

77-3504. Household income means the total federal adjusted gross income, as defined in the Internal Revenue Code, plus (1) any Nebraska adjustments increasing the total federal adjusted gross income, (2) any interest or dividends received by the owner regarding obligations of the State of Nebraska or any political subdivision, authority, commission, or instrumentality thereof to the extent excluded in the computation of gross income for federal income tax purposes, and (3) any social security or railroad retirement benefit to the extent excluded in the computation of gross income for federal income tax purposes, of the claimant and spouse, and any additional owners who are natural persons and who occupy the homestead, for the taxable year of the claimant immediately prior to the year for which the claim for exemption is made, less all medical expenses actually incurred and paid by the claimant, his or her spouse, or any owner-occupant which are in excess of four percent of household income calculated prior to the deduction for medical expenses. For purposes of this section, medical expenses means the costs of health insurance premiums and the costs of goods and services purchased from a person licensed under Chapter 71, article 1 or 47, or a health care facility or health care service licensed pursuant to Chapter 71, article 20, under the Health Care Facility Licensure Act for purposes of restoring or maintaining health, including insulin and prescription medicine but not including nonprescription medicine.

Sec. 153. Section 81-502, Revised Statutes Supplement, 1999, is amended to read:

81-502. (1) It shall be the duty of the State Fire Marshal, under authority of the Governor:

(a) To enforce all laws of the state relating to the suppression of arson and investigation of the cause, origin, and circumstances of fires;

(b) To promote safety and reduce loss by fire;

(c) To make an investigation for fire safety of the premises and facilities of:

(i) Liquor establishments for which a license or renewal of a license is sought, upon request of the Nebraska Liquor Control Commission, pursuant to section 53-119.01;

(ii) Licensed foster care facilities or applicants for licenses for foster care facilities, upon request by the Department of Health and Human Services, pursuant to section 71-1903;

(iii) Licensed providers of programs or applicants for licenses to provide such programs, upon request of the Department of Health and Human Services Regulation and Licensure, pursuant to section 71-1913. The State Fire Marshal shall report the results of the investigation to the department within thirty days after receipt of the request from the department;

(iv) Licensed hospitals, skilled nursing facilities, intermediate care facilities, or other health care facilities or institutions which are mentioned in subdivision (1) of section 71-2017 licensed under the Health Care Facility Licensure Act or applicants for licenses for such facilities or institutions, upon request by the Department of Health and Human Services Regulation and Licensure, pursuant to section 71-2022 41 of this act; and

(v) Mobile home parks for which a license or renewal of a license is sought, upon request of the Department of Health and Human Services Regulation

and Licensure, pursuant to section 71-4635; and

(d) After a careful study and investigation of relevant data, to adopt, promulgate, alter, and enforce, through inspections and code compliance, orders, rules, and regulations covering:

(i) The prevention of fires;

(ii) The storage, sale, and use of flammable liquids, combustibles, and fireworks;

(iii) Electric wiring and heating, protection equipment devices, materials, furnishings, and other safeguards within the structure necessary to promote safety and reduce loss by fire, and the means and adequacy of exits, in case of fire, in assembly, educational, institutional, residential, mercantile, office, storage, and industrial-type occupancies as such structures are defined in the National Fire Protection Association, Pamphlet Number 101, and associated pamphlets, and all other buildings, structures, and enclosures in which numbers of persons congregate from time to time for any purpose whether privately or publicly owned;

(iv) Design, construction, location, installation, and operation of equipment for storing, handling, and utilization of liquefied petroleum gases, specifying the odorization of such gases and the degree thereof;

(v) Chemicals, prozylin plastics, X-ray nitrocellulose films, or any other hazardous material that may now or hereafter exist;

(vi) Tanks used for the storage of regulated substances pursuant to the Petroleum Products and Hazardous Substances Storage and Handling Act; and

(vii) Accessibility standards and specifications adopted pursuant to section 81-5,147.

(2) The State Fire Marshal may enter into contracts with private individuals or other agencies, boards, commissions, or governmental bodies for the purpose of carrying out his or her duties and responsibilities pursuant to the Arson Reporting Immunity Act, the Nebraska Natural Gas Pipeline Safety Act of 1969, and sections 81-502 to 81-541.01, 81-5,132 to 81-5,146, and 81-5,151 to 81-5,157.

(3) The State Fire Marshal may delegate the authority set forth in this section to qualified local fire prevention personnel. The State Fire Marshal may overrule a decision, act, or policy of the local fire prevention personnel. When the State Fire Marshal overrules the local personnel, such local personnel may follow the appeals procedure established by sections 81-502.01 to 81-502.03. Such delegation of authority may be revoked by the State Fire Marshal for cause upon thirty days' notice after a hearing.

(4) The State Fire Marshal, first assistant fire marshal, and deputies shall have such other powers and perform such other duties as are set forth in sections 81-501.01 to 81-531 and 81-5,151 to 81-5,157 and as may be conferred and imposed by law.

(5) The rules and regulations adopted and promulgated pursuant to subdivision (1)(d) of this section may conform generally to the standards recommended by the National Fire Protection Association, Pamphlet Number 101, known as the Life Safety Code, and associated pamphlets, but not when doing so would impose an unduly severe or costly burden without substantially contributing to the safety of persons or property. This section and the rules and regulations adopted and promulgated pursuant to subdivision (1)(d) of this section shall apply to existing as well as new buildings, structures, and enclosures. Such rules and regulations shall also apply to sites or structures in public ownership listed on the National Register of Historic Places but without destroying the historic quality thereof.

(6) Plans for compliance with the rules and regulations adopted and promulgated pursuant to subdivision (1)(d) of this section shall be reviewed by the State Fire Marshal. Plans submitted after remodeling or construction has begun shall be accompanied by a penalty of fifty dollars in addition to the plan review fee set out in subdivision (4)(a) of section 81-505.01.

Sec. 154. Section 81-604.01, Reissue Revised Statutes of Nebraska, is amended to read:

81-604.01. Any local or state agency or department, or any private facility involved in arranging or supervising placements for those persons requiring care or supervision, shall notify the Department of Health and Human Services Regulation and Licensure when there is reason to believe that the total number of persons served in any institution, facility, place, or building exceeds three individuals and that such facility is not currently licensed by the Department of Health and Human Services Regulation and Licensure. The department shall investigate or inspect such complaints pursuant to ~~sections 71-2017 to 71-2029 and 71-5901 to 71-5909~~ the Health Care Facility Licensure Act.

Sec. 155. Section 81-651, Revised Statutes Supplement, 1998, is amended to read:

81-651. (1) The Department of Health and Human Services may provide visiting community nursing services or home health services to persons living in the state and may charge fees for such services. The department shall not be exempt from licensure as a home health agency under subdivision (17) of section 71-2017.01 the Health Care Facility Licensure Act.

(2) The department may organize, license, and operate home health agencies to assist in providing services under subsection (1) of this section.

(3) The department (a) may employ necessary personnel, including, but not limited to, licensed nurses, physical therapists, physical therapy assistants, audiologists, speech-language pathologists, communication assistants, occupational therapists, occupational therapy assistants, home health aides, homemakers, respiratory care practitioners, nutritionists, social workers, and supervisory personnel, and may purchase equipment and materials necessary to maintain an effective program or (b) may contract with individuals or licensed agencies to obtain such services or to assist in providing services under subsection (1) of this section.

(4) The department may contract with any public, private, for-profit, or nonprofit agency or individual to provide home health services through any licensed home health agency created under subsection (2) of this section.

Sec. 156. Section 81-2210, Reissue Revised Statutes of Nebraska, is amended to read:

81-2210. Community aging services shall mean those activities and services which fulfill the goals of the Nebraska Community Aging Services Act, which are necessary to promote, restore, or support self-sufficiency and independence for older individuals, and which include (1) congregate activities, including, but not limited to, senior centers, group meals, volunteerism, adult day ~~care~~ care services, and recreation, and (2) individual services which may include, but shall not be limited to, specialized transportation, meals-on-wheels, home handyman services, home health care services, legal services, ~~and~~ counseling related to problems of aging or encouraging access to aging services, and senior companion volunteer services.

Sec. 157. Section 81-2243, Reissue Revised Statutes of Nebraska, is amended to read:

81-2243. Long-term care facility shall include:

- (1) A nursing facility;
- (2) An assisted-living facility;
- (3) ~~A boarding home;~~
- ~~(4)~~ Any other adult care home;
- ~~(5)~~ (4) A continuing care community;
- ~~(6)~~ (5) Any swing bed in an acute care facility or extended care facility; and
- ~~(7)~~ (6) Any adult day ~~care~~ facility service.

Sec. 158. Section 81-3201, Reissue Revised Statutes of Nebraska, is amended to read:

81-3201. (1) The Director of Regulation and Licensure appointed by the Governor for the Department of Health and Human Services Regulation and Licensure shall (a) have administrative experience in an executive capacity and some special training in public health work and (b) be either a graduate of a recognized school of medicine and licensed to practice medicine and surgery in the State of Nebraska or a person with a recognized and demonstrated expertise in and knowledge of health and human services delivery. If the director appointed is not a licensed physician, the Governor shall appoint a chief medical officer to be responsible for oversight of health issues in the health and human services system, as defined in section 81-3003, and decisions in contested cases under the Uniform Licensing Law as specified in section 71-155.01 and of health care facilities and occupations as specified in this section.

(2) The chief medical officer is subject to confirmation by a majority of the members of the Legislature. The chief medical officer shall be a graduate of a recognized school of medicine and licensed to practice medicine and surgery in the State of Nebraska and have some special training in public health work. If a chief medical officer is appointed, he or she shall perform the duties under the Uniform Licensing Law specified in section 71-155.01 and shall be the final decisionmaker in contested cases of (a) the health care facilities defined in section 71-2017.01 the Health Care Facility Licensure Act arising under the act and sections 71-2023, 71-2023.01 to 71-2023.07, 71-6025 to 71-6031, 71-6042, and 81-604.03, and (b) ~~boarding homes under section 71-5906, and (c)~~ occupations referenced in sections 71-6038 and 71-6039.

Sec. 159. Section 83-392, Reissue Revised Statutes of Nebraska, is amended to read:

83-392. The department may establish, operate, and administer skilled nursing care and intermediate care facilities. ~~No + PROVIDED, that no~~ such facility shall be established, operated, or administered without having complied with the laws, rules, and regulations establishing standards for construction, maintenance, and operation of such facilities and the care of persons in such facilities, and no such facility shall be established, operated, or administered without a license pursuant to ~~sections 71-2017 to 71-2029~~ the Health Care Facility Licensure Act.

Sec. 160. Section 163 of this act becomes operative on January 1, 2002. The other sections of this act become operative on January 1, 2001.

Sec. 161. Original sections 20-162, 30-3402, 37-1254.06, 44-526, 44-771, 44-772, 44-782, 44-2806, 44-2827.01, 60-4,164.01, 60-6,201, 60-6,202, 60-6,204, 68-1019.02, 68-1202, 69-2507, 71-1,147.15, 71-2049, 71-2079, 71-2084, 71-20,112, 71-3608, 71-3613, 71-5033, 71-6012, 71-6016, 71-6021, 71-6023, 71-6037, 71-6044, 71-6049, 71-6051, 71-6052, 71-6615, 71-6826, 71-7702, 76-1304, 77-2702.14, 77-2702.15, 77-2704.12, 77-3504, 81-604.01, 81-2210, 81-2243, 81-3201, and 83-392, Reissue Revised Statutes of Nebraska, sections 28-326, 68-1038, 71-168.02, 71-1,147.08, 71-1,147.35, 71-1,341, 71-511, 71-533, 71-1637, 71-2048.01, 71-2097, 71-20,103, 71-20,115, 71-20,116, 71-2411, 71-5803.01, 71-5803.02, 71-5803.05, 71-5803.08 to 71-5803.11, 71-5803.13, 71-5803.15, 71-5869, 71-6043, 71-6050, 71-6602, 71-6721, 71-6725, 71-6735, 71-7102, 71-7901, 71-8219, and 81-651, Revised Statutes Supplement, 1998, and sections 28-414, 44-793, 68-1006.01, 71-185.01, 71-1,103, 71-1,142, 71-1,147.09, 71-1,147.10, 71-1,200, 71-507, 71-2601, 71-51,102, 71-6053, 71-7613, 71-8507, and 81-502, Revised Statutes Supplement, 1999, are repealed.

Sec. 162. The following sections are outright repealed: Sections 71-2017.03, 71-2017.04, 71-2017.06, 71-2018, 71-2020, 71-2021, 71-2021.02, 71-2022, 71-2023.01 to 71-2023.07, 71-2026 to 71-2029, 71-5901, 71-5902, 71-5904 to 71-5909, 71-6018, 71-6024 to 71-6036, 71-6609, 71-6614, 71-7801, 71-7802, and 71-7805, Reissue Revised Statutes of Nebraska, sections 71-2017, 71-2017.07, 71-2021.01, 71-2023, 71-2024, 71-20,117, 71-5903, 71-7804, and 71-7806, Revised Statutes Supplement, 1998, and sections 71-2017.01, 71-20,118, 71-20,119, and 71-7803, Revised Statutes Supplement, 1999.

Sec. 163. The following sections are outright repealed: Sections 71-1,147.01, 71-1,147.04 to 71-1,147.07, and 71-1,147.12, Reissue Revised Statutes of Nebraska, section 71-1,147.03, Revised Statutes Supplement, 1998, sections 71-1,147.02 and 71-1,147.11, Revised Statutes Supplement, 1999, section 71-1,147.08, Revised Statutes Supplement, 1998, as amended by section 88 of this legislative bill, and sections 71-1,147.09 and 71-1,147.10, Revised Statutes Supplement, 1999, as amended by sections 89 and 90 of this legislative bill.