

## LEGISLATIVE BILL 407

Approved by the Governor April 15, 1985

Introduced by Public Health & Welfare Committee,  
Wesely, 26, Chairperson; Lynch, 13;  
Peterson, 21; Smith, 33; Withem, 14

AN ACT relating to health; to adopt the Nebraska Regulation of Health Professions Act; to provide a termination date for the act; to provide severability; and to declare an emergency.

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

Section 1. This act shall be known and may be cited as the Nebraska Regulation of Health Professions Act.

Sec. 2. The purpose of the Nebraska Regulation of Health Professions Act is to establish guidelines for the regulation of health professions not licensed or regulated prior to January 1, 1985, and those licensed or regulated health professions which seek to change their scope of practice. The act is not intended and shall not be construed to apply to any regulatory entity created prior to January 1, 1985, or to any remedial or technical amendments to any laws which licensed or regulated activity prior to January 1, 1985, except as provided in such act. The Legislature believes that all individuals should be permitted to enter into a health profession unless there is an overwhelming need for the state to protect the interests of the public.

Sec. 3. For purposes of the Nebraska Regulation of Health Professions Act, unless the context otherwise requires, the definitions found in sections 4 to 20 of this act shall be used.

Sec. 4. Applicant group shall mean any health professional group or organization, any individual, or any other interested party which proposes that any health professional group not previously regulated be regulated or which proposes to change the scope of practice of a regulated health profession.

Sec. 5. Board shall mean the State Board of Health.

Sec. 6. Certificate or certification shall mean a voluntary process by which a statutory regulatory entity grants recognition to an individual who has met certain prerequisite qualifications specified by such regulatory entity and who may assume or use certified in the title or designation to perform prescribed health professional tasks.

Sec. 7. Committee shall mean the technical

committee created in section 24 of this act.

Sec. 8. Director shall mean the Director of Health.

Sec. 9. Grandfather clause shall mean a provision in a regulatory statute applicable to practitioners actively engaged in the regulated health profession prior to the effective date of the regulatory statute which exempts the practitioners from meeting the prerequisite qualifications set forth in the regulatory statute to perform prescribed occupational tasks.

Sec. 10. Health profession shall mean any regulated health profession or any health professional group not previously regulated.

Sec. 11. Health professional group not previously regulated shall mean those persons or groups who are not currently licensed or otherwise regulated under Chapter 71, who are determined by the director to be qualified by training, education, or experience to perform the functions prescribed in this section, and whose principal functions, customarily performed for remuneration, are to render services directly or indirectly to individuals for the purpose of:

(1) Preventing physical, mental, or emotional injury or illness, excluding persons acting in their capacity as clergy;

(2) Facilitating recovery from injury or illness; or

(3) Providing rehabilitative or continuing care following injury or illness.

Sec. 12. Inspection shall mean the periodic examination of practitioners by a state agency in order to ascertain whether the practitioner's occupation is being carried out in a manner consistent with the public health, safety, and welfare.

Sec. 13. License, licensing, or licensure shall mean permission to engage in a health profession which would otherwise be unlawful in this state in the absence of such permission and which is granted to individuals who meet prerequisite qualifications and allows them to perform prescribed health professional tasks and use a particular title.

Sec. 14. Professional license shall mean an individual nontransferable authorization to work in a health profession based on qualifications which include graduation from an accredited or approved program and acceptable performance on a qualifying examination or series of examinations.

Sec. 15. Practitioner shall mean an individual who has achieved knowledge and skill by the practice of a specified health profession and is actively engaged in such profession.

Sec. 16. Public member shall mean an individual who is not, and never was, a member of the health

profession being regulated, the spouse of a member, or an individual who does not have and never has had a material financial interest in the rendering of the health professional service being regulated or an activity directly related to the profession being regulated.

Sec. 17. Registration shall mean the formal notification which, prior to rendering services, a practitioner submits to a state agency setting forth the name and address of the practitioner, the location, nature, and operation of the health activity to be practiced, and, if required by the regulatory entity, a description of the service to be provided.

Sec. 18. Regulated health professions shall mean those persons or groups who are currently licensed or otherwise regulated under Chapter 71, who are qualified by training, education, or experience to perform the functions prescribed in this section, and whose principal functions, customarily performed for remuneration, are to render services directly or indirectly to individuals for the purpose of:

- (1) Preventing physical, mental, or emotional injury or illness;
- (2) Facilitating recovery from injury or illness; or
- (3) Providing rehabilitative or continuing care following injury or illness.

Sec. 19. Regulatory entity shall mean any board, commission, agency, division, or other unit or subunit of state government which regulates one or more professions, occupations, industries, businesses, or other endeavors in this state.

Sec. 20. State agency shall include every state office, department, board, commission, regulatory entity, and agency of the state and, when provided by law, programs and activities involving less than the full responsibility of a state agency.

Sec. 21. After January 1, 1985, a health profession shall be regulated by the state only when:

- (1) Unregulated practice can clearly harm or endanger the health, safety, or welfare of the public, and the potential for the harm is easily recognizable and not remote or dependent upon tenuous argument;
- (2) The public needs, and can reasonably be expected to benefit from, an assurance of initial and continuing professional ability; and
- (3) The public cannot be effectively protected by other means in a more cost-effective manner.

Sec. 22. After evaluating the criteria in sections 21 to 23 of this act and considering governmental and societal costs and benefits, if the Legislature finds that it is necessary to regulate a health profession not previously regulated by law, the least restrictive alternative method of regulation shall be implemented,

consistent with the public interest and this section, as follows:

(1) When a service is being performed for individuals involving a hazard to the public health, safety, or welfare, the regulation shall impose inspection requirements and enable an appropriate state agency to enforce violations by injunctive relief in court including, but not limited to, regulation of the business activity providing the service rather than the employees of the business;

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

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

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

Sec. 23. After January 1, 1985, an applicant group shall submit an application to the director on forms prescribed by the director. For purposes of this section, any applicant group which has obtained the introduction of a legislative bill in the 1985 regular session of the Legislature which proposes the regulation of a health professional group not previously licensed or which proposes to change the scope of practice of a regulated health profession and submits an application to the director within sixty days of the effective date of this act shall have priority for consideration of its application and the director shall submit his or her final report to the Legislature on such applications by January 1, 1986. The application shall include an explanation of:

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

(2) The efforts made to address the problem, including (a) voluntary efforts, if any, by members of the health profession to establish a code of ethics or help resolve disputes between health practitioners and

consumers and (b) recourse to, and the extent of use of, applicable law and whether present law could be strengthened to control the problem;

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

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

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

(b) Whether the public can identify qualified practitioners;

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

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

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

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

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

(v) The nature and duration of any training including, but not limited to, whether the training includes a substantial amount of supervised field

experience; whether training programs exist in this state; if there will be an experience requirement; whether the experience must be acquired under a registered, certified, or licensed practitioner; whether there are alternative routes of entry or methods of meeting the prerequisite qualifications; whether all applicants will be required to pass an examination; and if an examination is required, by whom it will be developed and how the costs of development will be met; and

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

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

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

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

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

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

(8) The expected costs of regulation, including (a) the impact registration, certification, or licensure will have on the costs of the services to the public and (b) the cost to the state and to the general public of implementing the proposed legislation.

Sec. 24. (1) The director with the advice of the board shall appoint an appropriate technical committee to examine and investigate each application. The committee shall consist of six appointed members and one member of the board designated by the board who shall serve as chairperson of the committee. The chairperson of the committee shall not be a member of the applicant group, any health profession sought to be regulated by the application, or any health profession which is directly or indirectly affected by the application. The director shall ensure that the total composition of the committee is fair, impartial, and equitable. If any member of a technical committee is a member of a health profession affected, either directly or indirectly, by the application, the director shall also appoint representatives of other health professions affected by the application to such committee to ensure that all affected health professions are equally and fairly represented on such committee. In no event shall more than two members of the same regulated health profession, the applicant group, or the health profession sought to be regulated by an application serve on a technical committee.

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

(3) Applicant groups shall have the burden of bringing forth evidence upon which the committee shall make its findings. Each committee shall detail its findings in a report and file the report with the board and the director. A committee may recommend that an application for regulation or change in the scope of practice be denied. If the committee determines that an application should be approved, the committee's report shall include a recommendation concerning the least restrictive alternative method of regulation to be implemented, consistent with the public interest. Such recommendation shall be based on the criteria established in sections 21 to 23 of this act.

Sec. 25. After January 1, 1986, the board shall receive reports from the technical committees and shall meet to review and discuss each report. The board shall apply the criteria established in sections 21 to 23 of this act and compile its own report, including its findings and recommendations, and submit such report, together with the committee report, to the director.

Sec. 26. (1) After receiving reports from the committee or the board, the director shall prepare a final report for the Legislature. The final report shall include copies of the committee report and the board report, if

any, but the director shall not be bound by the findings and recommendations of such reports. The director in compiling his or her report shall apply the criteria established in sections 21 to 23 of this act and may consult with the board or the committee. The final report shall be submitted to the Speaker of the Legislature, the Chairperson of the Executive Board of the Legislature, and the Chairperson of the Public Health and Welfare Committee of the Legislature no later than nine months after the application is submitted to the director and shall be made available to all other members of the Legislature upon request. If an application is submitted to the director within sixty days of the effective date of this act by an applicant group which has obtained the introduction of a legislative bill in the 1985 regular session of the Legislature that proposes the regulation of a health professional group not previously licensed or proposes to change the scope of practice of a regulated health profession, the director shall submit a final report to the Legislature on such application by January 1, 1986.

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

Sec. 27. (1) The director may, with the advice of the board, adopt and promulgate rules and regulations necessary to carry out the Nebraska Regulation of Health Professions Act.

(2) The director shall provide all necessary professional and clerical services to assist the committees and the board. Records of all official actions and minutes of all business coming before the committees and the board shall be kept. The director shall be the custodian of all records, documents, and other property of the committees and the board.

(3) Committee members shall receive no salary, but shall be reimbursed for their actual and necessary expenses as provided in sections 84-306.01 to 84-306.05 for state employees.

Sec. 28. The Nebraska Regulation of Health Professions Fund is hereby created. All money in the fund shall be used exclusively for the operation and administration of the Nebraska Regulation of Health Professions Act. The State Treasurer shall credit to the fund five per cent of all fees collected on or after July 1, 1984, pursuant to the licensing or regulation of regulated health professions and remitted to the state treasury by the Department of Health or any board or board of examiners of any regulated health profession. Any money in the fund available for investment shall be invested by the state investment officer pursuant to sections 72-1237 to



72-1269.

Sec. 29. Nothing in the Nebraska Regulation of Health Professions Act shall apply to the practice of the religious tenets of any recognized church or religious denomination which includes healing solely by spiritual means through prayer.

Sec. 30. This act shall terminate on July 1, 1988.

Sec. 31. If any section in this act or any part of any section shall be declared invalid or unconstitutional, such declaration shall not affect the validity or constitutionality of the remaining portions thereof.

Sec. 32. Since an emergency exists, this act shall be in full force and take effect, from and after its passage and approval, according to law.