

LEGISLATIVE BILL 608

Approved by the Governor June 4, 1997

Introduced By Wesely, 26

AN ACT relating to health care facilities; to amend sections 30-2627, 30-2639, 68-1006.01, 68-1038, 71-507, 71-516.02, 71-516.03, 71-1637, 71-2017, 71-2017.01, 71-2017.07, 71-2024, 71-2411, 71-5805.01, 71-5809.01, 71-5810, 71-5813, 71-5828, 71-5830, 71-6054, 71-6702, 81-651, and 81-2243, Reissue Revised Statutes of Nebraska; to eliminate provisions relating to residential care facilities and domiciliary facilities; to provide for assisted-living facilities; to provide for rules and regulations; to redefine institution in the Emergency Box Drug Act; to harmonize provisions; to provide operative dates; to repeal the original sections; and to outright repeal section 71-5818.02, Reissue Revised Statutes of Nebraska.

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

Section 1. Section 30-2627, Reissue Revised Statutes of Nebraska, is amended to read:

30-2627. (a) Any competent person or a suitable institution may be appointed guardian of a person alleged to be incapacitated, except that it shall be unlawful for any agency providing residential care in an institution or community-based program, or any owner, part owner, manager, administrator, employee, or spouse of an owner, part owner, manager, administrator, or employee of any nursing home, room and board home, ~~residential care facility, domiciliary assisted-living facility,~~ or institution engaged in the care, treatment, or housing of any person physically or mentally handicapped, infirm, or aged to be appointed guardian of any such person residing, being under care, receiving treatment, or being housed in any such home, ~~facility,~~ or institution within the State of Nebraska. Nothing in this subsection shall prevent the spouse, adult child, parent, or other relative of the person alleged to be incapacitated from being appointed guardian or prevent the guardian officer for one of the Nebraska veterans homes as provided in section 80-304.01 from being appointed guardian or conservator for the person alleged to be incapacitated. It shall be unlawful for any county attorney or deputy county attorney appointed as guardian for a person alleged to be incapacitated to circumvent his or her duties or the rights of the ward pursuant to the Nebraska Mental Health Commitment Act by consenting to inpatient or outpatient psychiatric treatment over the objection of the ward.

(b) Persons who are not disqualified under subsection (a) of this section and who exhibit the ability to exercise the powers to be assigned by the court have priority for appointment as guardian in the following order:

(1) A person nominated most recently by either of the following methods:

(i) A person nominated by the incapacitated person in a power of attorney or a durable power of attorney; or

(ii) A person nominated by an attorney in fact who is given power to nominate in a power of attorney or a durable power of attorney executed by the incapacitated person;

(2) The spouse of the incapacitated person;

(3) An adult child of the incapacitated person;

(4) A parent of the incapacitated person, including a person nominated by will or other writing signed by a deceased parent;

(5) Any relative of the incapacitated person with whom he or she has resided for more than six months prior to the filing of the petition;

(6) A person nominated by the person who is caring for him or her or paying benefits to him or her.

(c) When appointing a guardian, the court shall take into consideration the expressed wishes of the allegedly incapacitated person. The court, acting in the best interest of the incapacitated person, may pass over a person having priority and appoint a person having lower priority or no priority. With respect to persons having equal priority, the court shall select the person it deems best qualified to serve.

(d) In its order of appointment, unless waived by the court, the court shall require any person appointed as guardian to successfully complete within three months of such appointment a training program approved by the State Court Administrator. If the person appointed as guardian does not complete the training program, the court shall issue an order to show cause why such person should not be removed as guardian.

(e) The court may require a guardian to furnish a bond in an amount and conditioned in accordance with the provisions of sections 30-2640 and 30-2641.

Sec. 2. Section 30-2639, Reissue Revised Statutes of Nebraska, is amended to read:

30-2639. (a) The court may appoint an individual, or a corporation with general power to serve as trustee, as conservator of the estate of a protected person, except that it shall be unlawful for any agency providing residential care in an institution or community-based program or any owner, part owner, manager, administrator, employee, or spouse of an owner, part owner, manager, administrator, or employee of any nursing home, room and board home, ~~residential care facility~~, ~~domiciliary~~ assisted-living facility, or institution engaged in the care, treatment, or housing of any person physically or mentally handicapped, infirm, or aged to be appointed conservator of any such person residing, being under care, receiving treatment, or being housed in any such home, facility, or institution within the State of Nebraska. Nothing in this subsection shall prevent the spouse, adult child, parent, or other relative of the person in need of protection from being appointed conservator.

(b) Persons who are not disqualified under subsection (a) of this section and who exhibit the ability to exercise the powers to be assigned by the court have priority for appointment as conservator in the following order:

(1) A person nominated most recently by either of the following methods:

(i) A person nominated by the protected person in a power of attorney or durable power of attorney; or

(ii) A person nominated by an attorney in fact who is given power to nominate in a power of attorney or a durable power of attorney executed by the protected person;

(2) The spouse of the protected person;

(3) An adult child of the protected person;

(4) A parent of the protected person or a person nominated by the will of a deceased parent;

(5) Any relative of the protected person with whom he or she has resided for more than six months prior to the filing of the petition;

(6) A person nominated by the person who is caring for him or her or paying benefits to him or her.

(c) When appointing a conservator, the court shall take into consideration the expressed wishes of the person to be protected. A person having priority listed in subdivision (2), (3), (4), or (5) of subsection (b) of this section may nominate in writing a person to serve in his or her stead. With respect to persons having equal priority, the court shall select the person it deems best qualified to serve. The court, acting in the best interest of the protected person, may pass over a person having priority and appoint a person having lower priority or no priority.

(d) In its order of appointment, unless waived by the court, the court shall require any person appointed as conservator to successfully complete within three months of such appointment a training program approved by the State Court Administrator. If the person appointed as conservator does not complete the training program, the court shall issue an order to show cause why such person should not be removed as conservator.

Sec. 3. Section 68-1006.01, Reissue Revised Statutes of Nebraska, 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 forty dollars per month for a personal needs allowance if such persons reside in an ~~alternate~~ alternative living arrangement.

For purposes of this section, an alternative living arrangement shall include board and room, a licensed boarding home, a ~~licensed domiciliary facility~~, a certified adult family home, a licensed ~~residential care~~ 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. 4. Section 68-1038, Reissue Revised Statutes of Nebraska, is amended to read:

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

(1) Assets ~~shall mean~~ 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 ~~shall mean~~ 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 shall mean 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 shall mean means the Department of Health and Human Services;

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

(6) Home and community-based services shall mean 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 shall mean means assistance provided pursuant to the program established by section 68-1018;

(8) Qualified applicant shall mean 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, ~~domestic facility~~, residential care assisted-living facility, or center for the developmentally disabled, as such terms are defined in section 71-2017.01, 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 shall mean 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 shall mean means the spouse of a qualified applicant or qualified recipient.

Sec. 5. Section 71-507, Reissue Revised Statutes of Nebraska, is amended to read:

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

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

(2) Designated physician shall mean means the physician representing the emergency medical services provider as identified by name, address, and telephone number on the significant exposure report form;

(3) Emergency medical services provider shall mean means a person certified to provide emergency medical services pursuant to sections 71-5101 to 71-5164, a person certified to provide emergency medical care pursuant to the Emergency Medical Technician-Paramedic Act, a first responder certified to provide prehospital care pursuant to the First Responders Emergency Rescue Act, a sheriff, a deputy sheriff, a police officer, a state highway patrol officer, and a firefighter;

(4) Health care facility shall have has the meaning found in subdivisions (2), (10), (11), and ~~(21)~~ (20) of section 71-2017.01;

(5) Infectious disease or condition shall mean means hepatitis B, meningococcal meningitis, active pulmonary tuberculosis, human immunodeficiency virus, and such other diseases as the department may from time to time specify;

(6) Patient shall mean means an individual who is sick, injured, wounded, or otherwise helpless or incapacitated;

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

(8) Provider agency shall mean means any law enforcement agency, fire department, ambulance service, or other entity which is in the business of providing emergency response services;

(9) Significant exposure shall mean means a situation in which the body fluids, such as blood, saliva, urine, or feces, of a patient have entered the body of an emergency medical services provider through a body opening such as 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 medical services provider's body; and

(10) Significant exposure report form shall mean means the form used by the emergency medical services provider to document information necessary

for notification of significant exposure to an infectious disease or condition.

Sec. 6. Section 71-516.02, Reissue Revised Statutes of Nebraska, is amended to read:

71-516.02. The Legislature finds and declares that:

(1) Certain nursing homes and related facilities and ~~residential care assisted-living facilities~~ claim special care for persons who have Alzheimer's disease, dementia, or a related disorder;

(2) It is in the public interest to provide for the protection of consumers regarding the accuracy and authenticity of such claims; and

(3) The provisions of the Alzheimer's Special Care Disclosure Act are intended to require such facilities to disclose the reasons for those claims, require records of such disclosures to be kept, and require the Department of Health and Human Services Regulation and Licensure to examine the records.

Sec. 7. Section 71-516.03, Reissue Revised Statutes of Nebraska, is amended to read:

71-516.03. For the purposes of the Alzheimer's Special Care Disclosure Act, Alzheimer's special care unit shall mean any nursing facility, ~~residential care facility,~~ or assisted-living facility, licensed by the Department of Health and Human Services Regulation and Licensure, which secures, segregates, or provides a special program or special unit for residents with a diagnosis of probable Alzheimer's disease, dementia, or a related disorder and which advertises, markets, or otherwise promotes the facility as providing specialized Alzheimer's disease, dementia, or related disorder care services.

Sec. 8. Section 71-1637, Reissue Revised Statutes of Nebraska, 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 ~~(18)~~ (17) of section 71-2017.01 and the rules and regulations adopted and promulgated pursuant to such section. 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 Beginning July 1, 1998, the levy by a county or township shall be subject to section 77-3443. Each 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.~~ ~~organization.~~

(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 ~~(18)~~ (17) of section 71-2017.01, 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. 9. Section 71-2017, Reissue Revised Statutes of Nebraska, is amended to read:

71-2017. The purposes of sections 71-2017 to 71-2029 and 81-604.01 and the Nebraska Nursing Home Act are: (1) To provide for the development, establishment, and enforcement of basic standards (a) for the care of persons in hospitals, health clinics, skilled nursing facilities, intermediate care facilities, intermediate care facilities for the mentally retarded, nursing facilities, ~~domiciliary facilities,~~ mental health centers, centers for the developmentally disabled, substance abuse treatment centers, and ~~residential care assisted-living facilities~~ or persons using the services of a home health agency or hospice as defined in the Hospice Licensure Act and (b) for the construction, maintenance, and operation of such health care facilities which,

in light of existing knowledge, will insure safe and adequate care of such persons in such health care facilities; (2) to recognize the coordinated development of health care facilities and services; (3) to promote the development of multi-institutional systems that will coordinate and consolidate the delivery of health care services and multi-institutional arrangements for the sharing of support services; and (4) to promote the development of capacity to provide various levels of care on a geographically integrated basis to meet the special needs of residents of the State of Nebraska for health services.

Any hospital or other health care facility owned or operated by a fraternal organization mentioned in section 21-608 exclusively for its own members shall be exempt unless any such fraternal organization owning or operating such a hospital or other health care facility is issued a license for such hospital or other health care facility upon its written application and upon its agreeing to comply with sections 71-2017 to 71-2029 and the Nebraska Nursing Home Act.

The Department of Health and Human Services Regulation and Licensure may waive any rule, regulation, or standard adopted and promulgated by the department relating to construction or physical plant requirements of licensed health facilities upon proof by the licensee satisfactory to the department that the waiver of such rule, regulation, or standard will not unduly jeopardize the health or welfare of the patients or residents, that such rule, regulation, or standard would create an unreasonable hardship upon the facility, and that a waiver will not cause the State of Nebraska to fail to comply with any of the 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. The licensee shall submit and the department shall consider the following in evaluating the issue of unreasonable hardship: (i) The estimated cost of the modification or installation; (ii) the extent and duration of the disruption of the normal use of patient or resident areas resulting from construction work; (iii) the estimated period over which cost would be recovered through reduced insurance premiums and increased reimbursement related to cost; (iv) the availability of financing; and (v) the remaining useful life of the building. Any such waiver may be under such terms and conditions and for such period of time, not to exceed one year at a time, as the department may prescribe in rules and regulations for licensure of health care facilities, boarding homes, and hospices. Such terms and conditions may be different for licensed health care facilities, boarding homes, and hospices operating on the operative date of this section and facilities which will become operable after such date. The department may each year waive such rule, regulation, or standard for an additional year if the department determines that the continued waiver of such rule, regulation, or standard for an additional year will not constitute a hazard to the health or welfare of the patients or residents and will not cause the State of Nebraska to fail to comply with any of the 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.

Nothing in sections 71-2017 to 71-2029, 71-6043 to 71-6052, and 81-604.01, the Nebraska Nursing Home Act, or any rule or regulation adopted and promulgated pursuant thereto shall be construed to authorize or require any facility which is operated by and for members of a church which includes healing by prayer and spiritual means as a part of its religious practices to be licensed or inspected by the Department of Health and Human Services Regulation and Licensure except as such licensure and inspection pertain solely to sanitation, fire prevention, and safety standards and building and construction codes applicable to the facilities mentioned in subdivision (1) of this section, nor shall any patients, residents, or personnel thereof be subjected to any medical supervision, regulation, or control in connection with the operation of any such facility.

Sec. 10. Section 71-2017.01, Reissue Revised Statutes of Nebraska, is amended to read:

71-2017.01. For purposes of sections 71-2017 to 71-2029, unless the context otherwise requires:

(1) Care ~~shall mean~~ means the exercise of concern or responsibility for the comfort and welfare of the residents of a facility by the owner, occupant, administrator, or operator of the facility in addition to the provision of food and shelter to the residents and ~~shall include~~ includes, but ~~is not~~ limited to, the maintenance of a minimum amount of supervision of the activities of the residents of the facility as well as the provision of a minimum amount of assistance to the residents and ~~shall also include~~ includes personal care, hereby defined as the provision of health-related services for individuals who are in need of a protective environment but who are otherwise

able to manage the normal activities of daily living;

(2) Hospital ~~shall mean means~~ (a) any institution, facility, place, or building which is devoted primarily to the maintenance and operation of facilities for the diagnosis, treatment, or medical care over a period exceeding twenty-four consecutive hours of two or more nonrelated individuals suffering from illness, condition, injury, or deformity, (b) any institution, facility, place, or building which is devoted primarily to the rendering over a period exceeding twenty-four consecutive hours of obstetrical or other medical care for two or more nonrelated individuals, or (c) any institution, facility, place, or building in which any accommodation is primarily maintained, furnished, or offered for the medical and nursing care over a period exceeding twenty-four consecutive hours of two or more nonrelated aged or infirm persons requiring or receiving convalescent care. Hospital ~~shall include includes~~, but is not be limited to, facilities or parts of facilities which provide space for general acute hospitals, short-term hospitals, rehabilitation hospitals, long-term care hospitals, psychiatric or mental hospitals, and emergency hospitals or treatment centers. Hospital ~~shall does~~ not be ~~construed~~ to include the residence, office, or clinic of a private physician or of an association of physicians, any other health practitioner, or any practitioner or association of practitioners licensed pursuant to Chapter 71, in which residence, office, or clinic patients are not treated or given care for a period in excess of twenty-four consecutive hours;

(3) General acute hospital ~~shall mean means~~ a hospital having a duly constituted governing body which exercises administrative and professional responsibility and an organized medical staff which provides inpatient care, including medical, nursing, surgical, anesthesia, laboratory, diagnostic radiology, pharmacy, and dietary services. Such services may be provided through a contract or agreement;

(4) Short-term hospital ~~shall mean means~~ a hospital that (a) is primarily devoted to the diagnosis and treatment of individuals requiring short-term treatment or treatment of diagnosis consistent with the medical support available and (b) has written coordination agreements with a general acute hospital for transfers and quality assurance programs. Short-term hospital ~~shall does~~ not mean a facility for the treatment of mental diseases, a rehabilitation hospital, or a substance abuse treatment center;

(5) Rehabilitation hospital ~~shall mean means~~ a hospital which is operated for the primary purpose of assisting in the rehabilitation of disabled persons through an integrated program of medical and other services provided under professional supervision;

(6) Long-term care hospital ~~shall mean means~~ any hospital, any distinct part of any hospital, or any portion of a hospital which is primarily devoted to providing the care and services as set forth in subdivisions (10), (11), and ~~(21)~~ (20) of this section;

(7) Psychiatric or mental hospital ~~shall mean means~~ a hospital which is primarily engaged in providing to inpatients, by or under the supervision of a physician, psychiatric services for the diagnosis and treatment of mentally ill persons;

(8) Emergency hospital or treatment center ~~shall mean means~~ a hospital primarily devoted to the diagnosis and treatment of individuals requiring emergency outpatient services and emergency care and with written coordination agreements with a general acute hospital for transfers and quality assurance programs;

(9) Health clinic ~~shall mean means~~ an institution, a facility, a place, a building, or any distinct part of an institution, a facility, a place, or a building, not licensed as a hospital, in which advice, counseling, diagnosis, treatment, surgery, care, or services relating to the preservation or maintenance of health are provided on an outpatient basis and for a period not exceeding twenty-four consecutive hours primarily or exclusively to persons not residing or confined in such institution, facility, place, building, or distinct part of such institution, facility, place, or building. Health clinic ~~shall include includes~~, but is not be limited to, an ambulatory surgical center. Satellite clinics operated on an intermittent basis at a specific location or site and providing services within a portion of the total geographic area served by a licensed health clinic need not be separately licensed but may be operated as a part of a parent clinic and share administration and services. Health clinic ~~shall does~~ not include the residence, office, clinic, or any distinct part of the residence, office, or clinic of a private physician or association of physicians, any other health practitioner or association of practitioners, or any practitioner licensed pursuant to Chapter 71 unless such residence, office, clinic, or distinct part of the residence, office, or clinic is an ambulatory surgical center or unless ten or more abortions, as defined in subdivision (1) of section 28-326, are

performed during any one calendar week in such residence, office, clinic, or distinct part of the residence, office, or clinic. Health clinic shall does not include an institution, a facility, a place, a building, or any distinct part of an institution, a facility, a place, or a building which provides only routine health screenings, health education, or immunizations. For purposes of this subdivision, routine health screenings shall mean 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 for care, if indicated, and screening tool shall mean means a simple interview or testing procedure to collect basic information on health status;

(10) Skilled nursing facility shall mean means any institution, facility, place, or building or a distinct part of any institution, facility, place, or building which is primarily devoted to providing to inpatients skilled nursing care and related services for patients who require medical or nursing care or rehabilitation of injured, disabled, or sick persons. Unless a waiver is granted pursuant to section 71-2017.06, 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 section 71-2017.06, 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;

(11) Intermediate care facility shall mean means any institution, facility, place, or building in which accommodation and board for a period exceeding twenty-four consecutive hours and also nursing care and related medical services are provided for two or more nonrelated individuals who are ill, injured, or disabled but not in need of hospital or skilled nursing facility care, but who by reason of illness, disease, injury, deformity, disability, convalescence, or physical or mental infirmity require such nursing care and related medical services. An intermediate care facility shall provide at least one licensed registered nurse or licensed practical nurse on duty on the day shift seven days per week and at least one licensed registered nurse, licensed practical nurse, or care staff member on duty on the other two shifts seven days per week. An intermediate care facility shall provide a Director of Nursing Services, who shall be a licensed registered nurse, to administer, supervise, delegate, and evaluate nursing and nursing support services of the facility. The Director of Nursing Services shall serve on the day shift five days per week, eight hours per day, except when it is necessary to vary working hours to provide supervision on other shifts, and may satisfy the day-shift nurse requirement for five of seven days per week if he or she can meet both the nursing care needs of the patients or residents for that shift and his or her administrative and supervisory responsibilities as Director of Nursing Services;

(12) Intermediate care facility for the mentally retarded shall mean means any institution, facility, place, or building, not licensed as a hospital, that provides accommodation, board, training or habilitation services, advice, counseling, diagnosis, treatment, and care, including nursing care and related medical services, for a period exceeding twenty-four consecutive hours for fifteen or more nonrelated individuals who have mental retardation or related conditions, including epilepsy, cerebral palsy, or other developmental disabilities. The requirement of fifteen or more nonrelated individuals shall not apply to any intermediate care facility for the mentally retarded which has a valid license as of January 1, 1988;

(13) Residential care Assisted-living facility shall mean means any institution, facility, place, or building in which there are provided for a period exceeding twenty-four consecutive hours, through ownership, contract, or preferred provider arrangements, accommodation, board, and care, such as personal assistance in feeding, dressing, and other essential daily living activities, to an array of services for assistance with or provision of personal care, activities of daily living, health maintenance activities, or other supportive services, as defined in section 13 of this act, for four or more nonrelated individuals who by reason of illness, disease, injury, deformity, disability, or physical or mental infirmity are unable to sufficiently or properly care for themselves or manage their own affairs but do not require the daily services of a licensed registered nurse or licensed practical nurse;

(14) Domiciliary facility shall mean any institution; facility;

place or building in which there are provided for a period exceeding twenty-four consecutive hours accommodation and supervision to four or more individuals, not related to the owner, occupant, manager, or administrator thereof, who are essentially capable of managing their own affairs but who are in need of supervision, including supervision of nutrition, by the institution, facility, place, or building on a regular, continuing basis but not necessarily on a consecutive twenty-four-hour basis, who have been determined to need or want these services. Assisted living promotes resident self-direction and participation in decisions which emphasize independence, individuality, privacy, dignity, and residential surroundings. This definition shall does not include (a) those homes, apartments, or facilities providing casual care at irregular intervals and (b) those homes, apartments, or facilities in which a competent resident provides or contracts for his or her own personal or professional services if no more than twenty-five percent of the residents receive such services. A competent resident is someone who has the capability and capacity to make an informed decision:

(14) (14) Mental health center shall mean means any institution, facility, place, or building, not licensed as a hospital, which is used to provide for a period exceeding twenty-four consecutive hours accommodation, board, and advice, counseling, diagnosis, treatment, care, or services primarily or exclusively to persons residing or confined in the institution, facility, place, or building who are afflicted with a mental disease, disorder, or disability;

(15) (15) Center for the developmentally disabled shall mean means any residential institution, facility, place, or building, not licensed as a hospital, which is used to provide accommodation, board, and training, advice, counseling, diagnosis, treatment, care, including medical care when appropriate, or services primarily or exclusively to four or more persons residing in the institution, facility, place, or building who have developmental disabilities;

(16) (16) Substance abuse treatment center shall mean means any institution, facility, place, or building, not licensed as a hospital, including any private dwelling, which is used to provide residential care, treatment, services, maintenance, accommodation, or board in a group setting primarily or exclusively for individuals who are substance abusers. Substance abuse treatment center shall include includes those settings which provide programs and services on an outpatient basis primarily or exclusively to individuals who are substance abusers but not services that can be rendered only by a physician or within the confines of a hospital. Specific types or categories of substance abuse treatment centers may be further defined by appropriate rule and regulation of the department not inconsistent with this definition. For purposes of this subdivision, substance abuse shall mean 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 abuse shall mean means the use of substances in ways that have or are likely to have significant adverse social consequences;

(17) (17) Home health agency shall mean means a public agency, private organization, or subdivision of such an agency or organization which is primarily engaged in providing 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 patients in a place of temporary or permanent residence used as the patient's home under a plan of care as prescribed by the attending physician and which meets the rules, regulations, and standards as established by the department. Nothing in this subdivision shall be construed to require (a) a physician's plan of care, (b) a summary report to the physician, (c) a progress report, or (d) a discharge summary when only personal care or assistance with the activities of daily living, as such terms are defined in section 71-6602, are provided. Parent home health agency shall mean means the primary home health agency which establishes, maintains, and assures administrative and supervisory control of branch offices and subunits. Branch office shall mean means a home health agency which is at a location or site providing services within a portion of the total geographic area served by the parent agency and is in sufficient proximity to share administration, supervision, and services with its parent agency in a manner that renders it unnecessary for the branch independently to meet licensure requirements. A branch office shall be part of its parent home health agency and share administration and services. Subunit shall mean means a home health agency which serves patients in a geographic area different from that of the parent agency and which, by virtue of the distance between it and the parent agency, is judged incapable of sharing administration, supervision,

and services on a daily basis and shall independently meet the licensing requirements for home health agencies. Home health agency ~~shall does~~ not include private duty nursing registries as long as the private duty nursing registrant is the direct payee from the patient. Home health agency ~~shall does~~ not apply to the practice of home health care by other licensed medical persons as authorized by the practice of their particular specialty nor to the individuals providing homemaker or chore services within the home;

(19) (18) Developmental disability ~~shall mean means~~ a severe, chronic disability of a person which (a) is attributable to a mental or physical impairment or combination of mental and physical impairment, (b) is manifested before the person attains the age of twenty-two, (c) is likely to continue indefinitely, (d) results in substantial functional limitations in three or more of the following areas of major life activity: Self-care; receptive and expressive language; learning; mobility; self-direction; capacity for independent living; and economic self-sufficiency, and (e) reflects the person's need for a combination and sequence of special interdisciplinary or generic care, treatment, or other services which are of lifelong or extended duration and are individually planned and coordinated;

(20) (19) Qualified mental retardation professional ~~shall mean means~~ any person who meets the requirements of 42 C.F.R. 483.430(a);

(21) (20) Nursing facility ~~shall mean means~~ any institution, facility, place, or building or a distinct part of any institution, facility, place, or building which is primarily devoted to providing to inpatients nursing care and related services for patients who require medical or nursing care or rehabilitation of injured, disabled, or sick persons. Unless a waiver is granted pursuant to section 71-2017.07, 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 section 71-2017.07, 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;

(22) (21) Department ~~shall mean means~~ the Department of Health and Human Services Regulation and Licensure; and

(23) (22) Ambulatory surgical center ~~shall mean means~~ any facility, not licensed as a hospital, (a) the primary purpose of which is to provide surgical services to patients not requiring hospitalization, in which the patient is admitted to and discharged from such facility within the same working day and is not permitted to stay overnight, (b) which meets all state licensure requirements of a health clinic pursuant to subdivision (9) of this section, and (c) which has qualified for a written agreement with the Health Care Finance 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 facility services. Ambulatory surgical center ~~shall 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. 11. Section 71-2017.07, Reissue Revised Statutes of Nebraska, is amended to read:

71-2017.07. The Department of Health and Human Services Regulation and Licensure may waive either the requirement of subdivision (21) (20) of section 71-2017.01 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 of such subdivision 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:

(1)(a) 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;

(b) 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

(c) 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

(2) 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 (1)(b) and (c) of this section have been met.

The Department of Health and Human Services Finance and Support shall apply for such a waiver from the federal government to carry out the provisions of subdivision (2) of this section.

A waiver granted under this section shall be subject to annual review by the department. 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. 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.

Sec. 12. Section 71-2024, Reissue Revised Statutes of Nebraska, is amended to read:

71-2024. 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 hospital or related institution as defined in sections 71-2017 to 71-2029 consistent with the Nebraska Nursing Home Act, the Uniform Controlled Substances Act, the Uniform Licensing Law, sections 13 to 15 of this act, and sections 28-1437 to 28-1439.05, 71-2017 to 71-2029, 71-6501, 71-6601 to 71-6615, and 71-6701 to 71-6717, the department shall adopt, promulgate, and enforce rules, regulations, and standards with respect to the different types of hospitals and related institutions except nursing homes to be licensed hereunder as may be designed to further the accomplishment of the purposes of sections 71-2017 to 71-2029. Such rules, regulations, and standards shall be modified, amended, or rescinded from time to time in the public interest by the department. The department, with the advice of the Nursing Home Advisory Council, shall adopt, promulgate, and enforce rules, regulations, and standards with respect to nursing homes. 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. 13. For purposes of this section and sections 14 and 15 of this act:

(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;

(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. 14. (1) 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.

Sec. 15. To protect the health, safety, and welfare of the public, to ensure to the greatest extent possible the efficient and safe services and care to the residents living in an assisted-living facility, and to ensure prescribed drugs are administered in conformance to the orders authorizing their administration, the Department of Health and Human Services Regulation and Licensure shall adopt and promulgate rules, regulations, and standards pursuant to section 71-2024 which will become operative no later than July 1, 1998, for assisted-living facilities regarding licensing procedures, physical plant and sanitation, food service, staffing appropriate to meet the needs of the residents living in the facility, levels of care, quality of care procedures, record keeping, rights of residents, resident service agreements, and services to residents, including services to special populations.

Sec. 16. Section 71-2411, Reissue Revised Statutes of Nebraska, 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, as such terms are defined under section 71-2017.01;

(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 by the Department of Health and Human Services Regulation and Licensure under section 71-1,147.03;

(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. 17. Section 71-5805.01, Reissue Revised Statutes of Nebraska, is amended to read:

71-5805.01. Capital expenditure minimum shall mean a base amount of three million dollars for capital expenditures for ~~residential care facilities, domiciliary facilities, assisted-living facilities~~ and physician clinics which are not ambulatory surgical centers with any adjustments made by the department pursuant to this section. In all other cases, capital expenditure minimum shall mean a base amount of one million two hundred thousand dollars together with any adjustments made by the department pursuant to this section. On October 1 of each year the department shall adjust the base amount by an amount equal to the percentage change in the Department of Commerce Composite Construction Cost Index (1) from October 1, 1989, through the period most recently reported for the one-million-two-hundred-thousand-dollar base and (2) from July 19, 1996, through the period most recently reported for the three-million-dollar base.

Sec. 18. Section 71-5809.01, Reissue Revised Statutes of Nebraska, is amended to read:

71-5809.01. ~~Domiciliary~~ Assisted-living facility shall have the same meaning as in section 71-2017.01.

Sec. 19. Section 71-5810, Reissue Revised Statutes of Nebraska, is amended to read:

71-5810. Health care facility shall include hospitals, psychiatric hospitals, tuberculosis hospitals, skilled nursing facilities, kidney disease treatment centers, including freestanding hemodialysis units, intermediate care facilities, nursing facilities, ambulatory surgical centers, inpatient facilities owned or controlled by health maintenance organizations, rehabilitation facilities, and other comparable facilities without regard to location or ownership.

Health care facility shall not include (1) Christian Science Sanatoriums operated or listed and certified by the First Church of Christ Scientist, Boston, Massachusetts, (2) facilities operated solely as part of the professional practice of an independent practitioner, partnership, limited liability company, or professional corporation as defined in section 21-2202, (3) home health agencies, (4) ~~residential care facilities,~~ (5) ~~domiciliary assisted-living~~ facilities, (6) (5) alcoholism or drug abuse treatment facilities which do not offer medical services under professional supervision, or (7) (6) physician clinics.

Sec. 20. Section 71-5813, Reissue Revised Statutes of Nebraska, is amended to read:

71-5813. Institutional health services shall mean health services provided in or through health care facilities and shall include the entities in or through which such services are provided but shall not include home health, ~~residential care, or domiciliary care or assisted-living~~ services or services provided in or through physician clinics.

Sec. 21. Section 71-5828, Reissue Revised Statutes of Nebraska, is amended to read:

71-5828. Substantial change in health service shall mean (1) the offering of a health service which was not offered on a regular basis in or through a health care facility within the twelve-month period prior to the time the services would be offered or (2) the termination of a health service provided in or through a health care facility. Substantial change in health services shall not mean the development of home health, ~~residential care, or domiciliary care or assisted-living~~ services or the offering of services by physician clinics. A technological improvement to a service already being offered shall not be considered a substantial change in health service, but a technological improvement may require a certificate of need under the provisions of subdivision (2), (5), (7) (6), or (8) (7) of section 71-5830.

Sec. 22. Section 71-5830, Reissue Revised Statutes of Nebraska, is amended to read:

71-5830. No person, including persons acting for or on behalf of a health care facility, shall engage in any of the following activities without having first applied for and received the necessary certificate of need:

(1) The development, construction, acquisition, lease, or other

establishment of a health care facility, including purchasing or obtaining controlling interest in the stock of a health care facility by any means. For the purposes of this section, controlling interest shall mean a majority of the voting rights of the shares of stock entitled to vote. The proposed lease, acquisition, or purchase of an existing health care facility shall be subject to this subdivision unless:

(a) The acquisition of the facility occurs at a judicial sale pursuant to foreclosure of the facility for collection of a debt secured by the facility or a lien on the facility arising by the operation of law or a subsequent sale or lease of the facility by the secured lender or lienholder who has purchased the facility at a judicial sale;

(b) The acquisition of the facility is a transfer of ownership occurring by reason of the death of the owner or part owner thereof and the transferees are the owner's heirs, are persons designated in the owner's probated will or trust agreement, or are joint tenants with the owner on the title instrument;

(c) The facility to be acquired, leased, or purchased has not received federal or state reimbursement for one year or more prior to the date of such acquisition, lease, or purchase and the transfer will not result in any increased reimbursement for capital costs by any governmental reimbursement or health care insurance program; or

(d) The acquisition of the facility is a transfer to the spouse or lineal descendants of the owner or controlling shareholder or to a corporation, general partnership, limited partnership, or limited liability company directly or indirectly controlled by the owner or his or her spouse or lineal descendants, or any combination of such individuals and the transfer will not result in any increased reimbursement for capital costs by any governmental reimbursement or health care insurance program.

An application for certificate of need pursuant to this subdivision shall be denied whenever the approval of such development, construction, acquisition, lease, or other establishment would result in any person, corporation, partnership, limited liability company, or holding company owning or having controlling interest in health care facilities which (i) account for twenty percent or more of the total patient discharges in the state for all hospitals with an average length of stay of less than thirty days or (ii) account for twenty percent or more of the total licensed beds in the state for all freestanding skilled nursing, intermediate care, and nursing facilities;

(2) Offering a new institutional health service which will entail operating expenditures for the twelve-month period immediately following initiation of the new service in excess of the annual operating expenditure minimum;

(3) Entering into any obligation for any capital expenditure in excess of the base amount of seven hundred fifty thousand dollars, together with any adjustment made by the department by or on behalf of a health care facility which results in a substantial change to an institutional health service. On October 1 of each year, the department shall adjust the base amount by an amount equal to the percentage change in the Department of Commerce Composite Construction Cost Index from October 1, 1989, through the period most recently reported;

(4) Any change in the bed capacity of a health care facility which increases the total number of beds, redistributes beds among various categories, converts any type of hospital beds which may be licensed pursuant to sections 71-2017 to 71-2029 to skilled nursing or intermediate care beds or any combination of such beds, or relocates beds from one physical facility or site to another if the bed capacity of the facility will have changed by more than ten beds or more than ten percent of total bed capacity, whichever is less, over a two-year period. For purposes of this subdivision, redistributions, conversions, or relocations of beds for ~~residential care, domiciliary care, assisted-living~~ or swing beds shall not be included in the computation of bed capacity changes. Swing beds shall mean beds which may be used for acute or long-term care in a facility (a) located in an area which is not designated as urban by the United States Bureau of Census and (b) with up to one hundred beds, excluding beds for newborns and intensive-care-type inpatient units;

(5) Any change by a ~~residential care~~ assisted-living facility that converts ~~residential care~~ assisted-living beds to skilled nursing beds or intermediate care beds or any combination of such beds;

(6) Any change by a ~~domiciliary~~ facility that converts ~~domiciliary~~ skilled nursing beds to skilled nursing beds or intermediate care beds or any combination of such beds;

(7) Any capital expenditure or obligation incurred by or on behalf of a health care facility in excess of the capital expenditure minimum made:

(a) In preparation for the offering or developing of a new institutional health service, in preparation for initiating a substantial change in an existing health service, or in any arrangement or commitment made for financing the offering or development of such new or substantially changed health service. Expenditures in preparation for the offering of a new institutional health service shall include expenditures for architectural designs, plans, working drawings, and specifications but shall not include expenditures for preliminary plans, studies, and surveys or site acquisition;

(b) For the purchase, acquisition, or lease of clinical, diagnostic, treatment, or therapeutic equipment; or

(c) For the acquisition of a capital asset other than a health care facility as described in subdivision (1) of this section. For the purpose of this subdivision, capital asset shall mean any property which will be depreciated for a period exceeding twelve months using generally accepted accounting procedures; or

~~(d)~~ (7) Any capital expenditure by a health care facility over the capital expenditure minimum not covered by subdivisions (1) through ~~(7)~~ (6) of this section.

Sec. 23. Section 71-6054, Reissue Revised Statutes of Nebraska, is amended to read:

71-6054. (1)(a) The board shall issue a license to an applicant who submits (i) satisfactory evidence of completion of an associate degree or its equivalent in long-term care administration, allied health, or human services, including completion of one two-credit-hour course in each of the following areas: General administration; social gerontology; health problems of the aged; patient services and care; health and social service delivery systems; and a seminar on contemporary developments in aging, including the federal Older Americans Act, as now or hereafter amended, (ii) satisfactory evidence of completion of an administrator-in-training program under a certified preceptor, and (iii) evidence of successful passage of the National Association of Boards of Examiners for Nursing Home Administration written examination and a state examination that covers applicable state statutes and rules and regulations adopted and promulgated by the department as approved by the board, except that two years of successful experience as an administrator of a ~~domiciliary or residential care~~ an assisted-living facility of at least one hundred residents, immediately preceding application for licensure, may be considered equivalent to the requirements prescribed in subdivision (ii) of this subdivision. The board shall evaluate the experience of an applicant requesting the substitution of the requirements listed in subdivision (ii) of this subdivision with two years of experience and shall obtain the affidavit of at least two licensed nursing home administrators in Nebraska testifying that the applicant is of good moral character and in good standing as an administrator of a ~~domiciliary or residential care~~ an assisted-living facility. In no case shall the board accept such substitution if the ~~domiciliary or residential care~~ assisted-living facility while under the direction and administration of the applicant had its license suspended, denied, or revoked. The board shall license administrators in accordance with sections 71-6053 to 71-6068 and standards, rules, and regulations adopted and promulgated by the board pursuant to such sections. The license shall not be transferable or assignable, and each administrator shall be full time and responsible for the operation of only one licensed facility.

(b) Notwithstanding the provisions of sections 71-6053 to 71-6068, the board shall issue a license as a nursing home administrator to an applicant who will function as the administrator of a facility caring primarily for persons with head injuries and associated disorders who submits satisfactory evidence that he or she (i) has at least two years of experience working with persons with head injuries or severe physical disabilities, at least one of which was spent in an administrative capacity, (ii) is (A) a psychologist with at least a master's degree in psychology from an accredited college or university and has specialized training or one year of experience working with persons with traumatic head injury or severe physical disability, (B) a physician licensed under the Uniform Licensing Law to practice medicine and surgery or psychiatry and has specialized training or one year of experience working with persons with traumatic head injury or severe physical disability, (C) an educator with at least a master's degree in education from an accredited college or university and has specialized training or one year of experience working with persons with traumatic head injury or severe physical disability, or (D) a certified social worker, a certified master social worker, or a licensed mental health practitioner certified or licensed under the Uniform Licensing Law and has at least three years of social work or mental health practice experience and specialized training or one or more years of experience working with persons who have experienced traumatic head

injury or are severely physically disabled, and (iii) is of good moral character.

A license issued pursuant to this subdivision shall be issued without examination and without the requirement of completion of an administrator-in-training program. Such license may be renewed without the completion of any continuing education requirements.

(2) If an applicant for an initial license files an application for licensure within ninety days prior to the biennial renewal date of the license, the applicant may either:

(a) Request that the department delay the processing of the application and the issuance of the license until the biennial renewal date and pay only the fee for initial licensure; or

(b) Request that a license which will be valid until the next subsequent renewal date be issued immediately and pay the fee for initial licensure and an additional fee of one-fourth of the biennial fee.

(3) Licenses may be denied, suspended, limited, refused renewal, or revoked by the department for due cause which shall include: (a) Fraud in procuring a license; (b) immoral, unprofessional, or dishonorable conduct; (c) habitual intoxication or addiction to the use of drugs; (d) distribution of intoxicating liquors or drugs for other than lawful purposes; (e) conviction of a felony; (f) physical or mental incapacity to perform professional duties; (g) violation of any provision of sections 71-6053 to 71-6068 or standards, rules, and regulations adopted and promulgated thereunder or of any law or standards, rules, and regulations adopted and promulgated by the department relating to the proper administration and management of a home for the aged or infirm or nursing home; (h) commission of any of the acts or offenses set forth in sections 71-147 and 71-148; and (i) failure to pay the required fees. Except in cases of failure to pay the required fees, no license shall be denied, suspended, limited, refused renewal, or revoked except after due notice and opportunity for a hearing. Disciplinary actions and proceedings shall be conducted as specified in the Uniform Licensing Law. Any denial, suspension, limitation, refusal of renewal, or revocation of such license may be appealed, and the appeal shall be in accordance with the Administrative Procedure Act. A person whose license has been revoked, suspended, or limited may petition the board for reinstatement in the manner provided by sections 71-161.04 to 71-161.06.

Sec. 24. Section 71-6702, Reissue Revised Statutes of Nebraska, is amended to read:

71-6702. For purposes of sections 71-6701 to 71-6717:

(1) Administer ~~shall mean means~~ giving or applying a dosage unit of a medication to a resident;

(2) Assist with reference to medications ~~shall mean means~~ giving guidance to a resident in the ingestion or application of a medication by the resident of a facility;

(3) Center for the developmentally disabled ~~shall include includes~~ home and community-based services as defined in section 68-1038 which are certified by the department;

(4) Department ~~shall mean means~~ the Department of Health and Human Services Regulation and Licensure;

(5) External medication ~~shall mean means~~ a drug that is to be applied topically to the skin or by drop to the ears, eyes, or nose;

(6) Facility ~~shall mean means~~ a ~~domiciliary facility, residential care facility, mental health center, an assisted-living facility, or a~~ center for the developmentally disabled as such terms are defined in section 71-2017.01;

(7) Medication assistant ~~shall mean means~~ an individual who has been approved by the department to administer to residents of a facility or assist residents of a facility in taking or applying routine oral and external medications and oral and external nonlegend medications monitored by a registered nurse;

(8) Oral medication ~~shall mean means~~ a drug that is to be taken by the mouth; and

(9) Routine with reference to oral or external medication ~~shall mean means~~ a drug for which the frequency of administration, amount, strength, and method of administration are specifically fixed.

Sec. 25. Section 81-651, Reissue Revised Statutes of Nebraska, 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 under subdivision ~~(19)~~ (17) of section 71-2017.01.

(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. 26. 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) ~~A residential care~~ An assisted-living facility;
- (3) A boarding home;
- (4) Any other adult care home;
- (5) A continuing care community;
- (6) Any swing bed in an acute care facility or extended care

facility; and

- (7) Any adult day care facility.

Sec. 27. Sections 12, 15, 16, 27, and 28 of this act become operative on their effective date. The other sections of this act become operative on July 1, 1998.

Sec. 28. Original sections 71-2024 and 71-2411, Reissue Revised Statutes of Nebraska, are repealed.

Sec. 29. Original sections 30-2627, 30-2639, 68-1006.01, 68-1038, 71-507, 71-516.02, 71-516.03, 71-1637, 71-2017, 71-2017.01, 71-2017.07, 71-5805.01, 71-5809.01, 71-5810, 71-5813, 71-5828, 71-5830, 71-6054, 71-6702, 81-651, and 81-2243, Reissue Revised Statutes of Nebraska, are repealed.

Sec. 30. The following section is outright repealed: Section 71-5818.02, Reissue Revised Statutes of Nebraska.