2008

STATE OF NEBRASKA

STATUTES RELATING TO HEALTH CARE FACILITIES

Department of Health and Human Services
Division of Public Health
Licensure Unit

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NEBRASKA CREDENTIALED HEALTH CARE FACILITIES AND SERVICES
(Health Care Facilities and Services Licensure Statutes listed in alphabetical order)

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STATUTES PERTAINING TO HEALTH CARE FACILITIES AND SERVICES

HEALTH MAINTENANCE ORGANIZATIONS

44-32,119. Application; transmittal to Department of Health and Human Services; duties. (1) Upon receipt of an application for issuance of a certificate of authority, the Director of Insurance shall forthwith transmit copies of such application and accompanying documents to the Department of Health and Human Services.

(2) The Department of Health and Human Services shall determine whether the applicant has complied with sections 44-32,126 to 44-32,128 with respect to health care services to be furnished.

(3) Within forty-five days of receipt of the application for issuance of a certificate of authority, the Department of Health and Human Services shall certify to the Director of Insurance that the proposed health maintenance organization meets the requirements of such sections or notify the Director of Insurance that the health maintenance organization does not meet such requirements and specify in what respects it is deficient.

Source: Laws 1990, LB 1136, § 28; Laws 1996, LB 1044, § 245; Laws 2007, LB296, § 184. Operative date July 1, 2007.

44-32,120. Certificate of authority; issuance; conditions. The Director of Insurance shall, within forty-five days of receipt of certification or notice of deficiencies pursuant to section 44-32,119, issue a certificate of authority to any person filing a completed application upon receiving the prescribed fees and being satisfied that:

(1) The persons responsible for the conduct of the affairs of the applicant are competent, trustworthy, and possess good reputations;

(2) Any deficiencies identified by the Department of Health and Human Services have been corrected and the department has certified to the Director of Insurance that the health maintenance organization's proposed plan of operation meets the requirements of sections 44-32,126 to 44-32,128;

(3) The health maintenance organization will effectively provide or arrange for the provision of basic health care services on a prepaid basis, through insurance or otherwise, except to the extent of reasonable requirements for copayments or deductibles; and

(4) The health maintenance organization is in compliance with sections 44-32,138 to 44-32,148.

A certificate of authority shall be denied only after the Director of Insurance complies with the requirements of section 44-32,153.

Source: Laws 1990, LB 1136, § 29; Laws 1996, LB 1044, § 246; Laws 2007, LB296, § 185. Operative date July 1, 2007.

44-32,121. Certificate of authority; expiration; renewal. A certificate of authority issued pursuant to sections 44-32,119 and 44-32,120 shall expire on April 30 in each year and shall be renewed annually if the health maintenance organization has continued to comply with the laws of this state and the rules and regulations.

Source: Laws 1990, LB 1136, § 30.

44-32,126. Quality of care; procedures established. Each health maintenance organization shall establish procedures to assure that the health care services provided to enrollees are rendered under reasonable standards of quality of care consistent with prevailing professionally recognized standards of medical practice. Such procedures shall include mechanisms to assure availability, accessibility, and continuity of care.

Source: Laws 1990, LB 1136, § 35.

44-32,127. Quality assurance program; requirements. Each health maintenance organization shall have an ongoing, internal quality assurance program to monitor and evaluate its health care services, including primary and specialist physician services, and ancillary and preventive health care services across all institutional and noninstitutional settings. The quality assurance program shall include, but not be limited to, the following:

(1) A written statement of goals and objectives which emphasizes improved health status in evaluating the quality of care rendered to enrollees;

(2) A written quality assurance plan which describes the following:

(a) The health maintenance organization's scope and purpose in quality assurance;

(b) The organizational structure responsible for quality assurance activities;

(c) Contractual arrangements, when appropriate, for delegation of quality assurance activities;

(d) Confidentiality policies and procedures;

(e) A system of ongoing evaluation activities;

(f) A system of focused evaluation activities;

(g) A system for credentialing providers and performing peer review activities; and

(h) Duties and responsibilities of the designated physician responsible for the quality assurance activities;

(3) A written statement describing the system of ongoing quality assurance activities, including, but not limited to, the following:

(a) Problem assessment, identification, selection, and study;

(b) Corrective action, monitoring, evaluation, and reassessment; and

(c) Interpretation and analysis of patterns of care rendered to individual patients by individual providers;

(4) A written statement describing the system of focused quality assurance activities based on representative samples of the enrolled population which identifies method of topic selection, study, data collection, analysis, interpretation, and report format; and

(5) A written plan for taking appropriate corrective action whenever, as determined by the quality assurance program, inappropriate or substandard services have been provided or services which should have been furnished have not been provided.

Each health maintenance organization shall record proceedings of formal quality assurance program activities and maintain documentation in a confidential manner. Quality assurance program minutes shall be available to the Department of Health and Human Services. Each health maintenance organization shall also establish a mechanism for periodic reporting of quality assurance program activities to the governing body of the health maintenance organization, the providers, and appropriate staff.

Source: Laws 1990, LB 1136, § 36; Laws 1996, LB 1044, § 247; Laws 2007, LB296, § 186. Operative date July 1, 2007.

44-32,128. Patient record system; requirements. Each health maintenance organization shall ensure the use and maintenance of an adequate patient record system which facilitates documentation and retrieval of clinical information for the purpose of the health maintenance organization evaluating continuity and coordination of patient care and assessing the quality of health and medical care provided to enrollees. Enrollee clinical records shall be available to the Department of Health and Human Services or an authorized designee for examination and review to ascertain compliance with section 44-32,127 or as deemed necessary by the department.

Source: Laws 1990, LB 1136, § 37; Laws 1996, LB 1044, § 248; Laws 2007, LB296, § 187. Operative date July 1, 2007.

44-32,163. Fees; distribution. Every health maintenance organization subject to the Health Maintenance Organization Act shall pay to the director the following fees:

(1) For filing an application for a certificate of authority or amendment thereto, three hundred dollars;

(2) For filing an amendment to the organizational documents that requires approval, twenty dollars;

(3) For filing each annual report, two hundred dollars; and

(4) For renewing a certificate of authority, one hundred dollars.

Fees charged under this section shall be distributed one-half to the Director of Insurance and one-half to the Department of Health and Human Services. All fees or other assessments transmitted to the Department of Health and Human Services pursuant to the act shall be remitted to the state treasury for credit to the Health and Human Services Cash Fund. There shall be appropriated from money credited to the fund pursuant to this section such amounts as are available to pay expenses considered incident to the administration of the act.

Source: Laws 1990, LB 1136, § 72; Laws 1991, LB 703, § 12; Laws 1996, LB 1044, § 255; Laws 2007, LB296, § 194. Operative date July 1, 2007.

44-32,176. Department of Health and Human Services; contracts authorized. The Department of Health and Human Services, in carrying out obligations under the Health Maintenance Organization Act, may contract with qualified persons to make recommendations concerning the determinations required to be made. Such recommendations may be accepted in full or in part by the department.

Source: Laws 1990, LB 1136, § 85; Laws 1996, LB 1044, § 257; Laws 2007, LB296, § 196. Operative date July 1, 2007.

HEALTH CARE FACILITY LICENSURE ACT

71-401. Act, how cited. Sections 71-401 to 71-459 shall be known and may be cited as the Health Care Facility Licensure Act.

Source: Laws 2000, LB 819, § 1; Laws 2001, LB 398, § 65; Laws 2004, LB 1005, § 41; Laws 2007, LB203, § 1. Effective date September 1, 2007.

71-402. Purpose of act. The purpose of the Health Care Facility Licensure Act and the Nebraska Nursing Home Act is to protect the public health, safety, and welfare by providing for the licensure of health care facilities and health care services in the State of Nebraska and for the development, establishment, and enforcement of basic standards for such facilities and services.

Source: Laws 2000, LB 819, § 2. Operative date January 1, 2001.

71-403. Definitions, where found. For purposes of the Health Care Facility Licensure Act, unless the context otherwise requires, the definitions found in sections 71-404 to 71-431 shall apply.

Source: Laws 2000, LB 819, § 3; Laws 2007, LB203, § 2. Effective date September 1, 2007.

71-404. Adult day service, defined. (1) Adult day service means a person or any legal entity which provides care and an

array of social, medical, or other support services for a period of less than twenty-four consecutive hours in a community-based group program to four or more persons who require or request such services due to age or functional impairment.

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

Source: Laws 2000, LB 819, § 4; Laws 2002, LB 1062, § 39. Operative date July 20, 2002.

71-405. Ambulatory surgical center, defined. (1) Ambulatory surgical center means a facility (a) where surgical services are provided to persons not requiring hospitalization who are admitted to and discharged from such facility within the same working day and are not permitted to stay overnight at such facility, (b) which meets all applicable requirements for licensure as a health clinic under the Health Care Facility Licensure Act, and (c) which has qualified for a written agreement with the Health Care Financing Administration of the United States Department of Health and Human Services or its successor to participate in medicare as an ambulatory surgical center as defined in 42 C.F.R. 416 et seq. or which receives other third-party reimbursement for such services.

(2) Ambulatory surgical center does not include an office or clinic used solely by a practitioner or group of practitioners in the practice of medicine, dentistry, or podiatry.

Source: Laws 2000, LB 819, § 5. Operative date January 1, 2001.

71-406. Assisted-living facility, defined. (1) Assisted-living facility means a facility where shelter, food, and care are provided for remuneration for a period of more than twenty-four consecutive hours to four or more persons residing at such facility who require or request such services due to age, illness, or physical disability.

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

Source: Laws 2000, LB 819, § 6. Operative date January 1, 2001.

71-407. Care, defined. (1) Care means the exercise of concern or responsibility for the comfort, welfare, and habilitation of persons, including a minimum amount of supervision and assistance with or the provision of personal care, activities of daily living, health maintenance activities, or other supportive services.

(2) For purposes of this section:

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

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

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

Source: Laws 2000, LB 819, § 7. Operative date January 1, 2001.

71-408. Center or group home for the developmentally disabled, defined. Center or group home for the developmentally disabled means a facility where shelter, food, and care, advice, counseling, diagnosis, treatment, or related services are provided for a period of more than twenty-four consecutive hours to four or more persons residing at such facility who have developmental disabilities.

Source: Laws 2000, LB 819, § 8. Operative date January 1, 2001.

71-409. Critical access hospital, defined. Critical access hospital means a facility (1) with acute care inpatient beds where care or treatment is provided on an outpatient basis or on an inpatient basis to persons for an average period of not more than ninety-six hours and emergency services are provided on a twenty-four-hour basis, (2) which has formal agreements with at least one hospital and other appropriate providers for services such as patient referral and transfer, communications systems, provision of emergency and nonemergency transportation, and backup medical and emergency services, and (3) which is located in a rural area. For purposes of this section, rural area means a county with a population of less than one hundred thousand residents. A facility licensed as a critical access hospital shall have no more than twenty-five acute care inpatient beds.

Source: Laws 2000, LB 819, § 9; Laws 2004, LB 1005, § 42; Laws 2005, LB 664, § 1; Laws 2008, LB797, § 5. Operative date April 1, 2008.

71-410. Department, defined. Department means the Division of Public Health of the Department of Health and Human Services.

Source: Laws 2000, LB 819, § 10; Laws 2007, LB296, § 369. Operative date July 1, 2007.

71-411. Director, defined. Director means the Director of Public Health of the Division of Public Health.

Source: Laws 2000, LB 819, § 11; Laws 2007, LB296, § 370. Operative date July 1, 2007.

71-412. General acute hospital, defined. General acute hospital means a hospital with a duly constituted governing body where medical, nursing, surgical, anesthesia, laboratory, diagnostic radiology, pharmacy, and dietary services are provided on an inpatient or outpatient basis by the organized medical staff of such hospital.

Source: Laws 2000, LB 819, § 12. Operative date January 1, 2001.

71-413. Health care facility, defined. Health care facility means an ambulatory surgical center, an assisted-living facility, a center or group home for the developmentally disabled, a critical access hospital, a general acute hospital, a health clinic, a hospital, an intermediate care facility, an intermediate care facility for the mentally retarded, a long-term care hospital, a mental health center, a nursing facility, a pharmacy, a psychiatric or mental hospital, a public health clinic, a rehabilitation hospital, a skilled nursing facility, or a substance abuse treatment center.

Source: Laws 2000, LB 819, § 13. Operative date January 1, 2001.

71-414. Health care practitioner facility, defined. Health care practitioner facility means the residence, office, or clinic of a practitioner or group of practitioners credentialed under the Uniform Licensing Law or any distinct part of such residence, office, or clinic.

Source: Laws 2000, LB 819, § 14. Operative date January 1, 2001.

71-415. Health care service, defined. Health care service means an adult day service, a home health agency, a hospice or hospice service, or a respite care service. Health care service does not include an in-home personal services agency as defined in section 71-6501.

Source: Laws 2000, LB 819, § 15; Laws 2007, LB236, § 43. Effective date September 1, 2007.

71-416. Health clinic, defined. (1) Health clinic means a facility where advice, counseling, diagnosis, treatment, surgery, care, or services relating to the preservation or maintenance of health are provided on an outpatient basis for a period of less than twenty-four consecutive hours to persons not residing or confined at such facility. Health clinic includes, but is not limited to, an ambulatory surgical center or a public health clinic.

(2) Health clinic does not include (a) a health care practitioner facility (i) unless such facility is an ambulatory surgical center, (ii) unless ten or more abortions, as defined in subdivision (1) of section 28-326, are performed during any one calendar week at such facility, or (iii) unless hemodialysis or labor and delivery services are provided at such facility, or (b) a facility which provides only routine health screenings, health education, or immunizations.

(3) For purposes of this section:

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

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

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

Source: Laws 2000, LB 819, § 16. Operative date January 1, 2001.

71-417. Home health agency, defined. Home health agency means a person or any legal entity which provides skilled nursing care or a minimum of one other therapeutic service as defined by the department on a full-time, part-time, or intermittent basis to persons in a place of temporary or permanent residence used as the person's home.

Source: Laws 2000, LB 819, § 17. Operative date January 1, 2001.

71-418. Hospice or hospice service, defined. Hospice or hospice service means a person or any legal entity which provides home care, palliative care, or other supportive services to terminally ill persons and their families.

Source: Laws 2000, LB 819, § 18. Operative date January 1, 2001.

71-419. Hospital, defined. (1) Hospital means a facility where diagnosis, treatment, medical care, obstetrical care, nursing care, or related services are provided on an outpatient basis or on an inpatient basis for a period of more than twenty-four consecutive hours to persons who have an illness, injury, or deformity or to aged or infirm persons requiring or receiving convalescent care.

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

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

Source: Laws 2000, LB 819, § 19. Operative date January 1, 2001.

71-420. Intermediate care facility, defined. Intermediate care facility means a facility where shelter, food, and nursing care or related services are provided for a period of more than twenty-four consecutive hours to persons residing at such facility who are ill, injured, or disabled and do not require hospital or skilled nursing facility care.

Source: Laws 2000, LB 819, § 20. Operative date January 1, 2001.

71-421. Intermediate care facility for the mentally retarded, defined. Intermediate care facility for the mentally retarded means a facility where shelter, food, and training or habilitation services, advice, counseling, diagnosis, treatment, care, nursing care, or related services are provided for a period of more than twenty-four consecutive hours to four or more persons residing at such facility who have mental retardation or related conditions, including epilepsy, cerebral palsy, or other developmental disabilities.

Source: Laws 2000, LB 819, § 21. Operative date January 1, 2001.

71-422. Long-term care hospital, defined. Long-term care hospital means a hospital or any distinct part of a hospital that provides the care and services of an intermediate care facility, a nursing facility, or a skilled nursing facility.

Source: Laws 2000, LB 819, § 22. Operative date January 1, 2001.

71-423. Mental health center, defined. Mental health center means a facility where shelter, food, and counseling, diagnosis, treatment, care, or related services are provided for a period of more than twenty-four consecutive hours to persons residing at such facility who have a mental disease, disorder, or disability.

Source: Laws 2000, LB 819, § 23. Operative date January 1, 2001.

71-424. Nursing facility, defined. Nursing facility means a facility where medical care, nursing care, rehabilitation, or related services and associated treatment are provided for a period of more than twenty-four consecutive hours to persons residing at such facility who are ill, injured, or disabled.

Source: Laws 2000, LB 819, § 24. Operative date January 1, 2001.

71-425. Pharmacy, defined. Pharmacy means a facility advertised as a pharmacy, drug store, hospital pharmacy, dispensary, or any combination of such titles where drugs or devices are dispensed as defined in section 71-1,142.

Source: Laws 2000, LB 819, § 25; Laws 2001, LB 398, § 66. Operative date May 1, 2001.

71-426. Psychiatric or mental hospital, defined. Psychiatric or mental hospital means a hospital that provides psychiatric services on an inpatient or outpatient basis to persons who have a mental disease, disorder, or disability.

Source: Laws 2000, LB 819, § 26. Operative date January 1, 2001.

71-427. Rehabilitation hospital, defined. Rehabilitation hospital means a hospital that provides an integrated program of medical and other services for the rehabilitation of disabled persons.

Source: Laws 2000, LB 819, § 27. Operative date January 1, 2001.

71-427.01. Representative peer review organization, defined. Representative peer review organization means a utilization and quality control peer review organization as defined in section 1152 of the Social Security Act, 42 U.S.C. 1320c-1, as such section existed on September 1, 2007.

Source: Laws 2007, LB203, § 3; Effective date September 1, 2007.

71-428. Respite care service, defined. (1) Respite care service means a person or any legal entity that provides short-term temporary care on an intermittent basis to persons with special needs when the person's primary caregiver is unavailable to provide such care.

(2) Respite care service does not include:

(a) A person or any legal entity which is licensed under the Health Care Facility Licensure Act and which provides respite care services at the licensed location;

(b) A person or legal entity which is licensed to provide child care to thirteen or more children under the Child Care Licensing Act or which is licensed as a group home or child-caring agency under sections 71-1901 to 71-1906.01;

(c) An agency that recruits, screens, or trains a person to provide respite care;

(d) An agency that matches a respite care service or other providers of respite care with a person with special needs, or refers a respite care service or other providers of respite care to a person with special needs, unless the agency receives compensation for such matching or referral from the service or provider or from or on behalf of the person with special needs;

(e) A person who provides respite care to fewer than eight unrelated persons in any seven-day period in his or her home or in the home of the recipient of the respite care; or

(f) A nonprofit agency that provides group respite care for no more than eight hours in any seven-day period.

Source: Laws 2000, LB 819, §28; Laws 2002, LB 1062, §40; Laws 2004, LB 1005, §43; Laws 2005, LB 2, §1. Effective date September 4, 2005.

71-429. Skilled nursing facility, defined. Skilled nursing facility means a facility where medical care, skilled nursing care, rehabilitation, or related services and associated treatment are provided for a period of more than twenty-four consecutive hours to persons residing at such facility who are ill, injured, or disabled.

Source: Laws 2000, LB 819, § 29. Operative date January 1, 2001.

71-430. Substance abuse treatment center, defined. (1) Substance abuse treatment center means a facility, including any private dwelling, where shelter, food, and care, treatment, maintenance, or related services are provided in a group setting to persons who are substance abusers.

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

(3) For purposes of this section:

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

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

Source: Laws 2000, LB 819, § 30. Operative date January 1, 2001.

71-431. Treatment, defined. Treatment means a therapy, modality, product, device, or other intervention used to maintain well being or to diagnose, assess, alleviate, or prevent a disability, injury, illness, disease, or other similar condition.

Source: Laws 2000, LB 819, § 31. Operative date January 1, 2001.

71-432. Health care facility; health care service; licensure required. A health care facility or health care service shall not be established, operated, or maintained in this state without first obtaining a license issued by the department under the Health Care Facility Licensure Act. No facility or service shall hold itself out as a health care facility or health care service or as providing health care services unless licensed under the act. The department shall issue a license to health care facilities and health care services that satisfy the requirements for licensure under the act.

Source: Laws 2000, LB 819, § 32; Laws 2002, LB 1062, § 41. Operative date July 20, 2002.

71-433. Health care facility; health care service; license; application. (1) An applicant for an initial or renewal license to operate a health care facility or health care service required to be licensed under the Health Care Facility Licensure Act shall file a written application with the department. The application shall be accompanied by the license fee set pursuant to section 71-434 and shall set forth the full name and address of the facility or service to be licensed, the full name and address of the owner of such facility or service, the names of all persons in control of the facility or service, and additional information as required by the department, including affirmative evidence of the applicant's ability to comply with rules and regulations adopted and promulgated under the act. The application shall include the applicant's social security number if the applicant is an individual. The social security number shall not be public record and may only be used for administrative purposes.

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

Source: Laws 2000, LB 819, § 33. Operative date January 1, 2001.

71-434. License fees. (1) Licensure activities under the Health Care Facility Licensure Act shall be funded by license fees. An applicant for an initial or renewal license under section 71-433 shall pay a license fee as provided in this section.

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

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

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

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

(d) Other relevant factors as determined by the department.

Such additional fee shall be no more than two thousand six hundred dollars for a hospital or a health clinic operating as an ambulatory surgical center, no more than two thousand dollars for an assisted-living facility, a health clinic providing hemodialysis or labor and delivery services, an intermediate care facility, an intermediate care facility for the mentally retarded, a nursing facility, or a skilled nursing facility, no more than one thousand dollars for home health agencies, hospice

services, and centers for the developmentally disabled, and no more than seven hundred dollars for all other health care facilities and health care services.

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

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

(5) The department shall collect a fee from any applicant or licensee requesting an informal conference with a representative peer review organization under section 71-452 to cover all costs and expenses associated with such conference.

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

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

Source: Laws 2000, LB 819, § 34; Laws 2002, LB 1062, § 42; Laws 2003, LB 415, § 1; Laws 2005, LB 246, § 1; Laws 2007, LB203, § 4; Laws 2007, LB296, § 371. The changes made by LB 296 became operative July 1, 2007. The changes made by LB 203 became effective September 1, 2007.

71-435. License; duration; issuance. (1) Except as otherwise provided in the Health Care Facility Licensure Act, licenses issued pursuant to the act shall expire one year after the date of issuance or on uniform annual dates established by the department.

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

Source: Laws 2000, LB 819, § 35. Operative date January 1, 2001.

71-436. License; multiple services or locations; effect. (1) An applicant for licensure under the Health Care Facility Licensure Act shall obtain a separate license for each type of health care facility or health care service that the applicant seeks to operate. A single license may be issued for (a) a facility or service operating in separate buildings or structures on the same premises under one management, (b) an inpatient facility that provides services on an outpatient basis at multiple locations, or (c) a health clinic operating satellite clinics on an intermittent basis within a portion of the total geographic area served by such health clinic and sharing administration with such clinics.

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

Source: Laws 2000, LB 819, § 36; Laws 2002, LB 1062, § 43. Operative date July 20, 2002.

71-437. Provisional license; when issued. A provisional license may be issued to a health care facility or health care service that substantially complies with requirements for licensure under the Health Care Facility Licensure Act and the rules and regulations adopted and promulgated under the act if the failure to fully comply with such requirements does not pose an imminent danger of death or physical harm to the persons residing in or served by such facility or service. Such provisional license shall be valid for a period of up to one year, shall not be renewed, and may be converted to a regular license upon a showing that the facility or service fully complies with the requirements for licensure under the act and rules and regulations.

Source: Laws 2000, LB 819, § 37. Operative date January 1, 2001.

71-438. Accreditation or certification; when accepted. (1) The department may accept accreditation or certification by a recognized independent accreditation body or public agency, which has standards that are at least as stringent as those of the State of Nebraska, as evidence that the health care facility or health care service complies with the rules, regulations, and standards adopted and promulgated under the Health Care Facility Licensure Act.

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

Source: Laws 2000, LB 819, § 38; Laws 2002, LB 1062, § 44. Operative date July 20, 2002.

71-439. Waiver of rule, regulation, or standard; when; procedure. (1) The department may waive any rule, regulation, or standard adopted and promulgated by the department relating to construction or physical plant requirements of a licensed health care facility or health care service upon proof by the licensee satisfactory to the department (a) that such waiver would

not unduly jeopardize the health, safety, or welfare of the persons residing in or served by the facility or service, (b) that such rule, regulation, or standard would create an unreasonable hardship for the facility or service, and (c) that such waiver would not cause the State of Nebraska to fail to comply with any applicable requirements of medicare or medicaid so as to make the state ineligible for the receipt of all funds to which it might otherwise be entitled.

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

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

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

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

(d) The availability of financing; and

(e) The remaining useful life of the building.

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

Source: Laws 2000, LB 819, § 39. Operative date January 1, 2001.

71-440. Inspection by department; report. The department may inspect or provide for the inspection of any health care facility or health care service licensed under the Health Care Facility Licensure Act in such manner and at such times as provided in rules and regulations adopted and promulgated by the department. The department shall issue an inspection report and provide a copy of the report to the facility or service within ten working days after the completion of an inspection.

Source: Laws 2000, LB 819, § 40. Operative date January 1, 2001.

71-441. Inspection by State Fire Marshal; fee. The department may request the State Fire Marshal to inspect any applicant for licensure or any licensee for fire safety pursuant to section 81-502. The State Fire Marshal shall assess a fee for such inspection pursuant to section 81-505.01 payable by such applicant or licensee. The State Fire Marshal may delegate such authority to make such inspections to qualified local fire prevention personnel pursuant to section 81-502.

Source: Laws 2000, LB 819, § 41. Operative date January 1, 2001.

71-442. Alternative methods for assessing compliance. In addition to or in lieu of the authority to inspect for purposes of licensure and renewal, the department may adopt and promulgate rules and regulations which permit the use of alternative methods for assessing the compliance by a health care facility or health care service with the Health Care Facility Licensure Act and the rules and regulations adopted and promulgated under the act.

Source: Laws 2000, LB 819, § 42. Operative date January 1, 2001.

71-443. Findings of noncompliance; review, notice; statement of compliance; procedure. If the inspection report issued under section 71-440 contains findings of noncompliance by a health care facility or health care service with any applicable provisions of the Health Care Facility Licensure Act or rules and regulations adopted under the act, the department shall review such findings within twenty working days after such inspection. If the findings are supported by the evidence, the department shall proceed pursuant to sections 71-446 to 71-455, except that if the findings indicate one or more violations that create no imminent danger of death or serious physical harm and no direct or immediate adverse relationship to the health, safety, or security of the persons residing in or served by the facility or service, the department may send a letter to the facility or service requesting a statement of compliance. The letter shall include a description of each such violation, a request that the facility or service submit a statement of compliance within ten working days, and a notice that the department may take further steps if the statement of compliance is not submitted. The statement of compliance shall indicate any steps which have been or will be taken to correct each violation and the period of time estimated to be necessary to correct each violation. If the facility or service fails to submit and implement a statement of compliance which indicates a good faith effort to correct the violations, the department may proceed pursuant to sections 71-446 to 71-455.

Source: Laws 2000, LB 819, § 43. Operative date January 1, 2001.

71-444. Complaints; investigation; immunity. (1) Any person may submit a complaint to the department and request investigation of an alleged violation of the Health Care Facility Licensure Act or rules and regulations adopted and promulgated under the act. The department shall review all complaints and determine whether to conduct an investigation. In making such determination, the department may consider factors such as:

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

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

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

(d) Whether the complainant may be a necessary witness if action is taken and is willing to identify himself or herself and come forward to testify if action is taken; or

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

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

Source: Laws 2000, LB 819, § 44. Operative date January 1, 2001.

71-445. Discrimination or retaliation prohibited. A health care facility or health care service shall not discriminate or retaliate against a person residing in, served by, or employed at such facility or service who has initiated or participated in any proceeding authorized by the Health Care Facility Licensure Act or who has presented a complaint or provided information to the administrator of such facility or service or the Department of Health and Human Services. Such person may maintain an action for any type of relief, including injunctive and declaratory relief, permitted by law.

Source: Laws 2000, LB 819, § 45; Laws 2007, LB296, § 372. Operative date July 1, 2007.

71-446. License; temporary suspension or limitation; procedure; appeal. (1) If the director determines that persons receiving care or treatment at a health care facility or by a health care service are in imminent danger of death or serious physical harm, he or she may temporarily suspend or temporarily limit the license of such facility or service and may order the immediate removal of such persons and the temporary closure of the facility or service pending further action by the department. The department shall also simultaneously institute proceedings for revocation, suspension, or limitation of the license. A hearing shall be held no later than ten days after the date of such temporary suspension or temporary limitation.

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

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

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

Source: Laws 2000, LB 819, § 46. Operative date January 1, 2001.

71-447. License; denied or refused renewal; grounds. The department may deny or refuse to renew a license under the Health Care Facility Licensure Act to any health care facility or health care service that fails to meet the requirements for licensure provided in the act or in rules and regulations adopted and promulgated under the act, including (1) failing an inspection pursuant to section 71-440, (2) failing to meet a compliance assessment standard adopted under section 71-442, (3) having had a license revoked within the two-year period preceding application, or (4) any of the grounds listed in section 71-448.

Source: Laws 2000, LB 819, § 47. Operative date January 1, 2001.

71-448. License; disciplinary action; grounds. The Division of Public Health of the Department of Health and Human Services may take disciplinary action against a license issued under the Health Care Facility Licensure Act on any of the following grounds:

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

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

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

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

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

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

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

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

(9) Violation of the Emergency Box Drug Act;
(10) Failure to file a report required by section 71-168.02;
(11) Violation of the Medication Aide Act;
(12) Failure to file a report of suspected abuse or neglect as required by sections 28-372 and 28-711; or
(13) Violation of the Automated Medication Systems Act.
Source: Laws 2000, LB 819, § 48; Laws 2004, LB 1005, § 44; Laws 2007, LB296, § 373; Laws 2008, LB308, § 12. Operative date April 22, 2008.

71-449. License; disciplinary actions authorized. (1) The department may impose any one or a combination of the following types of disciplinary action against the license of a health care facility or health care service:
(a) A fine not to exceed ten thousand dollars per violation;
(b) A prohibition on admissions or readmissions, a limitation on enrollment, or a prohibition or limitation on the provision of care or treatment;
(c) A period of probation not to exceed two years during which the facility or service may continue to operate under terms and conditions fixed by the order of probation;
(d) A period of suspension not to exceed three years during which the facility or service may not operate; and
(e) Revocation which is a permanent termination of the license and the licensee may not apply for a license for a minimum of two years after the effective date of the revocation.
(2) Any fine imposed and unpaid under the Health Care Facility Licensure Act shall constitute a debt to the State of Nebraska which may be collected in the manner of a lien foreclosure or sued for and recovered in any proper form of action in the name of the State of Nebraska in the district court of the county in which the facility or service is located. The department shall, within thirty days after receipt, remit fines to the State Treasurer for credit to the permanent school fund.
Source: Laws 2000, LB 819, § 49. Operative date January 1, 2001.

71-450. License; disciplinary actions; considerations. (1) In determining what type of disciplinary action to impose, the department shall consider:
(a) The gravity of the violation, including the probability that death or serious physical or mental harm will result, the severity of the actual or potential harm, and the extent to which the provisions of applicable statutes, rules, and regulations were violated;
(b) The reasonableness of the diligence exercised by the health care facility or health care service in identifying or correcting the violation;
(c) Any previous violations committed by the facility or service; and
(d) The financial benefit to the facility or service of committing or continuing the violation.
(2) The department may adopt and promulgate rules and regulations which set forth specific violations which will result in a particular disciplinary action, including the use of scope and severity determinations.
(3) If the licensee fails to correct a violation or to comply with a particular type of disciplinary action, the department may take additional disciplinary action as described in section 71-449.
Source: Laws 2000, LB 819, § 50. Operative date January 1, 2001.

71-451. License; disciplinary actions; notice. (1) If the department determines to deny, refuse renewal of, or take disciplinary action against a license, the department shall send to the applicant or licensee, by certified mail to the last address shown on the records of the department, a notice setting forth the determination, the particular reasons for the determination, including a specific description of the nature of the violation and the statute, rule, or regulation violated, and the type of disciplinary action which is pending. The denial, refusal to renew, or disciplinary action shall become final fifteen days after the mailing of the notice unless the applicant or licensee, within such fifteen-day period, makes a written request for an informal conference or a hearing pursuant to section 71-452.
(2) A copy of the notice in subsection (1) of this section shall also be mailed to the holder of the license if the holder of such license is not actually involved in the daily operation of the facility or service. If the holder of the license is a corporation, a copy of the notice shall be sent to the corporation's registered agent.
Source: Laws 2000, LB 819, § 51. Operative date January 1, 2001.

71-452. License; disciplinary actions; rights of licensee. Within fifteen days after service of a notice under section 71-451, an applicant or a licensee shall notify the director in writing that the applicant or licensee (1) desires to contest the notice and request an informal conference with a representative of the department in person or by other means at the request of the applicant or licensee, (2) desires to contest the notice and request an informal conference with a representative peer review organization with which the department has contracted, (3) desires to contest the notice and request a hearing, or (4) does not contest the notice. If the director does not receive such notification within such fifteen-day period, the action of the department shall be final.
Source: Laws 2000, LB 819, § 52; Laws 2007, LB203, § 5. Effective date September 1, 2007.

71-453. License; disciplinary actions; informal conference; procedure. (1) The director shall assign a representative of the department, other than the individual who did the inspection upon which the notice is based, or a representative peer review organization to hold an informal conference with the applicant or licensee within thirty days after receipt of a request made under subdivision (1) or (2) of section 71-452. Within twenty working days after the conclusion of the conference, the representative or representative peer review organization shall report in writing to the department its conclusion regarding whether to affirm, modify, or dismiss the notice and the specific reasons for the conclusion and shall provide a copy of the report to the director and the applicant or licensee.

(2) Within ten working days after receiving a report under subsection (1) of this section, the department shall consider such report and affirm, modify, or dismiss the notice and shall state the specific reasons for such decision, including, if applicable, the specific reasons for not adopting the conclusion of the representative or representative peer review organization as contained in such report. The department shall provide the applicant or licensee with a copy of such decision by certified mail to the last address shown in the records of the department. If the applicant or licensee desires to contest an affirmed or modified notice, the applicant or licensee shall notify the director in writing within five working days after receiving such decision that the applicant or licensee requests a hearing.

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

Source: Laws 2000, LB 819, § 53; Laws 2007, LB203, § 6. Effective date September 1, 2007.

71-454. License; disciplinary actions; hearings; procedure. (1) If the applicant or licensee requests a hearing under section 71-452, the department shall hold a hearing and give the applicant or licensee the right to present such evidence as may be proper. On the basis of such evidence, the director shall affirm, modify, or set aside the determination. A copy of such decision setting forth the findings of facts and the particular reasons upon which the decision is based shall be sent by either registered or certified mail to the applicant or licensee. The decision shall become final thirty days after the copy is mailed unless the applicant or licensee, within such thirty-day period, appeals the decision under section 71-455.

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

Source: Laws 2000, LB 819, § 54. Operative date January 1, 2001.

71-455. Appeals. Any party to a decision of the department under the Health Care Facility Licensure Act may appeal such decision. The appeal shall be in accordance with the Administrative Procedure Act.

Source: Laws 2000, LB 819, § 55. Operative date January 1, 2001.

71-456. License; reinstatement; when; procedure. (1) A license issued under the Health Care Facility Licensure Act that has lapsed for nonpayment of fees is eligible for reinstatement at any time by applying to the department and paying the applicable fee as provided in section 71-434.

(2) A license that has been disciplined by being placed on suspension is eligible for reinstatement at the end of the period of suspension upon successful completion of an inspection and payment of the applicable renewal fee provided in section 71-434.

(3) A license that has been disciplined by being placed on probation is eligible for reinstatement at the end of the period of probation upon successful completion of an inspection if the department determines an inspection is warranted.

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

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

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

Source: Laws 2000, LB 819, § 56; Laws 2002, LB 1062, § 45. Operative date July 20, 2002.

71-457. Rules and regulations. (1) To protect the health, safety, and welfare of the public and to insure to the greatest extent possible the efficient, adequate, and safe practice of health care in any health care facility or health care service

licensed under the Health Care Facility Licensure Act, the department shall adopt, promulgate, and enforce rules, regulations, and standards with respect to the different types of health care facilities and health care services, except nursing facilities and skilled nursing facilities, designed to further the accomplishment of the purposes of the act. Such rules, regulations, and standards shall be modified, amended, or rescinded from time to time in the public interest by the department.

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

Source: Laws 2000, LB 819, § 57. Operative date January 1, 2001.

71-458. Violations; penalty. Any person who establishes, operates, or maintains a health care facility or health care service subject to the Health Care Facility Licensure Act without first obtaining a license as required under the act or who violates any of the provisions of the act shall be guilty of a Class I misdemeanor. Each day such facility or service operates after a first conviction shall be considered a subsequent offense.

Source: Laws 2000, LB 819, § 58. Operative date January 1, 2001.

71-459. Injunction. The department may maintain an action in the name of the state for an injunction against any person for establishing, operating, or maintaining a health care facility or health care service subject to the Health Care Facility Licensure Act without first obtaining a license as required by the act. In charging any defendant in a complaint in such action, it shall be sufficient to charge that such defendant did, upon a certain day and in a certain county, establish, operate, or maintain a health care facility or health care service without obtaining a license to do so, without alleging any further or more particular facts concerning the same.

Source: Laws 2000, LB 819, § 59. Operative date January 1, 2001.

71-460. Transferred to section 71-5903.

71-461. Transferred to section 71-5904.

71-462. Repealed. Laws 2001, LB 398, s. 96.

71-463. Terminated January 1, 2003.

ALZHEIMER'S SPECIAL CARE DISCLOSURE ACT

71-516. Repealed. Laws 1991, LB 10, § 7.

71-516.01. Act, how cited. Sections 71-516.01 to 71-516.04 shall be known and may be cited as the Alzheimer's Special Care Disclosure Act.

Source: Laws 1994, LB 1210, §162.

71-516.02. Legislative findings and declarations. The Legislature finds and declares that:

(1) Certain nursing homes and related facilities and 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 to examine the records.

Source: Laws 1994, LB 1210, § 163; Laws 1996, LB 1044, § 499; Laws 1997, LB 608, § 6; Laws 2007, LB296, § 387. Operative date July 1, 2007.

71-516.03. Alzheimer's special care unit, defined. For the purposes of the Alzheimer's Special Care Disclosure Act, Alzheimer's special care unit shall mean any nursing facility or assisted-living facility, licensed by the Department of Health and Human Services, 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.

Source: Laws 1994, LB 1210, § 164; Laws 1996, LB 1044, § 500; Laws 1997, LB 608, § 7; Laws 2007, LB296, § 388. Operative date July 1, 2007.

71-516.04. Facility; disclosures required; department; duties. Any facility which offers to provide or provides care

for persons with Alzheimer's disease, dementia, or a related disorder by means of an Alzheimer's special care unit shall disclose the form of care or treatment provided that distinguishes such form as being especially applicable to or suitable for such persons. The disclosure shall be made to the Department of Health and Human Services and to any person seeking placement within an Alzheimer's special care unit. The department shall examine all such disclosures in the records of the department as part of the facility's license renewal procedure at the time of licensure or relicensure.

The information disclosed shall explain the additional care provided in each of the following areas:

(1) The Alzheimer's special care unit's written statement of its overall philosophy and mission which reflects the needs of residents afflicted with Alzheimer's disease, dementia, or a related disorder;

(2) The process and criteria for placement in, transfer to, or discharge from the unit;

(3) The process used for assessment and establishment of the plan of care and its implementation, including the method by which the plan of care evolves and is responsive to changes in condition;

(4) Staff training and continuing education practices;

(5) The physical environment and design features appropriate to support the functioning of cognitively impaired adult residents;

(6) The frequency and types of resident activities;

(7) The involvement of families and the availability of family support programs; and

(8) The costs of care and any additional fees.

Source: Laws 1994, LB 1210, § 165; Laws 1996, LB 1044, § 501; Laws 2007, LB296, § 389. Operative date July 1, 2007.

BASIC STANDARDS

71-2017 and 71-2017.01. Repealed. Laws 2000, LB 819, §162.
71-2017.02. Repealed. Laws 1989, LB 355, §19.
71-2017.03 and 71-2017.04. Repealed. Laws 2000, LB 819, §162.
71-2017.05. Repealed. Laws 1988, LB 1100, §185.
71-2017.06 to 71-2018. Repealed. Laws 2000, LB 819, §162.
71-2019. Repealed. Laws 1982, LB 592, §2.
71-2020 to 71-2024. Repealed. Laws 2000, LB 819, §162.
71-2024.01 and 71-2024.02. Repealed. Laws 1987, LB 459, §7.
71-2025. Repealed. Laws 1982, LB 829, §3.
71-2026 to 71-2029. Repealed. Laws 2000, LB 819, §162.
71-2030. Repealed. Laws 1965, c. 423, §1.

MEDICAL AND HOSPITAL CARE

71-2046. Medical staff committee; utilization review committee; duties. Each hospital licensed in the State of Nebraska shall cause a medical staff committee and a utilization review committee to be formed and operated for the purpose of reviewing, from time to time, the medical and hospital care provided in such hospital and the use of such hospital facilities and for assisting individual physicians and surgeons practicing in such hospital and the administrators and nurses employed in the operation of such hospital in maintaining and providing a high standard of medical and hospital care and promoting the most efficient use of such hospital facilities.

Source: Laws 1971, LB 148, §1.

71-2047. Medical staff committee; utilization review committee; reports to; privilege to refuse; exception. Any physician, surgeon, hospital administrator, nurse, technologist, and any other person engaged in work in or about a licensed hospital and having any information or knowledge relating to the medical and hospital care provided in such hospital or the efficient use of such hospital facilities shall be obligated, when requested by a hospital medical staff committee or a utilization review committee, to provide such committee with all of the facts or information possessed by such individual with reference to such care or use. Any person making a report or providing information to a hospital medical staff committee or a utilization review committee of a hospital upon request of such committee has a privilege to refuse to disclose and to prevent any other person from disclosing the report or information so provided, except as provided in section 71-2048.

Source: Laws 1971, LB 148, §3.

71-2048. Communications; privileged; waiver. The proceedings, minutes, records, and reports of any medical staff committee or utilization review committee as defined in section 71-2046, together with all communications originating in such committees are privileged communications which may not be disclosed or obtained by legal discovery proceedings unless (1) the privilege is waived by the patient and (2) a court of record, after a hearing and for good cause arising from

extraordinary circumstances being shown, orders the disclosure of such proceedings, minutes, records, reports, or communications. Nothing in sections 71-2046 to 71-2048 shall be construed as providing any privilege to hospital medical records kept with respect to any patient in the ordinary course of business of operating a hospital nor to any facts or information contained in such records nor shall sections 71-2046 to 71-2048 preclude or affect discovery of or production of evidence relating to hospitalization or treatment of any patient in the ordinary course of hospitalization of such patient.

Source: Laws 1971, LB 148, §4.

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

Source: Laws 1989, LB 646, § 1; Laws 1998, LB 1073, § 122; Laws 2000, LB 819, § 99. Operative date January 1, 2001.

71-2049. Ambulatory surgical center and hospital; provide itemized list of patient's expenses; when; violation; penalty. Except for state hospitals administered by the Department of Health and Human Services, each ambulatory surgical center and each hospital, as such terms are defined in sections 71-405 and 71-419, shall, upon written request of a patient or third-party payor on behalf of a patient, include in such patient's or payor's bill an itemized list of all expenses such patient incurred during his or her stay at such ambulatory surgical center or hospital. Such expenses shall include, but not be limited to, the cost of (1) X-rays, (2) laboratory fees, (3) respiratory therapy services, (4) oxygen, (5) pharmaceuticals, (6) take-home drugs, (7) chargeable medical supplies, (8) central service supplies, (9) medical equipment, (10) room and board, and (11) all additional charges incurred by the patient. The right to request such information shall be clearly and conspicuously stated in each patient's or payor's bill. The patient or payor shall receive a copy of the itemized bill within fourteen days after the ambulatory surgical center or hospital receives the request. Such request shall be made by the patient or payor within twenty-eight days after the date of discharge.

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

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

Source: Laws 1982, LB 835, § 1; Laws 1985, LB 382, § 17; Laws 1994, LB 1210, § 116; Laws 1994, LB 1222, § 62; Laws 1996, LB 1044, § 608; Laws 2000, LB 819, § 100. Operative date January 1, 2001.

HOSPITAL CONSUMER INFORMATION ACT

71-2062 to 71-2074. Repealed. Laws 1994, LB 1222, §65.

71-2075. Written estimate of charges; when required; notice. (1) Upon the written request of a prospective patient, his or her attending physician, or any authorized agent of the prospective patient, each hospital, except hospitals excluded under section 1886 (d) (1) (B) of Public Law 98-21, the Social Security Act Amendments of 1983, and ambulatory surgical center shall provide a written estimate of the average charges for health services related to a particular diagnostic condition or medical procedure if such services are provided by the hospital or center. Such written request shall include a written medical diagnosis made by a health care practitioner licensed to provide such diagnosis. The prospective patient or his or her agent may also provide to the hospital or center the prospective patient’s age and sex, any complications or co-morbidities of the prospective patient, other procedures required for the prospective patient, and other information which would allow the hospital or center to provide a more accurate or detailed estimate. Such estimate shall be provided within seven working days from the date of submission of the written request and information necessary to prepare such an estimate.

(2) All hospitals and ambulatory surgical centers shall provide notice to the public that such hospital or center will provide an estimate of charges for medical procedures or diagnostic conditions pursuant to subsection (1) of this section. Such public notice shall be provided either as a part of the advertising or promotional materials of the hospital or center or by posting a notice in an obvious place within the public areas of the hospital or center.

Source: Laws 1985, LB 382, §14; Laws 1994, LB 1210, §120.

71-2076. Listing of common diagnostic related groups; when required. (1) Effective January 1, 1986, each hospital, except hospitals excluded under section 1886 (d) (1) (B) of Public Law 98-21, the Social Security Act Amendments of 1983, and ambulatory surgical center shall identify the twenty most common diagnostic related groups for which services are provided by the hospital or center. Such listing of diagnostic related groups shall be made available to consumers of health care, along with the range of average charges for treatment and the associated average length of stay for each diagnostic

related group listed. Such listing shall be provided to any person upon request. The information included in the listing shall show the date prepared and shall be regularly updated every six months.

(2) Any hospital or ambulatory surgical center which provides services for fewer than twenty diagnostic related groups or performs an insufficient number of procedures to compute a statistically valid average shall provide a listing to the public of the most common diagnostic related groups provided by the hospital or center and the average charges and length of stay for which a valid statistical average is available and shall disclose the circumstances for such limited available data.

Source: Laws 1985, LB 382, §15; Laws 1994, LB 1210, §121.

71-2077. Repealed. Laws 1994, LB 1222, §65.

SURGICAL INFECTIONS

71-2083. Surgical infections; report required. Each hospital licensed in Nebraska shall, at least annually, provide surgeons performing surgery at such hospital a report as to the number and rates of surgical infections in surgical patients of such surgeon.

Source: Laws 1994, LB 1210, §112.

RECEIVERS

71-2084. Terms, defined. For purposes of sections 71-2084 to 71-2096:

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

(2) Health care facility means a health care facility subject to licensing under the Health Care Facility Licensure Act.

Source: Laws 1983, LB 274, § 1; R.S.1943, (1990), § 71-6001; Laws 1995, LB 406, § 60; Laws 1996, LB 1044, § 612; Laws 2000, LB 819, § 102; Laws 2007, LB296, § 520. Operative date July 1, 2007.

71-2085. Appointment of receiver; conditions. The department may petition the district court for appointment of a receiver for a health care facility when any of the following conditions exist:

(1) If the department determines that the health, safety, or welfare of the residents or patients is in immediate danger;

(2) The health care facility is operating without a license;

(3) The department has suspended, revoked, or refused to renew the existing license of the health care facility;

(4) The health care facility is closing, or has informed the department that it intends to close, and adequate arrangements for the relocation of the residents or patients of such health care facility have not been made at least thirty days prior to closure; or

(5) The department determines that an emergency exists, whether or not it has initiated revocation or nonrenewal procedures, and because of the unwillingness or inability of the licensee, owner, or operator to remedy the emergency, the department believes a receiver is necessary.

Source: Laws 1983, LB 274, §2; R.S. 1943, (1990), §71-6002; Laws 1995, LB 406, §61.

71-2086. Appointment of receiver; procedure; temporary receiver; purpose of receivership. (1) The department shall file the petition for the appointment of a receiver provided for in section 71-2085 in the district court of the county where the health care facility is located and shall request that a receiver be appointed for the health care facility.

(2) The court shall expeditiously hold a hearing on the petition within seven days after the filing of the petition. The department shall present evidence at the hearing in support of the petition. The licensee, owner, or operator may also present evidence, and both parties may subpoena witnesses. The court may appoint a temporary receiver for the health care facility ex parte if the department, by affidavit, states that an emergency exists which presents an imminent danger of death or physical harm to the residents or patients of the health care facility. If a temporary receiver is appointed, notice of the petition and order shall be served on the licensee, owner, operator, or administrator of the health care facility within seventy-two hours after the entry of the order. The petition and order may be served by any method specified in section 25-505.01 or the court may permit substitute or constructive service as provided in section 25-517.02 when service cannot be made with reasonable diligence by any of the methods specified in section 25-505.01. A hearing on the petition and temporary order shall be held within seventy-two hours after notice has been served unless the licensee, owner, or operator consents to a later date. After the hearing the court may terminate, continue, or modify the temporary order. If the court determines that the department did not have probable cause to submit the affidavit in support of the appointment of the temporary receiver, the court shall have the jurisdiction to determine and award compensatory damages against the state to the owner or operator. If the licensee, owner, or operator informs the court at or before the time set for hearing that he or she does not object to the petition, the court shall waive the hearing and at once appoint a receiver for the health care facility.

(3) The purpose of a receivership created under this section is to safeguard the health, safety, and continuity of care of residents and patients and to protect them from adverse health effects. A receiver shall not take any actions or assume any responsibilities inconsistent with this purpose. No person shall impede the operation of a receivership created under this

section. After the appointment of a receiver, there shall be an automatic stay of any action that would interfere with the functioning of the health care facility, including, but not limited to, cancellation of insurance policies executed by the licensee, owner, or operator, termination of utility services, attachments or setoffs of resident trust funds or working capital accounts, and repossession of equipment used in the health care facility. The stay shall not apply to any licensure, certification, or injunctive action taken by the department.

Source: Laws 1983, LB 274, § 3; R.S.1943, (1990), § 71-6003; Laws 1995, LB 406, § 62; Laws 2007, LB296, § 521. Operative date July 1, 2007.

71-2087. Receiver; appointment; effect; duties. When a receiver is appointed under section 71-2086, the licensee, owner, or operator shall be divested of possession and control of the health care facility in favor of the receiver. The appointment of the receiver shall not affect the rights of the owner or operator to defend against any claim, suit, or action against such owner or operator or the health care facility, including, but not limited to, any licensure, certification, or injunctive action taken by the department. A receiver shall:

(1) Take such action as is reasonably necessary to protect and conserve the assets or property of which the receiver takes possession or the proceeds of any transfer of the assets or property and may use them only in the performance of the powers and duties set forth in this section and section 71-2088 or by order of the court;

(2) Apply the current revenue and current assets of the health care facility to current operating expenses and to debts incurred by the licensee, owner, or operator prior to the appointment of the receiver. The receiver may apply to the court for approval for payment of debts incurred prior to appointment if the debts appear extraordinary, of questionable validity, or unrelated to the normal and expected maintenance and operation of the health care facility or if the payment of the debts will interfere with the purposes of the receivership. The receiver shall give priority to expenditures for current, direct resident care, including nursing care, social services, dietary services, and housekeeping;

(3) Be responsible for the payment of taxes against the health care facility which become due during the receivership, including property taxes, sales and use taxes, withholding, taxes imposed pursuant to the Federal Insurance Contributions Act, and other payroll taxes, but not including state and federal taxes which are the liability of the owner or operator;

(4) Be entitled to and take possession of all property or assets of residents or patients which are in the possession of the licensee, owner, operator, or administrator of the health care facility. The receiver shall preserve all property, assets, and records of residents or patients of which the receiver takes possession and shall provide for the prompt transfer of the property, assets, and necessary and appropriate records to the alternative placement of any transferred or discharged resident;

(5) Upon order of the court, provide for the orderly transfer of all residents or patients in the health care facility to other suitable facilities if correction of violations of federal and state laws and regulations is not possible or cannot be completed in a timely manner or there are reasonable grounds to believe the health care facility cannot be operated on a sound financial basis and in compliance with all applicable federal or state laws and regulations or make other provisions for the continued health, safety, and welfare of the residents or patients;

(6) Perform regular accountings; and

(7) Make periodic reports to the court and the department.

Source: Laws 1995, LB 406, §63.

71-2088. Receiver; powers. A receiver appointed under section 71-2086 may exercise those powers and shall perform those duties set out by the court. A receiver may:

(1) Assume the role of administrator and take control of day-to-day operations or name an administrator to conduct the day-to-day operations of the health care facility subject to the supervision and direction of the receiver;

(2) Remedy violations of federal and state laws and regulations governing the operation of the health care facility;

(3) Let contracts and hire agents and employees, including legal counsel, to carry out the powers and duties of the receiver; and

(4) Hire or discharge any employees including the administrator.

Source: Laws 1995, LB 406, §64.

71-2089. Receiver; litigation authorized. The receiver in its discretion may, but shall not be required to, defend any claim, suit, or action against the receiver or the health care facility arising out of conditions, actions, or circumstances occurring or continuing at the health care facility after the appointment of the receiver. The receiver in its discretion may, but shall not be required to, defend any licensure, certification, or injunctive action initiated by the department after its appointment. The receiver shall not appeal or continue the appeal of any licensure or certification action initiated by the department against the health care facility before the appointment of the receiver. The receiver shall cooperate with the owner or operator in any defense undertaken by the owner or operator against any claim, suit, or action against him or her or the health care facility, including, but not limited to, any licensure, certification, or injunctive action taken by the department.

Source: Laws 1995, LB 406, §65.

71-2090. Property and records; inspection by department. The department may inspect the health care facility at any

time during the receivership, and the receiver shall cooperate with the department in any such inspection. All records required by federal or state statutes and regulations shall be kept on the premises of the health care facility and shall be available for inspection and copying by any authorized employee of the department.

Source: Laws 1995, LB 406, §66.

71-2091. Receivership; receiver responsibility; successor appointed; when. The receiver is responsible for the conduct of the health care facility during the receivership. The department may apply to the court for an order terminating the appointment of a receiver and appointing a successor receiver when violations of federal or state laws or regulations occur during the receivership or for other appropriate reasons.

Source: Laws 1995, LB 406, §67.

71-2092. Receivership; termination; procedure; failure to terminate; effect. (1) A receivership established under section 71-2086 may be terminated by the district court which established it after a hearing upon an application for termination. The application may be filed:

(a) Jointly by the receiver and the current licensee of the health care facility which is in receivership, stating that the deficiencies in the operation, maintenance, or other circumstances which were the grounds for establishment of the receivership have been corrected and that there are reasonable grounds to believe that the health care facility will be operated in compliance with all applicable statutes and the rules and regulations adopted and promulgated pursuant thereto;

(b) By the current licensee of the health care facility, alleging that termination of the receivership is merited for the reasons set forth in subdivision (a) of this subsection, but that the receiver has declined to join in the petition for termination of the receivership;

(c) By the receiver, stating that all residents or patients of the health care facility have been relocated elsewhere and that there are reasonable grounds to believe it will not be feasible to again operate the health care facility on a sound financial basis and in compliance with federal and state laws and regulations and asking that the court approve the surrender of the license of the health care facility to the department and the subsequent return of the control of the premises of the health care facility to the owner of the premises; or

(d) By the department (i) stating that the deficiencies in the operation, maintenance, or other circumstances which were the grounds for establishment of the receivership have been corrected and that there are reasonable grounds to believe that the health care facility will be operated in compliance with all applicable statutes and the rules and regulations adopted and promulgated pursuant thereto or (ii) stating that there are reasonable grounds to believe that the health care facility cannot be operated in compliance with federal or state law and regulations and asking that the court order the removal of the residents or patients to appropriate alternative placements, the closure of the facility, and the license, if any, surrendered to the department or that the health care facility be sold under reasonable terms approved by the court to a new owner approved for licensure by the department.

(2) If the receivership has not been terminated within twelve months after the appointment of the receiver, the court shall, after hearing, order either that the health care facility be closed after an orderly transfer of the residents or patients to appropriate alternative placements or that the health care facility be sold under reasonable terms approved by the court to a new owner approved for licensure by the department. The receivership period may be extended as necessary to protect the health, safety, and welfare of the residents or patients.

Source: Laws 1983, LB 274, §4; R.S. 1943, (1990), §71-6004; Laws 1995, LB 406, §68.

71-2093. Receivership; payment of expenses. The health care facility for which a receiver is appointed shall be responsible for payment of the expenses of a receivership established under section 71-2086 unless the court directs otherwise. The expenses include, but are not limited to:

(1) Compensation for the receiver and any related receivership expenses;

(2) Expenses incurred by the health care facility for the continuing care of the residents or patients of the health care facility;

(3) Expenses incurred by the health care facility for the maintenance of buildings and grounds of the health care facility; and

(4) Expenses incurred by the health care facility in the ordinary course of business, such as employees' salaries and accounts payable.

Source: Laws 1983, LB 274, §5; R.S. 1943, (1990), §71-6005; Laws 1995, LB 406, §69.

71-2094. Action against receiver; requirements. No person shall bring an action against a receiver appointed under section 71-2086 without first securing leave of the court. The receiver is liable in his or her personal capacity for intentional wrongdoing or gross negligence. In all other cases, the receiver is liable in his or her official capacity only, and any judgment rendered shall be satisfied out of the receivership assets. The receiver is not personally liable for the expenses of the health care facility during the receivership. The receiver is an employee of the state only for the purpose of defending a claim filed against the receiver. The Attorney General shall defend or arrange for the defense of all suits filed against the receiver

personally.
Source: Laws 1995, LB 406, §70.

71-2095. Receivership; acts not precluded; effect on liability. Sections 71-2086 to 71-2094 shall not:
(1) Preclude the sale or lease of a health care facility as otherwise provided by law; or
(2) Affect the civil or criminal liability of the licensee, owner, or operator of the health care facility placed in receivership for any acts or omissions of the licensee, owner, or operator which occurred before the receiver was appointed.
Source: Laws 1983, LB 274, §6; R.S. 1943, (1990), §71-6006; Laws 1995, LB 406, §71.

71-2096. Interference with enforcement; penalty. (1) Any person who prevents or interferes with or attempts to impede in any way any duly authorized representative of the department in the lawful enforcement of sections 71-2084 to 71-2096 shall be guilty of a Class IV misdemeanor. For purposes of this subsection, lawful enforcement includes, but is not limited to, (a) contacting or interviewing any resident or patient of a health care facility in private at any reasonable hour and without advance notice, (b) examining any relevant books or records of a health care facility, or (c) preserving evidence of any violations of sections 71-2084 to 71-2096.
(2) The county attorney of the county in which the health care facility is located or the Attorney General may be requested by the department to initiate prosecution.
Source: Laws 1983, LB 274, § 7; R.S.1943, (1990), § 71-6007; Laws 1995, LB 406, § 72; Laws 2007, LB296, § 522. Operative date July 1, 2007.

ASSISTED-LIVING FACILITIES

71-20,115 and 71-20,116. Transferred to sections 71-460 and 71-461.
71-20,117. Repealed. Laws 2000, LB 819, §162.

CRITICAL ACCESS HOSPITALS

71-20,118 and 71-20,119. Repealed. Laws 2000, LB 819, §162.

VISITATION PRIVILEGES

71-20,120. Visitation privileges; designation by patient. A hospital patient who is nineteen years of age or older or an emancipated minor may designate at any time, orally or in writing, up to five individuals not legally related by marriage or blood to the patient whom the patient wishes to be given the same visitation privileges as an immediate family member of such patient. An individual so designated shall have the same visitation privileges as an immediate family member of such patient. The patient may rescind the designation or designations at any time, orally or in writing. Any designation or rescission made under this section shall be noted on the patient's medical records at such hospital. For purposes of this section, medical records means the hospital's record of a patient's health history and treatment rendered.
Source: Laws 2002, LB 1062, § 51. Operative date July 20, 2002.

DISPOSITION OF REMAINS OF CHILD BORN DEAD

71-20,121. Disposition of remains of child born dead; hospital; duties. (1) Every hospital licensed under the Health Care Facility Licensure Act shall maintain a written policy for the disposition of the remains of a child born dead at such hospital. A parent of such child shall have the right to direct the disposition of such remains, except that disposition may be made by the hospital if no such direction is given by a parent within fourteen days following the delivery of such remains. Such policy and such disposition shall comply with all applicable provisions of state and federal law. Upon the delivery of a child born dead, the hospital shall notify at least one parent of such parents' right to direct the disposition of the remains of such child and shall provide at least one parent with a copy of its policy with respect to such disposition.
(2) For purposes of this section, child born dead means a child at any stage of gestation (a) who has died in utero, (b) whose remains have been removed from the uterus of the mother, for whom pregnancy has been confirmed prior to such removal, and (c) whose remains are identified with the naked eye at the time of such removal by the attending physician or upon subsequent pathological examination if requested by a parent. This section shall not apply to the performance of an elective abortion.
(3) Except as otherwise provided by law, nothing in this section shall be interpreted to prohibit any hospital from providing additional notification and assistance to the parent of a child born dead at such hospital relating to the disposition of the remains of such child, even if such remains cannot be identified with the naked eye at the time of delivery or upon subsequent pathological examination.

Source: Laws 2003, LB 95, § 38. Effective date August 31, 2003.

SUDDEN INFANT DEATH SYNDROME AND SHAKEN BABY SYNDROME

71-2101. Sudden infant death syndrome; legislative findings. The Legislature finds that sudden infant death syndrome is the sudden, unexpected death of an apparently healthy infant less than one year of age that remains unexplained after the performance of a complete postmortem investigation, including an autopsy, an examination of the scene of death, and a review of the medical history. The Legislature further finds that, despite the success of prevention efforts, sudden infant death syndrome has been the second leading cause of death for infants in Nebraska for the last twenty years. Although there are no known ways to prevent sudden infant death syndrome in all cases, there are steps that parents and caregivers can take to reduce the risk of sudden infant death. The Legislature further finds and declares that there is a present and growing need to provide additional programs aimed at reducing the number of cases of sudden infant death syndrome in Nebraska.

Source: Laws 2006, LB 994, § 147. Operative date April 13, 2006.

71-2102. Shaken baby syndrome; legislative findings. The Legislature finds that shaken baby syndrome is the medical term used to describe the violent shaking of an infant or child and the injuries or other results sustained by the infant or child. The Legislature further finds that shaken baby syndrome may occur when an infant or child is violently shaken as part of a pattern of abuse or because an adult has momentarily succumbed to the frustration of responding to a crying infant or child. The Legislature further finds that these injuries can include brain swelling and damage, subdural hemorrhage, mental retardation, or death. The Legislature further finds and declares that there is a present and growing need to provide programs aimed at reducing the number of cases of shaken baby syndrome in Nebraska.

Source: Laws 2006, LB 994, § 148. Operative date April 13, 2006.

71-2103. Information for parents of newborn child; requirements. Every hospital, birth center, or other medical facility that discharges a newborn child shall request that each maternity patient and father of a newborn child, if available, view a video presentation and read printed materials, approved by the Department of Health and Human Services, on the dangers of shaking infants and children, the symptoms of shaken baby syndrome, the dangers associated with rough handling or the striking of an infant, safety measures which can be taken to prevent sudden infant death, and the dangers associated with infants sleeping in the same bed with other children or adults. After viewing the presentation and reading the materials or upon a refusal to do so, the hospital, birth center, or other medical facility shall request that the mother and father, if available, sign a form stating that he or she has viewed and read or refused to view and read the presentation and materials. Such presentation, materials, and forms may be provided by the department.

Source: Laws 2006, LB 994, § 149. Operative date April 13, 2006.

71-2104. Public awareness activities; duties. The Department of Health and Human Services shall conduct public awareness activities designed to promote the prevention of sudden infant death syndrome and shaken baby syndrome. The public awareness activities may include, but not be limited to, public service announcements, information kits and brochures, and the promotion of preventive telephone hotlines.

Source: Laws 2006, LB 994, § 150. Operative date April 13, 2006.

CANCER DRUG REPOSITORY PROGRAM ACT

71-2422. Act, how cited. Sections 71-2422 to 71-2430 shall be known and may be cited as the Cancer Drug Repository Program Act.

Source: Laws 2003, LB 756, §1; Laws 2005, LB 331, §1. Effective date September 4, 2005.

71-2423. Terms, defined. For purposes of the Cancer Drug Repository Program Act:

(1) Cancer drug means a prescription drug used to treat (a) cancer or its side effects or (b) the side effects of a prescription drug used to treat cancer or its side effects;

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

(3) Health care facility has the definition found in section 71-413;

(4) Health clinic has the definition found in section 71-416;

(5) Hospital has the definition found in section 71-419;

(6) Participant means a physician's office, pharmacy, hospital, or health clinic that has elected to voluntarily participate in the program and that accepts donated cancer drugs under the rules and regulations adopted and promulgated by the department for the program;

(7) Pharmacy has the definition found in section 71-425;

(8) Physician's office means the office of a person licensed to practice medicine and surgery or osteopathic medicine and

surgery;

(9) Prescribing practitioner means a health care practitioner licensed under the Uniform Licensing Law who is authorized to prescribe cancer drugs;

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

(11) Program means the cancer drug repository program established pursuant to section 71-2424.

Source: Laws 2003, LB 756, § 2; Laws 2005, LB 331, § 2; Laws 2007, LB296, § 541; Laws 2007, LB463, § 1200. The changes made by LB 296 became operative July 1, 2007.

71-2424. Cancer drug repository program; established. The department shall establish a cancer drug repository program for accepting donated cancer drugs and dispensing such drugs to Nebraska residents. Participation in the program shall be voluntary.

Source: Laws 2003, LB 756, § 3. Operative date September 15, 2003.

71-2425. Cancer drug donation. Any person or entity, including, but not limited to, a cancer drug manufacturer or health care facility, may donate cancer drugs to the program. Cancer drugs may be donated to a participant.

Source: Laws 2003, LB 756, §4; Laws 2005, LB 331, §3. Effective date September 4, 2005.

71-2426. Cancer drug; accepted or dispensed; conditions. (1) A cancer drug shall only be accepted or dispensed under the program if such drug is in its original, unopened, sealed, and tamper-evident packaging. A cancer drug packaged in single unit doses may be accepted and dispensed if the outside packaging is opened but the single-unit-dose packaging is unopened. There shall be no limitation on the number of doses that can be donated to the program as long as the donated drugs meet the requirements of this section. An injectable cancer drug may be accepted if it does not have temperature requirements other than controlled room temperature.

(2) A cancer drug shall not be accepted or dispensed under the program if (a) such drug bears an expiration date prior to the date of donation, (b) such drug is adulterated or misbranded as described in section 71-2401 or 71-2402, or (c) such drug has expired while in the repository.

(3) Subject to limitations provided in this section, unused cancer drugs dispensed under the medical assistance program established pursuant to the Medical Assistance Act may be accepted and dispensed under the program.

Source: Laws 2003, LB 756, § 5; Laws 2005, LB 331, § 4; Laws 2006, LB 1116, § 1; Laws 2006, LB 1248, § 77. Operative date July 1, 2006.

71-2427. Participant; duties; fee authorized. (1) A participant shall comply with all applicable provisions of state and federal law relating to the storage, distribution, and dispensing of donated cancer drugs and shall inspect all such drugs prior to dispensing to determine if they are adulterated or misbranded as described in section 71-2401 or 71-2402. Such drugs shall only be dispensed pursuant to a prescription issued by a prescribing practitioner. Such drugs may be distributed to another participant for dispensing.

(2) A participant may charge a handling fee for distributing or dispensing cancer drugs under the program. Such fee shall be established in rules and regulations adopted and promulgated by the department. Cancer drugs donated under the program shall not be resold.

Source: Laws 2003, LB 756, §6; Laws 2005, LB 331, §5. Effective date September 4, 2005.

71-2428. Immunity. (1) Any person or entity, including a cancer drug manufacturer, which exercises reasonable care in donating, accepting, distributing, or dispensing cancer drugs under the Cancer Drug Repository Program Act or rules and regulations adopted and promulgated under the act shall be immune from civil or criminal liability or professional disciplinary action of any kind for any injury, death, or loss to person or property relating to such activities.

(2) Notwithstanding subsection (1) of this section, the donation of a cancer drug by a cancer drug manufacturer does not absolve the manufacturer of any criminal or civil liability that would have existed but for the donation, nor shall such donation increase the liability of such cancer drug manufacturer that would have existed but for the donation.

Source: Laws 2003, LB 756, § 7. Operative date September 15, 2003.

71-2429. Rules and regulations. The department, upon the recommendation of the Board of Pharmacy, shall adopt and promulgate rules and regulations to carry out the Cancer Drug Repository Program Act. Such rules and regulations shall include, but not be limited to:

(1) Eligibility criteria and other standards and procedures for participants that accept and distribute or dispense donated cancer drugs;

(2) Necessary forms for administration of the program, including, but not limited to, forms for use by persons or entities that donate, accept, distribute, or dispense cancer drugs under the program. The forms shall include the name of the person to whom the drug was originally prescribed;

(3) The maximum handling fee that may be charged by participants that accept and distribute or dispense donated cancer drugs;

(4)(a) Categories of cancer drugs that the program will accept for dispensing and (b) categories of cancer drugs that the program will not accept for dispensing and the reason that such drugs will not be accepted; and

(5) Maintenance and distribution of the participant registry established in section 71-2430.

Source: Laws 2003, LB 756, § 8; Laws 2005, LB 331, § 6; Laws 2006, LB 1116, § 2. Operative date July 1, 2006.

71-2430. Participant registry. The department shall establish and maintain a participant registry for the program. The participant registry shall include the participant's name, address, and telephone number and shall identify whether the participant is a physician's office, a pharmacy, a hospital, or a health clinic. The department shall make the participant registry available to any person or entity wishing to donate cancer drugs to the program.

Source: Laws 2005, LB 331, §7. Effective date September 4, 2005.

COMMUNITY HEALTH CENTER RELABELING AND REDISPENSING

71-2431. Community health center; relabeling and redispensing prescription drugs; requirements. (1) Prescription drugs or devices which have been delivered to a community health center for dispensing to a patient of such health center pursuant to a valid prescription, but which are not dispensed or administered to such patient, may be delivered to a pharmacist or pharmacy under contract with the community health center for relabeling and redispensing to another patient of such health center pursuant to a valid prescription if:

(a) The decision to accept delivery of the drug or device for relabeling and redispensing rests solely with the contracting pharmacist or pharmacy;

(b) The drug or device shall has been in the control of the community health center at all times;

(c) The drug or device is in the original and unopened labeled container with a tamper-evident seal intact. Such container shall bear the expiration date or calculated expiration date and lot number; and

(d) The relabeling and redispensing is not otherwise prohibited by law.

(2) For purposes of this section:

(a) Administer has the definition found in section 71-1,142;

(b) Calculated expiration date has the definition found in section 71-1,147.53;

(c) Community health center means a community health center established pursuant to the Health Centers Consolidation Act of 1996, 42 U.S.C. 201 et seq., as such act existed on May 7, 2005;

(d) Deliver or delivery has the definition found in section 71-1,142;

(e) Dispense or dispensing has the definition found in section 71-1,142;

(f) Prescription has the definition found in section 71-1,142; and

(g) Prescription drug or device has the definition found in section 71-1,142.

(3) The Department of Health and Human Services, in consultation with the Board of Pharmacy, may adopt and promulgate rules and regulations to carry out this section.

Source: Laws 2005, LB 382, §14; Laws 2007, LB 296, § 542. Operative date July 1, 2007.

ASSISTED-LIVING FACILITY ACT

71-5901. Act, how cited. Sections 71-5901 to 71-5908 shall be known and may be cited as the Assisted-Living Facility Act.

Source: Laws 2004, LB 1005, § 45. Operative date January 1, 2005.

71-5902. Purposes of act. The purposes of the Assisted-Living Facility Act are to supplement provisions of the Health Care Facility Licensure Act relating to the licensure and regulation of assisted-living facilities and to provide for the health and safety of residents of such facilities.

Source: Laws 2004, LB 1005, § 46. Operative date January 1, 2005.

71-5903. Terms, defined. For purposes of the Assisted-Living Facility Act:

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

(2) Administrator means the operating officer of an assisted-living facility and includes a person with a title such as administrator, chief executive officer, manager, superintendent, director, or other similar designation;

(3) Assisted-living facility has the same meaning as in section 71-406;

(4) Authorized representative means (a) a person holding a durable power of attorney for health care, (b) a guardian, or (c) a person appointed by a court to manage the personal affairs of a resident of an assisted-living facility other than the facility;

(5) Chemical restraint means a psychopharmacologic drug that is used for discipline or convenience and is not required

to treat medical symptoms;

(6) 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. Complex nursing interventions does not include a nursing assessment;

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

(8) 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;

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

(10) 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

(11) 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.

Source: Laws 1997, LB 608, § 13; R.S.Supp.,1998, § 71-20,115; Laws 2000, LB 819, § 60; R.S.1943, (2003), § 71-460; Laws 2004, LB 1005, § 47; Laws 2007, LB296, § 637. Operative date July 1, 2007.

71-5904. Admission requirements. Assisted living promotes resident self-direction and participation in decisions which emphasize independence, individuality, privacy, dignity, and residential surroundings.

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, illness, or physical disability. The administrator shall have the discretion regarding admission or retention of residents subject to the Assisted-Living Facility Act and rules and regulations adopted and promulgated under the act.

Source: Laws 1997, LB 608, § 14; R.S.Supp.,1998, § 71-20,116; Laws 2000, LB 819, § 61; R.S.1943, (2003), § 71-461; Laws 2004, LB 1005, § 48. Operative date January 1, 2005.

71-5905. Admission or retention; conditions; health maintenance activities; requirements. (1) An assisted-living facility shall not admit or retain a resident who requires complex nursing interventions or whose condition is not stable or predictable unless:

(a) The resident, if he or she is not a minor and is competent to make a rational decision as to his or her needs or care, or his or her authorized representative, and his or her physician or a registered nurse agree that admission or retention of the resident is appropriate;

(b) The resident or his or her authorized representative agrees to arrange for the care of the resident through appropriate private duty personnel, a licensed home health agency, or a licensed hospice; and

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

(2) Health maintenance activities at an assisted-living facility shall be performed in accordance with the Nurse Practice Act and the rules and regulations adopted and promulgated under the act.

Source: Laws 2004, LB 1005, § 49. Operative date January 1, 2005.

71-5906. Drugs, devices, biologicals, and supplements; list required; duties. (1) On and after January 1, 2005, every person seeking admission to an assisted-living facility or the authorized representative of such person shall, upon admission and annually thereafter, provide the facility with a list of drugs, devices, biologicals, and supplements being taken or being used by the person, including dosage, instructions for use, and reported use.

(2) Every person residing in an assisted-living facility on January 1, 2005, or the authorized representative of such person shall, within sixty days after January 1, 2005, and annually thereafter, provide the facility with a list of drugs, devices, biologicals, and supplements being taken or being used by such person, including dosage, instructions for use, and reported use.

(3) An assisted-living facility shall not be subject to disciplinary action by the department for the failure of any person seeking admission to or residing at such facility or the authorized representative of such person to comply with subsections (1) and (2) of this section.

(4) Each assisted-living facility shall provide for a registered nurse to review medication administration policies and procedures and to be responsible for the training of medication aides at such facility.

Source: Laws 2004, LB 1005, § 50. Operative date January 1, 2005.

71-5907. Life Safety Code classification. For purposes of the Life Safety Code under section 81-502, an assisted-living facility shall be classified as (1) residential board and care if the facility meets the residential board and care classification requirements of the Life Safety Code or (2) limited care if the facility meets the limited care classification requirements of the Life Safety Code.

Source: Laws 2004, LB 1005, § 51. Operative date January 1, 2005.

71-5908. Rules and regulations. The department shall adopt and promulgate rules and regulations necessary to carry out the Assisted-Living Facility Act, including, but not limited to, rules and regulations which:

(1) Prohibit the use of chemical or physical restraints at an assisted-living facility;

(2) Require that a criminal background check be conducted on all persons employed as direct care staff at an assisted-living facility;

(3) Establish initial and ongoing training requirements for administrators and approved curriculum for such training. Such requirements shall consist of thirty hours of initial training, including, but not limited to, training in resident care and services, social services, financial management, administration, gerontology, and rules, regulations, and standards relating to the operation of an assisted-living facility. The department may waive initial training requirements established under this subdivision for persons employed as administrators of assisted-living facilities on January 1, 2005, upon application to the department and documentation of equivalent training or experience satisfactory to the department. Training requirements established under this subdivision shall not apply to an administrator who is also a nursing home administrator or a hospital administrator; and

(4) Provide for acceptance of accreditation by a recognized independent accreditation body or public agency, which has standards that are at least as stringent as those of the State of Nebraska, as evidence that the assisted-living facility complies with rules and regulations adopted and promulgated under the Assisted-Living Facility Act.

Source: Laws 2004, LB 1005, § 52. Operative date January 1, 2005.

NEBRASKA NURSING HOME ACT

71-6008. Definitions, where found. As used in the Nebraska Nursing Home Act, unless the context otherwise requires, the definitions found in sections 71-6010 to 71-6017.01 shall apply.

Source: Laws 1983, LB 235, §1; Laws 1986, LB 782, §4; Laws 1998, LB 1354, §38. Operative date April 19, 1998.

71-6009. Repealed. Laws 1998, LB 1354, §48.

71-6010. Department, defined. Department shall mean the Department of Health and Human Services.

Source: Laws 1983, LB 235, § 3; Laws 1996, LB 1044, § 745; Laws 2007, LB296, § 638. Operative date July 1, 2007.

71-6011. Repealed. Laws 2007, LB 296, § 815.

71-6012. Nursing home, defined. Nursing home shall mean a nursing facility or a skilled nursing facility as defined in section 71-424 or 71-429.

Source: Laws 1983, LB 235, § 5; Laws 2000, LB 819, § 122. Operative date January 1, 2001.

71-6013. Resident, defined. Resident shall mean any person domiciled, residing, or receiving care and treatment, for a period in excess of twenty-four hours, in a nursing home.

Source: Laws 1983, LB 235, §6.

71-6014 and 71-6015. Repealed. Laws 2004, LB 1005, §145.

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

Source: Laws 1983, LB 235, § 9; Laws 2000, LB 819, § 123. Operative date January 1, 2001.

71-6017. Licensee, defined. Licensee shall mean the holder of a license.

Source: Laws 1983, LB 235, §10.

71-6017.01. Medicaid, defined. Medicaid means the medical assistance program established pursuant to the Medical Assistance Act.

Source: Laws 1986, LB 782, § 1; Laws 2006, LB 1248, § 78. Operative date July 1, 2006.

71-6018. Repealed. Laws 2000, LB 819, § 162.

71-6018.01. Nursing facility; nursing requirements; waiver; procedure. (1) Unless a waiver is granted pursuant to subsection (2) of this section, a nursing facility shall use the services of (a) a licensed registered nurse for at least eight consecutive hours per day, seven days per week and (b) a licensed registered nurse or licensed practical nurse on a twenty-

four-hour basis seven days per week. Except when waived under subsection (2) of this section, a nursing facility shall designate a licensed registered nurse or licensed practical nurse to serve as a charge nurse on each tour of duty. The Director of Nursing Services shall be a licensed registered nurse, and this requirement shall not be waived. The Director of Nursing Services may serve as a charge nurse only when the nursing facility has an average daily occupancy of sixty or fewer residents.

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

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

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

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

(b) The department has been granted any waiver by the federal government of staffing standards for certification under Title XIX of the federal Social Security Act, as amended, and the requirements of subdivisions (a)(ii) and (iii) of this subsection have been met.

(3) The department shall apply for such a waiver from the federal government to carry out subdivision (1)(b) of this section.

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

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

Source: Laws 2000, LB 819, § 126; Laws 2007, LB296, § 639. Operative date July 1, 2007.

71-6018.02. Skilled nursing facility; nursing requirements; waiver; procedure. (1) Unless a waiver is granted pursuant to subsection (2) of this section, a skilled nursing facility shall use the services of (a) a licensed registered nurse for at least eight consecutive hours per day, seven days per week and (b) a licensed registered nurse or licensed practical nurse on a twenty-four-hour basis seven days per week. Except when waived under subsection (2) of this section, a skilled nursing facility shall designate a licensed registered nurse or licensed practical nurse to serve as a charge nurse on each tour of duty. The Director of Nursing Services shall be a licensed registered nurse, and this requirement shall not be waived. The Director of Nursing Services may serve as a charge nurse only when the skilled nursing facility has an average daily occupancy of sixty or fewer residents.

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

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

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

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

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

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

(a) The facility or hospital is located in a nonurban area where the supply of skilled nursing facility services is not

sufficient to meet the needs of individuals residing in the area;

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

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

A waiver may be granted under this subsection for a period of up to one year by the department.

Source: Laws 2000, LB 819, § 127. Operative date January 1, 2001.

71-6019. Access to residents; when permitted. Any employee, representative, or agent of the department, the office of the state long-term care ombudsman, a law enforcement agency, or the local county attorney shall be permitted access at any hour to any resident of any nursing home. Friends and relatives of a resident shall have access during normal visiting and business hours of the facility. Representatives of community legal services programs, volunteers, and members of community organizations shall have access, after making arrangements with proper personnel of the home, during regular visiting and business hours if the purpose of such access is to:

(1) Visit, talk with, and make personal, social, and legal services available to all residents;

(2) Inform residents of their rights and entitlements and their corresponding obligations under federal and state laws by means of educational materials and discussions in groups and with individual residents;

(3) Assist residents in asserting their legal rights regarding claims for public assistance, medical assistance, and social security benefits, as well as in all other matters in which residents are aggrieved. Assistance may include counseling and litigation; or

(4) Engage in other methods of asserting, advising, and representing residents so as to extend to them full enjoyment of their rights.

Source: Laws 1983, LB 235, § 12; Laws 1992, LB 677, § 32; Laws 1996, LB 1044, § 747; Laws 2007, LB296, § 640. Operative date July 1, 2007.

71-6020. Visitor; visitation procedures. Any person entering a nursing home pursuant to section 71-6019 shall first notify appropriate nursing home personnel of his or her presence. He or she shall, upon request, produce identification to establish his or her identity. No such person shall enter the immediate living area of any resident without first identifying himself or herself and then receiving permission from the resident to enter. The rights of other residents present in the room shall be respected.

Source: Laws 1983, LB 235, §13.

71-6021. Administrator refuse access; hearing; procedure; access authorized. (1) Notwithstanding the provisions of sections 71-6019 and 71-6020, the administrator of a nursing home may refuse access to the nursing home to any person if the presence of such person in the nursing home would be injurious to the health and safety of a resident or would threaten the security of the property of a resident or the nursing home or if the person seeks access to the nursing home for commercial purposes. Any person refused access to a nursing home may, within thirty days of such refusal, request a hearing by the department. The wrongful refusal of a nursing home to grant access to any person as required in sections 71-6019 and 71-6020 shall constitute a violation of the Nebraska Nursing Home Act. A nursing home may appeal any citation issued pursuant to this section in the manner provided in sections 71-452 to 71-455.

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

Source: Laws 1983, LB 235, § 14; Laws 1992, LB 677, § 33; Laws 1996, LB 1044, § 748; Laws 2000, LB 819, § 124; Laws 2007, LB296, § 641. Operative date July 1, 2007.

71-6022. Transfer or discharge of resident; conditions; procedure; involuntary transfer or discharge; notice requirements. (1) A nursing home shall not transfer or discharge a resident except (a) upon his or her consent, (b) for medical reasons, (c) for the resident's safety or the safety of other residents or nursing home employees, (d) when rehabilitation is such that movement to a less restrictive setting is possible, or (e) for nonpayment for the resident's stay, except as prohibited by section 71-6023.01 or by Title XVIII or XIX of the Social Security Act as amended.

(2) Involuntary transfer from a nursing home or discharge of a resident shall be preceded by a minimum written notice of thirty days, except when subdivision (d) of subsection (1) of this section applies, five days written notice shall be given to the resident or his or her representative and when subdivision (e) of subsection (1) of this section applies, a resident shall be

given ten days' written notice if his or her charges are five days or more in arrears. This subsection shall not apply when (a) an emergency transfer or discharge is mandated by the resident's health care needs and is in accord with the written orders and medical justification of the attending physician or (b) the transfer is mandated by the physical safety of other residents or nursing home employees, as documented in the nursing home records.

Source: Laws 1983, LB 235, §15; Laws 1986, LB 782, §5.

71-6023. Involuntary transfer or discharge; notice; contents. (1) The notice required by subsection (2) of section 71-6022 shall contain:

(a) The stated reason for the proposed transfer or discharge;

(b) The effective date of the proposed transfer or discharge; and

(c) In not less than twelve-point type, the text of section 71-445.

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

Source: Laws 1983, LB 235, § 16; Laws 2000, LB 819, § 125. Operative date January 1, 2001.

71-6023.01. Licensure; retention of medicaid resident required; when. A nursing home seeking or renewing a license shall be required to retain a resident whose economic status changes so that such resident receives medicaid or becomes eligible for medicaid if such resident has resided in the nursing home for a period of at least one year after July 17, 1986, unless ten percent of such nursing home's residents are receiving medicaid or are eligible for medicaid. Such requirement shall constitute a condition of licensure. The department shall notify the nursing home of such requirement ninety days prior to the renewal of a license or upon application for a license. For purposes of this section, nursing homes shall include long-term care hospitals, including long-term care units of a hospital. This section shall not apply to the Nebraska veterans homes established pursuant to Chapter 80, article 3.

Source: Laws 1986, LB 782, §2; Laws 1990, LB 1064, §30.

71-6024 to 71-6036. Repealed. Laws 2000, LB 819, § 162.

71-6037. Act, how cited. Sections 71-6008 to 71-6037 shall be known and may be cited as the Nebraska Nursing Home Act.

Source: Laws 1983, LB 235, § 30; Laws 1986, LB 782, § 6; Laws 2000, LB 819, § 128. Operative date January 1, 2001.

NURSING HOME ADVISORY COUNCIL

71-6043. Terms, defined. As used in sections 71-6043 to 71-6052, unless the context otherwise requires:

(1) Council means the Nursing Home Advisory Council as established by sections 71-6043 to 71-6052;

(2) Department means the Division of Public Health of the Department of Health and Human Services; and

(3) Nursing home means a nursing facility or a skilled nursing facility as defined in section 71-424 or 71-429.

Source: Laws 1967, c. 452, § 1, p. 1399; Laws 1982, LB 566, § 1; R.S.1943, (1986), § 71-2031; Laws 1996, LB 1044, § 752; Laws 1997, LB 307, § 193; Laws 2000, LB 819, § 129; Laws 2007, LB296, § 644. Operative date July 1, 2007.

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

Source: Laws 1982, LB 566, § 2; R.S.1943, (1986), § 71-2032; Laws 2000, LB 819, § 130. Operative date January 1, 2001.

71-6045. Council; members; qualifications. The council shall consist of sixteen members appointed by the Governor as follows:

(1) One member shall be a licensed registered nurse in the State of Nebraska;

(2) One member shall be a licensed physician and surgeon in the State of Nebraska;

(3) One member shall be a licensed dentist in the State of Nebraska;

(4) One member shall be a licensed pharmacist in the State of Nebraska;

(5) Three members shall be representatives of the Department of Health and Human Services with interest in or responsibilities for aging programs, medicaid, and regulation and licensure of nursing homes;

(6) One member shall be a representative of an agency of state or local government, other than the Department of Health and Human Services, with interests in or responsibilities for nursing homes or programs related thereto;

(7) Four members shall be laypersons representative of the public;

(8) Two members shall be administrators or owners of proprietary nursing homes; and

(9) Two members shall be administrators or owners of voluntary nursing homes.

Members serving on July 1, 2007, may serve until a replacement is appointed.

Source: Laws 1967, c. 452, § 3, p. 1400; Laws 1989, LB 344, § 17; R.S.Supp.,1989, § 71-2033; Laws 1996, LB 1044, § 753; Laws 2001, LB 398, § 80; Laws 2007, LB296, § 645. Operative date July 1, 2007.

71-6046. Council; certain members; limitation on service. Any member of the council who is representative of a state or local governmental agency may serve only during his continuance as an officer or employee of such state or local agency. No member of the council shall serve more than two successive terms. For the purpose of this section, service for more than eighteen months of a full term shall be deemed service for the full term.

Source: Laws 1967, c. 452, §4, p. 1400; R.S. 1943, (1986), §71-2034.

71-6047. Council; members; terms; vacancies. Members shall be appointed for three-year terms. Vacancies in any position on the council shall be filled for the unexpired portion of the term by appointment by the Governor in the same manner as provided for the original appointments.

Source: Laws 1967, c. 452, §5, p. 1401; Laws 1989, LB 344, §18; R.S. Supp., 1989, §71-2035.

71-6048. Council; meetings; chairperson; secretary. The council shall meet at least once during each calendar year and upon call of its chairperson or at the written request of a majority of its members. The council shall annually elect one of its members as chairperson and one of its members as secretary. The Director of Public Health or his or her designee shall represent the department at all meetings.

Source: Laws 1967, c. 452, § 6, p. 1401; R.S.1943, (1986), § 71-2036; Laws 1997, LB 307, § 194; Laws 2007, LB296, § 646. Operative date July 1, 2007.

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

Source: Laws 1967, c. 452, § 6, p. 1401; R.S.1943, (1986), § 71-2037; Laws 2000, LB 819, § 131. Operative date January 1, 2001.

71-6050. Council; duties. (1) The council shall advise and make recommendations to the department on all matters pertaining to the licensure and regulation of nursing homes in this state.

(2) In furtherance of such powers, the council shall:

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

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

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

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

Source: Laws 1967, c. 452, § 8, p. 1401; Laws 1982, LB 566, § 3; R.S.1943, (1986), § 71-2038; Laws 1998, LB 1070, § 19; Laws 2000, LB 1427, § 1; Laws 2000, LB 819, § 132; Laws 2001, LB 692, § 12. Effective date May 17, 2001.

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

Source: Laws 1967, c. 452, § 9, p. 1402; Laws 1982, LB 566, § 4; R.S.1943, (1986), § 71-2039; Laws 2000, LB 819, § 133. Operative date January 1, 2001.

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

Source: Laws 1967, c. 452, § 10, p. 1402; Laws 1983, LB 235, § 34; Laws 1986, LB 782, § 3; R.S.1943, (1986), § 71-2040; Laws 2000, LB 819, § 134. Operative date January 1, 2001.

IN-HOME PERSONAL SERVICES

71-6501. Terms, defined. For purposes of sections 71-6501 to 71-6504:

(1) Activities of daily living has the definition found in section 71-6602;

(2) Attendant services means services provided to nonmedically fragile persons, including hands-on assistance with activities of daily living, transfer, grooming, medication reminders, and similar activities;

(3) Companion services means the provision of companionship and assistance with letter writing, reading, and similar activities;

(4) Homemaker services means assistance with household tasks, including, but not limited to, housekeeping, personal laundry, shopping, incidental transportation, and meals;

(5) In-home personal services means attendant services, companion services, and homemaker services that do not require the exercise of medical or nursing judgment provided to a person in his or her residence to enable the person to remain safe and comfortable in such residence;

(6) In-home personal services agency means an entity that provides or offers to provide in-home personal services for compensation by employees of the agency or by persons with whom the agency has contracted to provide such services. In-home personal services agency does not include a local public health department as defined in section 71-1626, a health care facility as defined in section 71-413, a health care service as defined in section 71-415, programs supported by the federal Corporation for National and Community Service, an unlicensed home care registry or similar entity that screens and schedules independent contractors as caregivers for persons, or an agency that provides only housecleaning services. A home health agency may be an in-home personal services agency; and

(7) In-home personal services worker means a person who meets the requirements of section 71-6502 and provides in-home personal services.

Source: Laws 2007, LB236, § 39. Effective date September 1, 2007.

71-6502. In-home personal services worker; qualifications. An in-home personal services worker:

(1) Shall be at least eighteen years of age;

(2) Shall have good moral character;

(3) Shall not have been convicted of a crime under the laws of Nebraska or another jurisdiction, the penalty for which is imprisonment for a period of more than one year and which crime is rationally related to the person's fitness or capacity to act as an in-home personal services worker;

(4) Shall have no adverse findings on the Adult Protective Services Central Registry, the central register created in section 28-718, the Medication Aide Registry, the Nurse Aide Registry, or the central registry maintained by the sex offender registration and community notification division of the Nebraska State Patrol pursuant to section 29-4004;

(5) Shall be able to speak and understand the English language or the language of the person for whom he or she is providing in-home personal services; and

(6) Shall have training sufficient to provide the requisite level of in-home personal services offered.

Source: Laws 2007, LB236, § 40. Effective date September 1, 2007.

71-6503. In-home personal services agency; duties. An in-home personal services agency shall employ or contract with only persons who meet the requirements of section 71-6502 to provide in-home personal services. The in-home personal services agency shall perform or cause to be performed a criminal history record information check on each in-home personal services worker and a check of his or her driving record as maintained by the Department of Motor Vehicles or by any other state which has issued an operator's license to the in-home personal services worker, when driving is a service provided by the in-home personal services worker, and shall maintain documentation of such checks in its records for inspection at its place of business.

Source: Laws 2007, LB236, § 41. Effective date September 1, 2007.

71-6504. Sections; applicability. Sections 71-6501 to 71-6503 do not apply to the performance of health maintenance activities by designated care aides pursuant to section 71-1,132.30 or to persons who provide personal assistant services, respite care or habilitation services, or aged and disabled services.

Source: Laws 2007, LB236, § 42. Effective date September 1, 2007.

HOME HEALTH AIDE SERVICES

71-6601. Legislative intent. It is the intent of the Legislature that quality health care be provided to all citizens of the state who receive home health aide services through a licensed home health agency. A method of accomplishing quality health care is to ensure adequate training of unlicensed personnel who provide home health aide services by establishing minimum standards for training, evaluation, and supervision. The purpose of sections 71-6601 to 71-6615 is to establish requirements for the provision of home health aide services.

Source: Laws 1988, LB 1100, §116; Laws 1991, LB 703, §53.

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

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

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

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

(4) Home health agency means a home health agency as defined in section 71-417;

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

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

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

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

Source: Laws 1988, LB 1100, § 117; Laws 1991, LB 703, § 54; Laws 1996, LB 1044, § 765; Laws 1998, LB 1354, § 41; Laws 2000, LB 819, § 136; Laws 2007, LB296, § 662. Operative date July 1, 2007.

71-6603. Home health aide; requirements. On and after September 6, 1991, no person shall act as a home health aide unless such person:

(1) Is at least eighteen years of age;

(2) Is of good moral character;

(3) Has not been convicted of a crime under the laws of this state or another jurisdiction, the penalty for which is imprisonment for a period of more than one year and which is rationally related to the person's fitness or capacity to act as a home health aide;

(4) Is able to speak and understand the English language or the language of the home health agency patient and the home health agency staff member who acts as the home health aide's supervisor;

(5) Meets one of the following qualifications:

(a) Has successfully completed a home health aide training course which meets the standards described in section 71-6608.01;

(b) Is a graduate of a school of nursing;

(c) Has been employed by a licensed home health agency as a home health aide II prior to September 6, 1991;

(d) Has successfully completed a course in a school of nursing which included practical clinical experience in fundamental nursing skills and has completed a competency evaluation as described in section 71-6608.02;

(e) Has successfully completed a basic course of training approved by the department for nursing assistants as required by section 71-6039 and has completed a competency evaluation as described in section 71-6608.02;

(f) Has been employed by a licensed home health agency as a home health aide I prior to September 6, 1991, and has completed a competency evaluation as described in section 71-6608.02; or

(g) Has met the qualifications equal to one of those contained in subdivisions (a) through (f) of this subdivision in another state or territory of the United States; and

(6) Has provided to the employing licensed home health agency proof of meeting the requirements of this section.

Source: Laws 1988, LB 1100, § 118; Laws 1991, LB 703, § 55; Laws 2002, LB 1062, § 63. Operative date July 20, 2002.

71-6604. Repealed. Laws 1991, LB 703, §83.

71-6605. Home health aides; permitted acts. Home health aides may perform only personal care, assistance with the activities of daily living, and basic therapeutic care. A home health aide may provide medication only in compliance with the Medication Aide Act. Home health aides may not perform acts which require the exercise of nursing or medical judgment.

Source: Laws 1988, LB 1100, §120; Laws 1991, LB 703, §56; Laws 1998, LB 1354, §42. Operative date April 19, 1998.

71-6606. Home health agencies; employ qualified aides. After January 1, 1989, home health agencies shall employ only home health aides qualified to provide home health care pursuant to sections 71-6601 to 71-6615. The department shall prescribe procedures for verification by home health agencies of successful completion of the requirements of section 71-6603. Home health agencies shall provide direction and supervision of home health aides. Home health agencies shall provide or make available to their home health aides four one-hour inservice programs per year on subjects relevant to home health care and shall verify such programs in a manner and method prescribed by the department.

Source: Laws 1988, LB 1100, §121; Laws 1991, LB 703, §57.

71-6607. Home health agency; provide supervision; care plan. The home health agency shall provide supervision of home health aides by a Nebraska-licensed registered nurse.

Supervision of home health aide services consisting of personal care, assistance with activities of daily living, and measuring vital signs, if such measurements are taken at the request of the patient and are not required pursuant to the nursing care plan, shall include, at a minimum, an onsite visit to each patient, with or without the home health aide being present, once every sixty-two days and an onsite visit to observe each home health aide providing care and assistance and measuring vital signs once every six months.

Except for measuring vital signs at the request of the patient when such measurements are not required pursuant to the nursing care plan, supervision of home health aide services for basic therapeutic care shall include at a minimum an onsite visit to each patient, with or without the health aide being present, once every two weeks.

A care plan for home health aide services shall be developed for each patient by a Nebraska-licensed registered nurse and reviewed by the registered nurse as required by the patient's current condition or at least every sixty-two days.

Source: Laws 1988, LB 1100, §122; Laws 1991, LB 703, §58.

71-6608. Home health aide; demonstrate competency; when required. After January 1, 1989, any home health aide not acting as such for a period of three years shall demonstrate competency in the tasks and duties which are the subject of home health aide training courses. The home health agency shall determine and verify competency of the home health aide in the manner and method prescribed by the department.

Source: Laws 1988, LB 1100, §123.

71-6608.01. Home health aide training course; standards; supervised training; documentation required. A home health aide training course shall meet the following standards with regard to content and duration of training, qualifications for instructors, and documentation of training:

(1) Such course shall address each of the following subject areas through classroom and supervised practical training totaling at least seventy-five hours, with at least sixteen hours devoted to supervised practical training after the individual being trained has completed at least sixteen hours of classroom training:

(a) Communications skills;

(b) Observation, reporting, and documentation of patient status and the care or service furnished;

(c) Reading and recording temperature, pulse, and respiration;

(d) Basic infection control procedures;

(e) Basic elements of body functioning and changes in body functioning that must be reported to a home health aide's supervisor;

(f) Maintenance of a clean, safe, and healthy environment;

(g) Recognizing emergencies and knowledge of emergency procedures;

(h) The physical, emotional, and developmental needs of and ways to work with the populations served by the home health agency, including the need for respect for the patient, his or her privacy, and his or her property;

(i) Appropriate and safe techniques in personal hygiene and grooming that include:

(i) Bed bath;

(ii) Bath: Sponge, tub, and shower;

(iii) Shampoo: Sink, tub, and bed;

(iv) Nail and skin care;

(v) Oral hygiene; and

(vi) Toileting and elimination;

(j) Safe transfer techniques and ambulation;

(k) Normal range of motion and positioning;

(l) Adequate nutrition and fluid intake; and

(m) Any other task that the home health agency may choose to have the home health aide perform;

(2) The training and supervision of home health aides during the supervised practical portion of the training shall be performed by or under the general supervision of a registered nurse who possesses a minimum of two years of nursing experience, at least one year of which is in the provision of home health care, and who has supervised home health aide services for at least six months. Other individuals may be used to provide instruction under the supervision of a qualified registered nurse;

(3) The home health agency shall maintain sufficient documentation to demonstrate that the requirements of this section are met; and

(4) A home health aide training course may be offered by any organization, except that on or after September 6, 1991, a home health agency that has had its license denied, suspended, or revoked or has had admissions or readmissions prohibited shall not offer a home health aide training course for a period of twenty-four months after the occurrence of such action.

Source: Laws 1991, LB 703, §59.

71-6608.02. Home health aide competency evaluation; requirements. If a competency evaluation is required by section 71-6603, the home health agency shall be responsible for ensuring that the individuals who furnish home health aide services on its behalf meet the competency evaluation requirements of this section. A home health aide competency evaluation shall address each of the subjects listed in subdivisions (1) (b) through (1) (m) of section 71-6608.01. The competency evaluation may be offered by any organization except as specified in subdivision (4) of such section. The competency evaluation shall be performed by a registered nurse. The subject areas listed in subdivisions (1) (c) and (1) (i) through (1) (k) of such section shall be evaluated after observation of the aide's performance of the tasks with a patient or other individual. The other subject areas in subdivision (1) of such section shall be evaluated through written examination or oral examination or after observation of a home health aide with a patient or other individual. A home health aide shall not be considered competent in any task for which he or she is evaluated as unsatisfactory, and the home health aide shall not perform that task without direct supervision by a Nebraska-licensed nurse until after he or she receives training in the task for which he or she was evaluated as unsatisfactory and subsequently is evaluated as satisfactory. A home health aide shall not be considered to have successfully passed a competency evaluation if the aide has been evaluated as unsatisfactory in more than one of the required areas. The home health agency shall maintain documentation which demonstrates that the requirements of this section are met.

Source: Laws 1991, LB 703, §60.

71-6609. Repealed. Laws 2000, LB 819, § 162.
71-6610 and 71-6611. Repealed. Laws 1991, LB 703, §83.

71-6612. Home health agency; verify competency. Each home health agency shall be responsible for verifying in a manner and method prescribed by the department that a home health aide is competent to provide personal care, assistance with the activities of daily living, and basic therapeutic care to patients of the agency.

Source: Laws 1988, LB 1100, §127; Laws 1991, LB 703, §62.

71-6613. Repealed. Laws 1991, LB 703, §83.
71-6614. Repealed. Laws 2000, LB 819, § 162.

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

Source: Laws 1988, LB 1100, § 130; Laws 1991, LB 703, § 64; Laws 1996, LB 1155, § 66; Laws 2000, LB 819, § 137. Operative date January 1, 2001.

LABORATORY ACCREDITATION

71-6801 to 71-6803. Repealed. Laws 2000, LB 1115, §93.
71-6804. Repealed. Laws 2000, LB 1115, §93; Laws 2000, LB 1135, §34.
71-6805 to 71-6828. Repealed. Laws 2000, LB 1115, §93.
71-6829. Repealed. Laws 2000, LB 1115, §93; Laws 2000, LB 1135, §34.
71-6830 and 71-6831. Repealed. Laws 2000, LB 1115, §93.

71-6832. Human genetic testing; requirements. All laboratories performing human genetic testing for clinical diagnosis and treatment purposes shall be accredited by the College of American Pathologists or by any other national accrediting body or public agency which has requirements that are substantially equivalent to or more comprehensive than those of the college.

Source: Laws 2001, LB 432, § 4. Effective date September 1, 2001.

71-6833. Forensic DNA laboratories; requirements. Except as provided under section 81-2010, all forensic DNA laboratories performing work on behalf of the state or a political subdivision shall be accredited by the American Society of Crime Laboratory Directors-LAB-Laboratory Accreditation Board or the National Forensic Science Technology Center or by any other national accrediting body or public agency which has requirements that are substantially equivalent to or more comprehensive than those of the society or center.

Source: Laws 2001, LB 432, § 5. Effective date September 1, 2001.

HOSPICE LICENSURE ACT

71-7801 to 71-7806. Repealed. Laws 2000, LB 819, §162.

HEALTH CLINICS

71-7901. Health clinic; medical care organization or association; peer review committee authorized. Any health clinic as defined in section 71-416 and any other organization or association of health practitioners or providers licensed pursuant to Chapter 71 may cause a peer review committee to be formed and operated or may contract with an outside peer review committee for the purpose of reviewing, from time to time, the medical care provided by such health clinic, organization, or association and for assisting individual practitioners or providers practicing in such clinics, organizations, or associations in maintaining and providing a high standard of medical care.

Source: Laws 1997, LB 222, § 1; Laws 2000, LB 819, § 145. Operative date January 1, 2001.

71-7902. Peer review committee; report or information; privilege. Any person or entity making a report or providing information to a peer review committee of a clinic, organization, or association at the request of such committee has the privilege to refuse to disclose such report or information and to prevent any other person or entity from disclosing the report or information, except as provided in section 71-7903. Such disclosure shall not constitute a waiver of any privilege by the person or entity.

Source: Laws 1997, LB 222, §2. Effective date September 13, 1997.

71-7903. Peer review committee; privileged communications; exceptions. The proceedings, minutes, records, and reports of any peer review committee as described in section 71-7901, together with all communications originating in such committees, are privileged communications which may not be disclosed or obtained by legal discovery proceedings unless (1) the privilege is waived by the patient and (2) a court of record, after a hearing and for good cause arising from extraordinary circumstances being shown, orders the disclosure of such proceedings, minutes, records, reports, or communications. Nothing in sections 71-7901 to 79-7903 shall be construed to provide any privilege regarding medical records kept with respect to any patient in the ordinary course of business of operating a clinic, organization, or association of practitioners or providers, nor to any facts or information contained in such records, nor shall sections 71-7901 to 71-7903 preclude or affect discovery of or production of evidence relating to the treatment of any patient in the ordinary course of treatment of such patient.

Source: Laws 1997, LB 222, §3. Effective date September 13, 1997.

CREDENTIALING OF HEALTH CARE FACILITIES

71-8301. Legislative intent. It is the intent of the Legislature that quality health care services and human services be provided to all citizens of the state, that basic standards be developed to promote safe and adequate care of individuals in health care services facilities and human services facilities, that categories of facilities be regulated by the state solely for the purpose of protecting the public from unreasonable harm or danger, and that categories of facilities be regulated by the state only when it is demonstrated that regulation is in the best interest of the public. The purposes of sections 71-8301 to 71-8314 are to establish criteria that provide for the determination of what categories of facilities should be regulated, to develop a quality improvement mechanism which would periodically examine and reexamine the laws, regulations, processes, and results of the facility regulation system, to establish a facility regulation system based on meaningful results, including quality indicators, and to assure that the development, application, and implementation of the facility regulation system is consistent and uniform.

Source: Laws 1998, LB 1073, § 107. Operative date April 15, 1998.

71-8302. Definitions, where found. For purposes of sections 71-8301 to 71-8314, the definitions found in sections 71-8303 to 71-8307 are used.

Source: Laws 1998, LB 1073, § 108. Operative date April 15, 1998.

71-8303. Credentialing, defined. Credentialing means the totality of the licensure processes associated with obtaining a license or changing aspects of an existing license.

Source: Laws 1998, LB 1073, § 109. Operative date April 15, 1998.

71-8304. Facility, defined. Facility means any organization which provides health care services or human services to members of the general public.

Source: Laws 1998, LB 1073, § 110. Operative date April 15, 1998.

71-8305. Health care services, defined. Health care services means services associated with the diagnosis and treatment of physical, mental, or emotional injury or illness or the prevention, rehabilitation, or continuing care related to health problems.

Source: Laws 1998, LB 1073, § 111. Operative date April 15, 1998.

71-8306. Human services, defined. Human services means services that assist individuals in the conduct of daily living and includes the provision of food and shelter, a minimum amount of such assistance and personal care, and health-related services for individuals who are in need of a protected environment but who are otherwise able to manage normal activities of daily living.

Source: Laws 1998, LB 1073, § 112. Operative date April 15, 1998.

71-8307. Licensure, defined. Licensure means the permission granted by the state to provide health care services or human services to the public which would otherwise be unlawful without such permission and which is granted to facilities which meet prerequisite qualifications pertinent to public health, safety, and welfare.

Source: Laws 1998, LB 1073, § 113. Operative date April 15, 1998.

71-8308. Facilities not previously licensed; credentialing; when. Credentialing of categories of facilities not previously licensed should occur only when:

(1) Credentialing is necessary to prevent harm or endangerment to the public health, safety, or welfare and the potential for the harm or endangerment is easily recognizable and not remote or dependent upon tenuous argument;

(2) Credentialing would not significantly diminish the supply of qualified providers or would not otherwise diminish the public's access to needed services; and

(3) There is no more cost-effective means of protecting the public from harm than credentialing.

Source: Laws 1998, LB 1073, § 114. Operative date April 15, 1998.

71-8309. Facilities not previously licensed; legislative intent. If the Legislature finds that it is necessary for the protection of the public to regulate categories of facilities not previously regulated by state law after reviewing the criteria in section 71-8308 and considering governmental and societal costs and benefits, it is the intent of the Legislature that the least restrictive regulatory provisions consistent with protecting the public health, safety, and welfare be implemented.

Source: Laws 1998, LB 1073, § 115. Operative date April 15, 1998.

71-8310. Currently licensed facilities; changes in credentialing; when. Changes in the credentialing of categories of currently licensed facilities should occur only when:

(1) Credentialing is not needed to ensure the protection of the public health, safety, or welfare or the then current rules and regulations or statutory provisions are not providing adequate protection of the public health, safety, or welfare;

(2) Credentialing has been more detrimental than beneficial to the public health, safety, or welfare by diminishing the supply of qualified providers or the public's access to needed services; or

(3) There are more cost-effective means of protecting the public from harm than credentialing.

Source: Laws 1998, LB 1073, § 116. Operative date April 15, 1998.

71-8311. Currently licensed facilities; legislative intent. If the Legislature finds that it is necessary for the protection of the public to make changes in the statutes regulating categories of facilities after reviewing the criteria in section 71-8310 and considering governmental and societal costs and benefits, it is the intent of the Legislature that changes be implemented which are the least restrictive regulatory provisions consistent with protecting the public health, safety, and welfare.

Source: Laws 1998, LB 1073, § 117. Operative date April 15, 1998.

71-8312. Facility regulation system; periodic review. The Department of Health and Human Services shall periodically examine and reexamine the regulations, processes, and results of the facility regulation system. Changes in the facility regulation system should occur whenever the department finds that:

(1) A program or procedure is not needed to ensure the protection of the public health, safety, or welfare or a program or procedure is not providing adequate protection of the public health, safety, or welfare;

(2) A program or procedure has been more detrimental than beneficial to the fulfillment of the department's regulatory responsibilities as defined by law or has diminished the supply of qualified providers or the public's access to needed services; or

(3) There are alternatives to a program or procedure that would more cost effectively fulfill the department's duties and responsibilities.

Source: Laws 1998, LB 1073, § 118; Laws 2007, LB296, § 693. Operative date July 1, 2007.

71-8313. Department; credentialing recommendations. The Department of Health and Human Services shall review the regulation or proposed regulation of categories of facilities based on the criteria in sections 71-8301 to 71-8314. On or before November 1 of each year, the department shall provide the Legislature with recommendations for credentialing of

categories of facilities not previously regulated and changes in the statutes governing the credentialing of categories of facilities.

Source: Laws 1998, LB 1073, § 119; Laws 2007, LB296, § 694. Operative date July 1, 2007.

71-8314. Sections; how construed. Nothing in sections 71-8301 to 71-8314 is intended to authorize any certificate of need activities for facilities or to authorize the licensure of private practice health care services offices.

Source: Laws 1998, LB 1073, § 120. Operative date April 15, 1998.

MEDICAL RECORDS

71-8401. Legislative findings. The Legislature finds that medical records contain personal and sensitive information that if improperly used or released may do significant harm to a patient's interests. Patients need access to their own medical records as a matter of fairness to enable them to make informed decisions about their health care and correct inaccurate or incomplete information about themselves.

Source: Laws 1999, LB 17, § 1. Effective date August 28, 1999.

71-8402. Terms, defined. For purposes of sections 71-8401 to 71-8407: (1) Medical records means a provider's record of a patient's health history and treatment rendered;

(2) Mental health medical records means medical records or parts thereof created by or under the direction or supervision of a licensed psychiatrist, a licensed psychologist, or a mental health practitioner licensed or certified pursuant to sections 71-1,295 to 71-1,338 and sections 71-1,305.01 and 71-1,314.02;

(3) Patient includes a patient or former patient;

(4) Patient request or request of a patient includes the request of a patient's guardian or other authorized representative; and

(5) Provider means a physician, psychologist, chiropractor, dentist, hospital, clinic, and any other licensed or certified health care practitioner or entity.

Source: Laws 1999, LB 17, § 2; Laws 2007, LB 247, § 56. Operative date June 1, 2007.

71-8403. Access to medical records. (1) A patient may request a copy of the patient's medical records or may request to examine such records. Access to such records shall be provided upon request pursuant to sections 71-8401 to 71-8407, except that mental health medical records may be withheld if any treating physician, psychologist, or mental health practitioner determines in his or her professional opinion that release of the records would not be in the best interest of the patient unless the release is required by court order. The request and any authorization shall be in writing and shall be valid for one hundred eighty days after the date of execution by the patient.

(2) Upon receiving a written request for a copy of the patient's medical records under subsection (1) of this section, the provider shall furnish the person making the request a copy of such records not later than thirty days after the written request is received.

(3) Upon receiving a written request to examine the patient's medical records under subsection (1) of this section, the provider shall, as promptly as required under the circumstances but no later than ten days after receiving the request: (a) Make the medical records available for examination during regular business hours; (b) inform the patient if the records do not exist or cannot be found; (c) if the provider does not maintain the records, inform the patient of the name and address of the provider who maintains such records, if known; or (d) if unusual circumstances have delayed handling the request, inform the patient in writing of the reasons for the delay and the earliest date, not later than twenty-one days after receiving the request, when the records will be available for examination. The provider shall furnish a copy of medical records to the patient as provided in subsection (2) of this section if requested.

(4) This section does not require the retention of records or impose liability for the destruction of records in the ordinary course of business prior to receipt of a request made under subsection (1) of this section. A provider shall not be required to disclose confidential information in any medical record concerning another patient or family member who has not consented to the release of the record.

Source: Laws 1999, LB 17, § 3. Effective date August 28, 1999.

71-8404. Access; charges. Except as provided in sections 71-8405 and 71-8407, for medical records provided under section 71-8403 or under subpoena by a patient or his or her authorized representative a provider may charge no more than twenty dollars as a handling fee and may charge no more than fifty cents per page as a copying fee. A provider may charge for the reasonable cost of all duplications of medical records which cannot routinely be copied or duplicated on a standard photocopy machine. A provider may charge an amount necessary to cover the cost of labor and materials for furnishing a copy of an X-ray or similar special medical record. If the provider does not have the ability to reproduce X-rays or other records requested, the person making the request may arrange, at his or her expense, for the reproduction of such records.

Source: Laws 1999, LB 17, § 4. Effective date August 28, 1999.

71-8405. Charges; exemptions. (1) A provider shall not charge a fee for medical records requested by a patient for use in supporting an application for disability or other benefits or assistance or an appeal relating to the denial of such benefits or assistance under:

(a) Sections 43-501 to 43-536 regarding assistance for certain children;

(b) The Medical Assistance Act relating to the medical assistance program;

(c) Title II of the federal Social Security Act, as amended, 42 U.S.C. 401 et seq.;

(d) Title XVI of the federal Social Security Act, as amended, 42 U.S.C. 1382 et seq.; or

(e) Title XVIII of the federal Social Security Act, as amended, 42 U.S.C. 1395 et seq.

(2) Unless otherwise provided by law, a provider may charge a fee as provided in section 71-8404 for the medical records of a patient requested by a state or federal agency in relation to the patient's application for benefits or assistance or an appeal relating to denial of such benefits or assistance under subsection (1) of this section.

(3) A request for medical records under this section shall include a statement or document from the department or agency that administers the issuance of the assistance or benefits which confirms the application or appeal.

Source: Laws 1999, LB 17, § 5; Laws 2006, LB 1248, § 81. Operative date July 1, 2006.

71-8406. Provider; immunity. A provider who transfers or submits information in good faith to a patient's medical record shall not be liable in damages to the patient or any other person for the disclosure of such medical records as provided in sections 71-8401 to 71-8407.

Source: Laws 1999, LB 17, § 6. Effective date August 28, 1999.

71-8407. Sections; applicability. Sections 71-8401 to 71-8407 do not apply to the release of medical records under the Nebraska Workers' Compensation Act.

Source: Laws 1999, LB 17, § 7. Effective date August 28, 1999.

OUTPATIENT SURGICAL PROCEDURES DATA ACT

81-6,111. Act, how cited. Sections 81-6,111 to 81-6,119 shall be known and may be cited as the Outpatient Surgical Procedures Data Act.

Source: Laws 2003, LB 73, § 1.

81-6,112. Purposes of act. The purposes of the Outpatient Surgical Procedures Data Act are to provide for: (1) The collection and compilation of outpatient surgical procedure information from hospitals and ambulatory surgical centers; (2) the use and disclosure of such information for public health purposes; and (3) periodic reporting to the Legislature and an annual statistical report.

Source: Laws 2003, LB 73, § 2.

81-6,113. Terms, defined. For purposes of the Outpatient Surgical Procedures Data Act:

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

(2) Medicaid means the medical assistance program established pursuant to the Medical Assistance Act;

(3) Medicare means Title XVIII of the federal Social Security Act, as such title existed on January 1, 2003;

(4) Outpatient surgical procedure means a surgical procedure provided to patients who do not require inpatient hospitalization;

(5) Primary payor means the public payor or private payor which is expected to be responsible for the largest percentage of the patient's current bill;

(6) Private payor means any nongovernmental source of funding; and

(7) Public payor means medicaid, medicare, and any other governmental source of funding.

Source: Laws 2003, LB 73, § 3; Laws 2006, LB 1248, § 88; Laws 2007, LB296, § 752. Operative date July 1, 2007.

81-6,114. Hospital and ambulatory surgical center; reports required. (1) Every hospital or ambulatory surgical center licensed under the Health Care Facility Licensure Act shall annually report the following outpatient surgical and related information to the department no later than May 1 of each year for the preceding calendar year in a format as prescribed by the department in rule and regulation:

(a) The name of the reporting facility;

(b) The facility portion of billed charges for each patient served at such facility;

(c) The county and state of residence by zip code for each patient served at such facility;

(d) The primary outpatient surgical procedure performed for each patient at such facility;

(e) The primary payor for each patient served at such facility; and

(f) Such other outpatient surgical information as voluntarily reported by such facilities.

(2) The department may impose a late fee for failure to report such information as required by this section.
Source: Laws 2003, LB 73, § 4.

81-6,115. Information; confidentiality. All information reported to the department pursuant to section 81-6,114 shall be privileged communications, shall not be discoverable or subject to subpoena, and may not be used or offered or received in evidence in any legal proceeding of any kind or character. Such information shall remain confidential with the department and shall not be disclosed except as provided in sections 81-6,116 and 81-6,117.
Source: Laws 2003, LB 73, § 5.

81-6,116. Information; use. (1) Information reported under section 81-6,114 may be used by the department for statistical and public health planning purposes and for other public health purposes as identified by the department in rule and regulation.
(2) The department shall periodically review information collected under section 81-6,114 for the purpose of identifying potential policies or practices of any reporting facility which may be detrimental to the public health, including, but not limited to, policies and practices which may have the effect of limiting access to needed health care services for Nebraska residents. The department shall provide recommendations to the Health and Human Services Committee of the Legislature relating to appropriate administrative and legislative responses to such policies and practices and shall provide an annual report to the chairperson of such committee of its findings and its current or planned activities under this section, if any.
Source: Laws 2003, LB 73, § 6.

81-6,117. Department; annual statistical report. The department shall publish an annual statistical report from information collected under section 81-6,114 which shall include: (1) The twenty most frequently performed outpatient surgical procedures by type of procedure; (2) the total number of persons served for each listed procedure; (3) the total number of persons served by county and state of residence and region of service; and (4) the average billed charges for such procedures by county and state of residence. The department shall designate service regions for the purpose of aggregating and reporting information as required by this section. No information shall be published or disclosed by the department under this section in a manner that identifies or may be used to identify any individual hospital or ambulatory surgical center.
Source: Laws 2003, LB 73, § 7.

81-6,118. Costs; use in establishing licensure fees. Costs associated with implementation of the Outpatient Surgical Procedures Data Act may be considered by the department in determining variable costs for purposes of establishing licensure fees under section 71-434 and shall not require an appropriation of General Funds.
Source: Laws 2003, LB 73, § 8.

81-6,119. Rules and regulations. The department shall adopt and promulgate rules and regulations to implement the Outpatient Surgical Procedures Data Act. Such rules and regulations shall comply with all applicable provisions of federal law and shall minimize the imposition of additional costs to reporting facilities.
Source: Laws 2003, LB 73, § 9.