

71-6201. Act, how cited.

Sections 71-6201 to 71-6229 shall be known and may be cited as the Nebraska Regulation of Health Professions Act.

Source: Laws 1985, LB 407, § 1; Laws 1988, LB 384, § 1; Laws 1993, LB 536, § 102; Laws 2012, LB834, § 3.

71-6202. Purpose of act.

The purpose of the Nebraska Regulation of Health Professions Act is to establish guidelines for the regulation of health professions which are not licensed or regulated and those licensed or regulated health professions which seek to change their scope of practice. The Legislature believes that all individuals should be permitted to provide a health service, a health-related service, or an environmental service unless there is an overwhelming need for the state to protect the public from harm.

Source: Laws 1985, LB 407, § 2; Laws 2012, LB834, § 4.

71-6203. Definitions, where found.

For purposes of the Nebraska Regulation of Health Professions Act, unless the context otherwise requires, the definitions found in sections 71-6204 to 71-6220.01 shall be used.

Source: Laws 1985, LB 407, § 3; Laws 1988, LB 384, § 2; Laws 1993, LB 536, § 103; Laws 2012, LB834, § 5.

71-6204. Applicant group, defined.

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

Source: Laws 1985, LB 407, § 4; Laws 2012, LB834, § 6.

71-6205. Board, defined.

Board shall mean the State Board of Health.

Source: Laws 1985, LB 407, § 5.

71-6206. Certificate or certification, defined.

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

Source: Laws 1985, LB 407, § 6; Laws 2012, LB834, § 7.

71-6206.01. Chairperson, defined.

Chairperson shall mean the chairperson of the Health and Human Services Committee of the Legislature.

Source: Laws 1993, LB 536, § 104.

71-6207. Committee, defined.

Committee shall mean the technical committee created in section 71-6224.

Source: Laws 1985, LB 407, § 7.

71-6207.01. Credentialing, defined.

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

Source: Laws 1988, LB 384, § 3

71-6207.02. Directed review, defined.

Directed review shall mean a review conducted at the request of the director and the chairperson in which (1) there shall be no applicant group or application, (2) the duty of the committee shall be to formulate an initial proposal on the issues subject to review, and (3) the duty of the board and the director shall be to evaluate the proposal using the appropriate criteria and to make recommendations to the Legislature.

Source: Laws 1993, LB 536, § 105.

71-6208. Director, defined.

Director shall mean the Director of Public Health of the Division of Public Health of the Department of Health and Human Services.

Source: Laws 1985, LB 407, § 8; Laws 1996, LB 1044, § 758; Laws 2007, LB296, § 652; Laws 2012, LB834, § 8.

71-6208.01. Division, defined.

Division shall mean the Division of Public Health of the Department of Health and Human Services.

Source: Laws 2012, LB834, § 9.

71-6209. Grandfather clause, defined.

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

Source: Laws 1985, LB 407, § 9.

71-6210. Health profession, defined.

Health profession shall mean a vocation involving health services, health-related services, or environmental services requiring specialized knowledge and training. Health profession does not include the vocation of duly recognized members of the clergy acting in their ministerial capacity.

Source: Laws 1985, LB 407, § 10; Laws 2012, LB834, § 10.

71-6211. Health professional group not previously regulated, defined.

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

- (1) Preventing physical, mental, or emotional injury or illness, excluding persons acting in their capacity as clergy;
- (2) Facilitating recovery from injury or illness;
- (3) Providing rehabilitative or continuing care following injury or illness; or
- (4) Providing any other health service, health-related service, or environmental service which may be subject to regulation by the division.

Source: Laws 1985, LB 407, § 11; Laws 2007, LB463, § 1241; Laws 2012, LB834, § 11.

Cross References

Uniform Credentialing Act, see section 38-101.

71-6212. Inspection, defined.

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

Source: Laws 1985, LB 407, § 12.

71-6213. License, licensing, or licensure, defined.

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

Source: Laws 1985, LB 407, § 13; Laws 2012, LB834, § 12.

71-6214. Professional license, defined.

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

Source: Laws 1985, LB 407, § 14.

71-6215. Practitioner, defined.

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

Source: Laws 1985, LB 407, § 15.

71-6216. Public member, defined.

Public member shall mean an individual who is not, and never was, a member of the health profession being regulated, the spouse of a member, or an individual who does not have and never has had a material financial interest in the health profession being regulated or an activity directly related to the health profession being regulated.

Source: Laws 1985, LB 407, § 16; Laws 2012, LB834, § 13.

71-6217. Registration, defined.

Registration shall mean the formal notification which, prior to rendering services, a practitioner submits to a state agency setting forth the name and address of the practitioner, the location, nature, and operation of the health activity to be practiced, and such other information which is required by the regulatory entity. A registered practitioner may be subject to discipline and standards of professional conduct established by the regulatory entity and may be required to meet any test of education, experience, or training in order to render services.

Source: Laws 1985, LB 407, § 17; Laws 1988, LB 384, § 5; Laws 2012, LB834, § 14.

71-6218. Regulated health professions, defined.

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

- (1) Preventing physical, mental, or emotional injury or illness;
- (2) Facilitating recovery from injury or illness;
- (3) Providing rehabilitative or continuing care following injury or illness; or
- (4) Providing any other health service, health-related service, or environmental service which may be subject to regulation by the division.

Source: Laws 1985, LB 407, § 18; Laws 2007, LB463, § 1242; Laws 2012, LB834, § 15.

Cross References

Uniform Credentialing Act, see section 38-101.

71-6219. Regulatory entity, defined.

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

Source: Laws 1985, LB 407, § 19.

71-6219.01. Review body, defined.

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

Source: Laws 1988, LB 384, § 6.

71-6220. State agency, defined.

State agency shall include every state office, department, board, commission, regulatory entity, and agency of the state and, when provided specifically by law to be a state agency for purposes of this section, programs and activities involving less than the full responsibility of a state agency.

Source: Laws 1985, LB 407, § 20; Laws 1991, LB 81, § 5.

71-6220.01. Welfare, defined.

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

Source: Laws 1988, LB 384, § 4.

71-6221. Regulation of health profession; change in scope of practice; when.

(1) A health profession shall be regulated by the state only when:

(a) Unregulated practice can clearly harm or endanger the health, safety, or welfare of the public;

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

(c) The public needs assurance from the state of initial and continuing professional ability; and

(d) The public cannot be protected by a more effective alternative.

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

(a) Absence of a separate regulated profession creates a situation of harm or danger to the health, safety, or welfare of the public;

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

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

(d) The public cannot be protected by a more effective alternative.

(3) The scope of practice of a regulated health profession shall be changed only when:

(a) The health, safety, and welfare of the public are inadequately addressed by the present scope of practice or limitations on the scope of practice;

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

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

(d) The current education and training for the health profession adequately prepares practitioners to perform the new skill or service;

(e) There are appropriate post professional programs and competence assessment measures available to assure that the practitioner is competent to perform the new skill or service in a safe manner; and

(f) There are adequate measures to assess whether practitioners are competently performing the new skill or service and to take appropriate action if they are not performing competently.

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

Source: Laws 1985, LB 407, § 21; Laws 1988, LB 384, § 7; Laws 1996, LB 1044, § 759; Laws 2007, LB296, § 653; Laws 2012, LB834, § 16.

71-6222. Least restrictive method of regulation; how implemented.

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

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

(a) Inspection requirements;

(b) Enabling an appropriate state agency to bring an end to a harmful practice by injunctive relief in court;

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

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

(2) When there exists a diversity of approaches, methods, and theories by which services may be rendered and when the right of the consumer to choose freely among such options is considered to be of equal importance with the need to protect the public from harm, the regulation shall implement a system of registration;

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

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

Source: Laws 1985, LB 407, § 22; Laws 1988, LB 384, § 8.

71-6223. Letter of intent; application; contents.

(1) An applicant group shall submit a letter of intent to file an application to the director on forms prescribed by the director. The letter of intent shall identify the applicant group, the proposed regulation or change in scope of practice sought, and information sufficient for the director to determine whether the application is eligible for review.

(2) The director shall notify the applicant group as to whether it is eligible for review within fifteen days after the receipt of the letter of intent. The final application shall be submitted to the director who shall notify the applicant group of its acceptance for review within fifteen days after receipt of the final application. If more than one application is received in a given year, the director may establish the order in which applications shall be reviewed.

(3) The application shall include an explanation of:

(a) The problem created by not regulating a health professional group not previously regulated or by not changing the scope of practice of a regulated health profession;

(b) If the application is for the regulation of a health professional group not previously regulated, all feasible methods of regulation, including those methods listed in section 71-6222, and the impact of such methods on the public;

(c) The benefit to the public of regulating a health professional group not previously regulated or changing the scope of practice of a regulated health profession;

(d) The extent to which regulation or the change of scope of practice might harm the public;

(e) The type of standards that exist to ensure that a practitioner of a health profession would maintain competency;

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

(g) The role and availability of third-party reimbursement for the services provided by the applicant group;

(h) The experience of other jurisdictions in regulating the practitioners affected by the application;

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

(j) Other information relevant to the requested review as determined by the division.

Source: Laws 1985, LB 407, § 23; Laws 1988, LB 384, § 9; Laws 2012, LB834, § 17.

71-6223.01. Application fee; disposition; waiver.

Each application shall be accompanied by an application fee of five hundred dollars to be submitted at the time the letter of intent is filed. The division shall remit all application fees to the State Treasurer for credit to the Professional and Occupational Credentialing Cash Fund. The application fee shall not be refundable, but the director may waive all or part of the fee if he or she finds it to be in the public interest to do so. Such a finding by the director may include, but shall not be limited to, circumstances in which the director determines that the application would be eligible for review and:

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

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

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

Source: Laws 1988, LB 384, § 14; Laws 2012, LB834, § 18.

71-6223.02. Directed review; initiation; procedure; report.

At any time the director and the chairperson may initiate a directed review or the chairperson in consultation with the members of the Health and Human Services Committee of the Legislature may initiate a directed review. The purpose of a directed review is to determine the advisability of credentialing a health professional group not previously regulated, of changing the scope of practice of a regulated health profession, or of other issues regarding the regulation of health professions. Before initiating a directed review, the director and the chairperson, or the chairperson in consultation with the Health and Human Services Committee, shall determine that no appropriate applicant group exists. No letter of intent, applicant group, application, or application fee shall be required in a directed review. The duty of the technical committee in a directed review shall be to investigate the issues that are the subject of the review, to hold a public hearing to receive information from the public on the issues, to develop a specific proposal to address the issues investigated taking into account the appropriate criteria as set forth in section 71-6221, and to prepare a final report containing the technical committee's proposal, other options considered, and other relevant information.

Source: Laws 1993, LB 536, § 106; Laws 2015, LB 90, § 2.

71-6224. Technical committee; appointment; membership; meetings; duties.

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

(2) As soon as possible after its appointment, the committee shall meet and review the application assigned to it. The committee shall serve as a fact-finding body and undertake such investigation as it deems necessary to address the issues identified in the application. As part of its investigation, each committee shall consider available scientific evidence and conduct public fact-finding hearings. Each committee shall comply with the Open Meetings Act.

(3) An applicant group shall have the burden of producing evidence to support its application.

(4) Each committee shall detail its findings in a report and file the report with the board and the director. Each committee shall evaluate the application presented to it on the basis of the appropriate criteria as established in sections 71-6221 to 71-6223, shall make written findings on all criteria, and shall make a recommendation for approval or denial. Whether it recommends approval or denial of an application, the committee may make additional recommendations regarding changes to the proposal or other solutions to problems identified during the review and may comment on the anticipated benefits to the health, safety, and welfare of the public. If the committee recommends approval of an application for regulation of a health profession not currently regulated, it shall also recommend the least restrictive method of regulation to be implemented consistent with the cost-effective protection of the public and with section 71-6222. The committee may recommend a specific method of regulation not listed in section 71-6222 if it finds that such method is the best alternative method of regulation.

Source: Laws 1985, LB 407, § 24; Laws 1988, LB 384, § 10; Laws 2004, LB 821, § 20; Laws 2012, LB834, § 19.

Cross References

Open Meetings Act, see section 84-1407.

71-6225. Board; review technical committee report; report to director.

The board shall receive reports from the technical committees and shall meet to review and discuss each report. The board shall apply the criteria established in sections 71-6221 to 71-6223 and compile its own report, including its findings and recommendations, and submit such report, together with the committee report, to the director. The recommendation of the board shall be developed in a manner consistent with subsection (4) of section 71-6224.

Source: Laws 1985, LB 407, § 25; Laws 1988, LB 384, § 11; Laws 2012, LB834, § 20.

71-6226. Director; prepare final report; recommendations.

(1) After receiving and considering reports from the committee or the board, the director shall prepare a final report for the Legislature. The final report shall include copies of the committee report and the board report, if any, but the director shall not be bound by the findings and recommendations of such reports. The director in compiling his or her report shall apply the criteria established in sections 71-6221 to 71-6223 and may consult with the board or the committee. The recommendation of the director shall be developed in a manner consistent with subsection (4) of section 71-6224. The final report shall be submitted electronically to the Speaker of the Legislature, the Chairperson of the Executive Board of the Legislature, and the Chairperson of the Health and Human Services Committee of the Legislature no later than twelve months after the application is submitted to the director and found to be complete and shall be made available electronically to all other members of the Legislature upon request.

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

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

Source: Laws 1985, LB 407, § 26; Laws 1988, LB 384, § 12; Laws 2012, LB782, § 123; Laws 2012, LB834, § 21.

71-6227. Rules and regulations; professional and clerical services; expenses.

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

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

(3) Committee members shall receive no salary, but shall be reimbursed for their actual and necessary expenses as provided in sections 81-1174 to 81-1177 for state employees.

Source: Laws 1985, LB 407, § 27.

71-6228. Repealed. Laws 2012, LB 834, § 23.

71-6229. Act, how construed.

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

Source: Laws 1985, LB 407, § 29.