

LEGISLATIVE BILL 244

Approved by the Governor March 29, 1991

Introduced by Schellpeper, 18

AN ACT relating to health care facilities; to amend sections 68-1038, 71-507, 71-2017, 71-2017.01, 71-2017.03, 71-2017.06, 71-2020, 71-5801, 71-5803, 71-5810, 71-5830, and 77-2704, Reissue Revised Statutes of Nebraska, 1943; to define and redefine terms; to change staffing requirements for certain facilities; to provide for and change provisions relating to waiver of staffing requirements; to provide for nursing facilities; to provide fees; to harmonize provisions; to eliminate provisions relating to a Health Service Supervisor; to repeal the original sections; and to declare an emergency.

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

Section 1. That section 68-1038, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

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

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

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

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

(4) Department shall mean the Department of Social Services;

(5) Director shall mean the Director of Social Services;

(6) Home and community-based services shall mean services furnished under home and community-based

waivers as defined in Title XIX of the Social Security Act, as amended, 42 U.S.C. 1396;

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

(8) Qualified applicant shall mean a person (a) who applies for medical assistance on or after July 9, 1988, (b) who is under care in a state-licensed hospital, skilled nursing facility, intermediate care facility, intermediate care facility for the mentally retarded, nursing facility, domiciliary facility, residential care facility, or center for the developmentally disabled, as such terms are defined in section 71-2017.01, or an adult family home certified by the department or is receiving home and community-based services, and (c) whose spouse is not under such care or receiving such services and is not applying for or receiving medical assistance;

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

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

Sec. 2. That section 71-507, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

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

(1) Department shall mean the Department of Health;

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

(3) Emergency medical services provider shall mean a person certified to provide emergency medical services pursuant to sections 71-5101 to ~~71-5123~~ 71-5140, a person certified to provide emergency medical care pursuant to the Emergency Medical Technician-Paramedic Act, a sheriff, a deputy sheriff, a police officer, a state highway patrol officer, and a firefighter;

(4) Health care facility shall have the

meaning found in subdivisions (2), (10), ~~and (11)~~, and (22) of section 71-2017.01;

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

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

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

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

(9) Significant exposure shall mean a situation in which the body fluids, such as blood, saliva, urine, or feces, of a patient have entered the body of an emergency medical services provider through a body opening such as the mouth or nose, a mucous membrane, or a break in skin from cuts or abrasions, from a contaminated needlestick or scalpel, from intimate respiratory contact, or through any other situation when the patient's body fluids may have entered the emergency medical services provider's body; and

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

Sec. 3. That section 71-2017, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

71-2017. The purposes of sections 71-2017 to 71-2029 and 81-604.01 and section 7 of this act and the Nebraska Nursing Home Act are: (1) To provide for the development, establishment, and enforcement of basic standards (a) for the care of persons in hospitals, health clinics, skilled nursing facilities, intermediate care facilities, intermediate care facilities for the mentally retarded, nursing facilities, domiciliary facilities, mental health centers, centers for the developmentally disabled, alcoholic treatment centers, residential care facilities, and drug treatment centers or persons using the services of a home health agency

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

Any hospital or other health care facility owned or operated by a fraternal organization mentioned in section 21-608 exclusively for its own members shall be exempt unless any such fraternal organization owning or operating such a hospital or other health care facility is issued a license for such hospital or other health care facility upon its written application and upon its agreeing to comply with sections 71-2017 to 71-2029 and section 7 of this act and the Nebraska Nursing Home Act.

The Department of Health may waive any rule, regulation, or standard adopted and promulgated by the department relating to construction or physical plant requirements of licensed health facilities upon proof by the licensee satisfactory to the department that the waiver of such rule, regulation, or standard will not unduly jeopardize the health or welfare of the patients or residents, that such rule, regulation, or standard would create an unreasonable hardship upon the facility, and that a waiver will not cause the State of Nebraska to fail to comply with any of the applicable requirements of medicare or medicaid so as to make the state ineligible for the receipt of all funds to which it might otherwise be entitled. The licensee shall submit and the department shall consider the following in evaluating the issue of unreasonable hardship: (i) The estimated cost of the modification or installation; (ii) the extent and duration of the disruption of the normal use of patient or resident areas resulting from construction work; (iii) the estimated period over which cost would be recovered through reduced insurance premiums and increased reimbursement related to cost; (iv) the availability of financing; and (v) the remaining useful life of the building. Any such waiver may be under such terms and conditions and for such

period of time, not to exceed one year at a time, as the department may prescribe. The department may each year waive such rule, regulation, or standard for an additional year if the department determines that the continued waiver of such rule, regulation, or standard for an additional year will not constitute a hazard to the health or welfare of the patients or residents and will not cause the State of Nebraska to fail to comply with any of the applicable requirements of medicare or medicaid so as to make the state ineligible for the receipt of all funds to which it might otherwise be entitled.

Nothing in sections 71-2017 to 71-2029, 71-6043 to 71-6052, and 81-604.01 and section 7 of this act, the Nebraska Nursing Home Act, or any rule or regulation adopted and promulgated pursuant thereto shall be construed to authorize or require any facility which is operated by and for members of a church which includes healing by prayer and spiritual means as a part of its religious practices to be licensed or inspected by the Department of Health except as such licensure and inspection pertain solely to sanitation, fire prevention, and safety standards and building and construction codes applicable to the facilities mentioned in subdivision (1) of this section, nor shall any patients, residents, or personnel thereof be subjected to any medical supervision, regulation, or control in connection with the operation of any such facility.

Sec. 4. That section 71-2017.01, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

71-2017.01. For purposes of sections 71-2017 to 71-2029 and section 7 of this act, unless the context otherwise requires:

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

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

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

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

(5) Rehabilitation hospital shall mean an inpatient facility a hospital which is operated for the

primary purpose of assisting in the rehabilitation of disabled persons through an integrated program of medical and other services provided under professional supervision;

(6) Long-term care hospital shall mean any hospital, any distinct part of any hospital, or any portion of a hospital which is primarily devoted to providing the care and services as set forth in subdivisions (10), and (11), and (22) of this section;

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

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

(9) Health clinic shall mean any institution, facility, place, building, or agency, not licensed as a hospital, which is operated under the name or title of health clinic, health center, or any other word or phrase of like or similar import, either independently or in connection with any other purpose, for the purpose of providing or making available at such institution, facility, place, building, or agency on an outpatient basis and for a period not exceeding twenty-four consecutive hours advice, counseling, diagnosis, treatment, care, or services relating to the preservation or maintenance of health primarily or exclusively to persons not residing or confined in such institution, facility, place, ~~or~~ building, or agency. Satellite clinics operated on an intermittent basis at a specific location or site and providing services within a portion of the total geographic area served by a licensed health clinic need not be licensed but may operate as a part of the parent clinic and share administration and services. Specific types or categories of health clinics may be further defined by appropriate rule and regulation of the Department of Health not inconsistent with this definition and in no case shall be construed to include the residence, office, or clinic of a private physician or an association of physicians, any other health practitioner or association of practitioners, or any practitioner licensed pursuant to Chapter 71 unless ten or more abortions, as defined in subdivision (1) of section

28-326, are performed during any one calendar week in such residence, office, or clinic;

(10) Skilled nursing facility shall mean any institution, or facility, place, or building or a distinct part of any institution, or facility, place, or building which is primarily devoted to providing to inpatients skilled nursing care and related services for patients who require medical or nursing care or rehabilitation services for the rehabilitation of injured, disabled, or sick persons. Unless a waiver is granted pursuant to section 71-2017.06, a skilled nursing facility shall provide at least one licensed registered nurse on duty on the day shift seven days per week and a licensed registered nurse or licensed practical nurse on the other two shifts seven days per week use the services of (a) a licensed registered nurse for at least eight consecutive hours per day, seven days per week, and (b) a licensed registered nurse or licensed practical nurse on a twenty-four-hour basis seven days per week. Except when waived under section 71-2017.06, a skilled nursing facility shall designate a licensed registered nurse or licensed practical nurse to serve as a charge nurse on each tour of duty. The Director of Nursing Services shall be a licensed registered nurse, and this requirement shall not be waived. The Director of Nursing Services may serve as a charge nurse only when the skilled nursing facility has an average daily occupancy of sixty or fewer residents;

(11) Intermediate care facility shall mean any institution, facility, place, or building in which accommodation and board for a period exceeding twenty-four consecutive hours and also nursing care and related medical services are provided for two or more nonrelated individuals who are ill, injured, or disabled but not in need of hospital or skilled nursing facility care, but who by reason of illness, disease, injury, deformity, disability, convalescence, or physical or mental infirmity require such nursing care and related medical services. An intermediate care facility shall provide at least one licensed registered nurse or licensed practical nurse on duty on the day shift seven days per week and at least one licensed registered nurse, licensed practical nurse, or care staff member on duty on the other two shifts seven days per week. An intermediate care facility shall provide a Director of Nursing Services, who shall be a licensed registered nurse, to administer, supervise, delegate, and evaluate nursing and nursing support services of the facility. 7 except that an intermediate care facility that, as of

February 1, 1987, has in its employ a licensed practical nurse as Health Service Supervisor may retain such licensed practical nurse in that capacity. Such facility shall not be required to provide a Director of Nursing Services during the continuance of employment of such licensed practical nurse if such licensed practical nurse is and continues to be supervised by a licensed physician, osteopathic physician, or licensed registered nurse who, by employment or contract, is above such licensed practical nurse in the line of authority of the facility and is responsible, in the interest of the facility, for his or her hire, transfer, promotion, layoff, recall, promotion, discharge, assignment, reward, or discipline and adjustment of grievances or the effective recommendation of such action, which responsibility is not merely routine or clerical in nature but requires the exercise of independent judgment. Nothing contained in this section shall be construed to expand the scope of practice of a licensed practical nurse to permit an intermediate care facility utilizing a licensed practical nurse as Health Service Supervisor to provide nursing services other than those which are within the scope of practice of a licensed practical nurse as defined in section 71-1-1322-05. The Director of Nursing Services or Health Service Supervisor shall serve on the day shift five days per week, eight hours per day, except when it is necessary to vary working hours to provide supervision on other shifts, and may satisfy the day-shift nurse requirement for five of seven days per week if he or she can meet both the nursing care needs of the patients or residents for that shift and his or her administrative and supervisory responsibilities as Director of Nursing Services, or Health Service Supervisor;

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

(13) Residential care facility shall mean any

institution, facility, place, or building in which there are provided for a period exceeding twenty-four consecutive hours accommodation, board, and care, such as personal assistance in feeding, dressing, and other essential daily living activities, to four or more nonrelated individuals who by reason of illness, disease, injury, deformity, disability, or physical or mental infirmity are unable to sufficiently or properly care for themselves or manage their own affairs but do not require the daily services of a licensed registered nurse or licensed practical nurse;

(14) Domiciliary facility shall mean any institution, facility, place, or building in which there are provided for a period exceeding twenty-four consecutive hours accommodation and supervision to four or more individuals, not related to the owner, occupant, manager, or administrator thereof, who are essentially capable of managing their own affairs but who are in need of supervision, including supervision of nutrition, by the institution, facility, place, or building on a regular, continuing basis but not necessarily on a consecutive twenty-four-hour basis. This definition shall not include those homes or facilities providing casual care at irregular intervals;

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

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

(17) Alcoholic treatment center shall mean any institution, facility, place, or building, not licensed as a hospital, including any private dwelling, which is used to provide residential care, treatment, services, maintenance, accommodation, or board in a group setting primarily or exclusively for individuals having any type of habituation, dependency, or addiction to the use of

alcohol, in which are provided guidance, supervision, and personal services relating to those areas of adjustment which enable the alcohol dependent or alcoholic to move into independent living in normal surroundings but not services that can be rendered only by a physician or within the confines of a hospital, and which is not a permanent residence but only a temporary one. Alcoholic treatment center shall include institutions, facilities, places, or buildings in which there are provided nonresidential programs and services primarily or exclusively to nonresidents of the institution, facility, place, or building having any type of habituation, dependency, or addiction to the use of alcohol. Specific types or categories of alcoholic treatment centers may be further defined by appropriate rule and regulation of the department not inconsistent with this definition;

(18) Drug treatment center shall mean any institution, facility, place, or building, not licensed as a hospital, including any private dwelling, which is used to provide residential care, treatment, services, maintenance, accommodation, or board in a group setting primarily or exclusively for individuals who have any type of habituation, dependency, or addiction to the use of any kind of controlled substance, narcotic drug, or other type of drug, in which are provided guidance, supervision, and personal services relating to those areas of adjustment which enable the drug user, dependent, or addict to move into independent living in normal surroundings but not services that can be rendered only by a physician or within the confines of a hospital, and which is not a permanent residence but only a temporary one. Drug treatment center shall include institutions, facilities, places, or buildings in which there are provided nonresidential programs and services primarily or exclusively to nonresidents of the institution, facility, place, or building having any type of habituation, dependency, or addiction to the use of any kind of controlled substance, narcotic drug, or other type of drug. Specific types or categories of drug treatment centers may be further defined by appropriate rule and regulation of the department not inconsistent with this definition;

(19) Home health agency shall mean a public agency, private organization, or subdivision of such an agency or organization which is primarily engaged in providing skilled nursing care or a minimum of one other therapeutic service as defined by the department on a full-time, part-time, or intermittent basis to patients

in a place of temporary or permanent residence used as the patient's home under a plan of care as prescribed by the attending physician and which meets the rules, regulations, and standards as established by the department. Parent home health agency shall mean the primary home health agency which establishes, maintains, and assures administrative and supervisory control of branch offices and subunits. Branch office shall mean a home health agency which is at a location or site providing services within a portion of the total geographic area served by the parent agency and is in sufficient proximity to share administration, supervision, and services with its parent agency in a manner that renders it unnecessary for the branch independently to meet licensure requirements. A branch office shall be part of its parent home health agency and share administration and services. Subunit shall mean a home health agency which serves patients in a geographic area different from that of the parent agency and which, by virtue of the distance between it and the parent agency, is judged incapable of sharing administration, supervision, and services on a daily basis and shall independently meet the licensing requirements for home health agencies. Home health agency shall not include private duty nursing registries as long as the private duty nursing registrant is the direct payee from the patient. Home health agency shall not apply to the practice of home health care by other licensed medical persons as authorized by the practice of their particular specialty nor to the individuals providing homemaker or chore services within the home;

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

(21) Qualified mental retardation professional shall mean any person (a) who has satisfied any of the

educational requirements listed in this subdivision, (b) who has at least two years of additional experience in treating persons with mental retardation, one of which was spent in an administrative capacity, and (c) who has offered proof of fulfillment of the requirements prescribed in this subdivision to the department. Educational requirements to satisfy this subdivision shall include the following: A psychologist with at least a master's degree in psychology from an accredited college or university and with specialized training or one year of experience in treating persons with mental retardation; a physician licensed under the Uniform Licensing Law to practice medicine and surgery, osteopathic medicine and surgery, or as an osteopathic physician and with specialized training or one year of experience in treating persons with mental retardation; an educator with a degree in education from an accredited college or university and with specialized training or one year of experience in working with persons with mental retardation; or a certified social worker or certified master social worker certificated under the Uniform Licensing Law who has at least three years' social work experience and specialized training or one year of experience in working with persons with mental retardation; and

(22) Nursing facility shall mean any institution, facility, place, or building or a distinct part of any institution, facility, place, or building which is primarily devoted to providing to inpatients nursing care and related services for patients who require medical or nursing care or rehabilitation of injured, disabled, or sick persons. Unless a waiver is granted pursuant to section 7 of this act, a nursing facility shall use the services of (a) a licensed registered nurse for at least eight consecutive hours per day, seven days per week, and (b) a licensed registered nurse or licensed practical nurse on a twenty-four-hour basis seven days per week. Except when waived under section 7 of this act, 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.

Sec. 5. That section 71-2017.03, Reissue Revised Statutes of Nebraska, 1943, be amended to read

as follows:

71-2017.03. Whenever the terms home for the aged, home for the aged or infirm, or nursing home are mentioned in any statute, unless such statute specifically designates otherwise, they all shall be construed to refer exclusively to skilled nursing facilities, to intermediate care facilities, and to intermediate care facilities for the mentally retarded, and to nursing facilities.

Sec. 6. That section 71-2017.06, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

71-2017.06. (1) On and after October 1, 1990, ~~the~~ The Department of Health may waive the evening and night staffing requirements of subdivision (10) of section 71-2017.01 for skilled nursing facilities or for long-term care hospitals certified under Title XVIII of the 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 shall include, but not be 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.

(2) On and after October 1, 1990, the ~~The~~ department may waive the requirement of subdivision (10) of section 71-2017.01 that a skilled nursing facility or long-term care hospital certified under Title XVIII of the Social Security Act, as amended, provide a licensed registered nurse on duty at the facility for more than forty hours per week if:

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

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

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

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

Sec. 7. The Department of Health may waive either (1) the requirement of subdivision (22) of section 71-2017.01 that a nursing facility or long-term care hospital certified under Title XIX of the 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 (2) the requirement of subdivision (22) of section 71-2017.01 that a nursing facility or long-term care hospital certified under Title XIX of the 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) The facility or hospital demonstrates to the satisfaction of the department that it has been unable, despite diligent efforts, including offering wages at the community prevailing rate for the facilities or hospitals, to recruit appropriate personnel;

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

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

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

department shall provide notice of the granting of a waiver to the long-term care ombudsman of the Department on Aging and to the Nebraska Advocacy Services or any successor designated for the protection of and advocacy for persons with mental illness or mental retardation. A nursing facility granted a waiver shall provide written notification to each resident of the facility or, if appropriate, to the guardian, legal representative, or immediate family of the resident. As a condition of granting or renewing a waiver, a facility or hospital may be required to employ other qualified licensed personnel.

The department may grant a waiver under this section if it determines that the waiver will not cause the State of Nebraska to fail to comply with any of the applicable requirements of medicaid so as to make the state ineligible for the receipt of all funds to which it might otherwise be entitled.

Sec. 8. That section 71-2020, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

71-2020. Applicants for a license shall file applications under oath with the Department of Health upon forms prescribed and shall pay a license fee of fifty dollars as a base fee, except that hospitals, skilled nursing facilities, intermediate care facilities, nursing facilities, and intermediate care facilities for the mentally retarded shall pay a license fee of one hundred twenty-five dollars as a base fee. In addition to such base fee, hospitals, skilled nursing facilities, intermediate care facilities, nursing facilities, and intermediate care facilities for the mentally retarded shall pay a fee of five dollars for each bed available for patients of the facility, and all other types of facilities shall pay a fee of one dollar for each bed available for patients thereof. Such fees shall be paid into the state treasury and by the State Treasurer credited to the General Fund, or if the license is denied, that part of the fees paid for beds available shall be returned to the applicant. A facility licensed as a hospital, a skilled nursing facility, or an intermediate care facility on January 1, 1991, may apply for a license as a nursing facility without payment of the initial license fee if the application is made to the department by October 1, 1991.

Applications shall be signed (1) by the owner, if an individual or partnership, (2) by two of its officers, if a corporation, or (3) by the head of the

governmental department having jurisdiction over it, if a governmental unit. Applications shall set forth the full name and address of the institution for which license is sought, and of the owner in case of different address, the names of the persons in control thereof, and such additional information as the Department of Health may require, including affirmative evidence of ability to comply with such reasonable standards, rules, and regulations as may be lawfully prescribed hereunder.

Sec. 9. That section 71-5801, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

71-5801. Sections 71-5801 to 71-5872 and section 11 of this act shall be known and may be cited as the Nebraska Health Care Certificate of Need Act.

Sec. 10. That section 71-5803, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

71-5803. For purposes of the Nebraska Health Care Certificate of Need Act, unless the context otherwise requires, the definitions found in sections 71-5804 to 71-5828 and section 11 of this act shall be used.

Sec. 11. Nursing facility shall have the same meaning as in section 71-2017.01.

Sec. 12. That section 71-5810, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

71-5810. Health care facility shall include hospitals, psychiatric hospitals, tuberculosis hospitals, skilled nursing facilities, kidney disease treatment centers, including freestanding hemodialysis units, intermediate care facilities, nursing facilities, ambulatory surgical facilities, inpatient facilities owned or controlled by health maintenance organizations, rehabilitation facilities, and other comparable facilities.

Health care facility shall not include Christian Science Sanatoriums operated or listed and certified by the First Church of Christ Scientist, Boston, Massachusetts, facilities operated solely as part of the professional practice of an independent practitioner, partnership, or professional corporation as defined in section 21-2202, home health agencies, or alcoholism or drug abuse treatment facilities which do not offer medical services under professional supervision.

Sec. 13. That section 71-5830, Reissue Revised Statutes of Nebraska, 1943, be amended to read

as follows:

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

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

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

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

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

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

An application for certificate of need pursuant to this subdivision shall be denied whenever the approval of such development, construction,

acquisition, lease, or other establishment would result in any person, corporation, partnership, or holding company owning or having controlling interest in health care facilities which (i) account for twenty percent or more of the total patient discharges in the state for all hospitals with an average length of stay of less than thirty days or (ii) account for twenty percent or more of the total licensed beds in the state for all freestanding skilled nursing, and intermediate care, and nursing facilities;

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

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

(4) Any change in the bed capacity of a health care facility which increases the total number of beds, redistributes beds among various categories, converts any type of hospital beds which may be licensed pursuant to sections 71-2017 to 71-2029 and section 7 of this act to skilled nursing or intermediate care beds or any combination of such beds, or relocates beds from one physical facility or site to another if the bed capacity of the facility will have changed by more than ten beds or more than ten percent of total bed capacity, whichever is less, over a two-year period. For purposes of this subdivision, redistributions, conversions, or relocations of beds for residential care, domiciliary care, or swing beds shall not be included in the computation of bed capacity changes. Swing beds shall mean beds which may be used for acute or long-term care in a facility (a) located in an area which is not designated as urban by the United States Bureau of Census and (b) with up to one hundred beds, excluding beds for newborns and intensive-care-type inpatient units;

(5) Any change by a residential care facility that converts residential care beds to skilled nursing

beds or intermediate care beds or any combination of such beds;

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

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

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

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

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

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

Sec. 14. That section 77-2704, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

77-2704. (1) There are exempted from the computation of the amount of sales and use taxes imposed by the Nebraska Revenue Act of 1967 the gross receipts from the sale, lease, or rental of and the storage, use, or other consumption in this state of the following:

(a) Tangible personal property, the gross receipts from the sale, lease, or rental of which or the storage, use, or other consumption of which this state is prohibited from taxing under the Constitution or laws of the United States or under the Constitution of ~~this~~ state Nebraska;

(b)(i) Aircraft fuel as defined under Chapter 3, article 1;

(ii) Minerals, oil, and gas as defined under Chapter 57; and

(iii) Motor vehicle fuels as defined, taxed, or exempted under Chapter 66, article 4, special fuels as defined, taxed, or exempted for use on the highways under Chapter 66, article 6, and special fuels used to provide motive power for railroad rolling stock;

(c) Tangible personal property used for the performance of a written contract entered into prior to June 1, 1967, except as provided in subdivision (1)(g) of section 77-2703;

(d) Any newspaper regularly issued at average intervals not exceeding one week if such newspaper contains matters of general interest and reports of current events;

(e) Leased tangible personal property sold to a lessee of that tangible personal property under an agreement whereby certain rental payments are credited against the purchase price of that tangible personal property, except that this exemption shall not exceed the amount for which the lessor has collected and paid tax on such rental payments;

(f) Prescription medicines when prescribed and dispensed for human use by a person licensed under the provisions of Chapter 71, article 1, insulin, prosthetic devices, and oxygen and any equipment which concentrates oxygen for a patient's use sold under a doctor's prescription for aid in human respiration;

(g)(i) Meals and food products, including soft drinks and candy, for human consumption served by public or private schools, school districts, student organizations, or parent-teacher associations pursuant to an agreement with the proper school authorities, in an elementary or secondary school or at any institution of higher education, public or private, during the regular school day or at an approved function of any such school or institution, but such exemption shall not apply to sales at any facility or function which is open to the general public, except that concession sales by elementary and secondary schools, public or private, shall be exempt;

(ii) Meals and food products, including soft drinks and candy, for human consumption when sold by a church at a function of such church; and

(iii) Meals and food products, including soft drinks and candy, for human consumption when served to patients and inmates of hospitals and other institutions licensed by the state for the care of human beings;

(h) Tangible personal property which is

shipped to a point outside this state, when the contract of sale is expressly or impliedly contingent upon delivery by the retailer to such point by means of facilities operated by the retailer, delivery by the retailer to a carrier for shipment to a consignee at such point, delivery by the retailer to the United States post office for delivery outside this state, or delivery by the retailer to a customs broker or forwarding agent for shipment outside this state. Such exemption shall include the amount charged for fabrication of tangible personal property furnished by the customer which is fabricated in this state and then shipped by the retailer performing the fabrication to a point outside of this state. This shall also include the gross receipts from sales of tangible personal property to a common or contract carrier shipped by the seller via the purchasing carrier under a bill of lading, whether the freight is paid in advance or the shipment is made freight charges collect, to a point outside this state and the property is actually transported to the out-of-state destination for use by the carrier in the conduct of its business as a common or contract carrier;

(i)(i) Purchases by any organization created exclusively for religious purposes, any nonprofit organization providing services exclusively to the blind, any private educational institution established under Chapter 79, article 17, any private college or university established under Chapter 85, article 11, any hospital, health clinic when two or more hospitals or the parent corporations of the hospitals own or control the health clinic for the purpose of reducing the cost of health services or when the health clinic receives funds under the Urban Health Initiative Program or the Rural Health Initiative Program of the United States Public Health Service, skilled nursing facility, ~~or~~ intermediate care facility, or nursing facility licensed under sections 71-2017 to 71-2029 and section 7 of this act and organized not for profit, any nonprofit organization providing services primarily for home health care purposes, any licensed child-caring agency, or any licensed child placement agency.

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

(iii) The appointment of purchasing agents

shall be recognized for the purpose of altering the status of the construction contractor as the ultimate consumer of tangible personal property which is physically incorporated into the structure and becomes the property of the owner of the organization or institution. The appointment of purchasing agents shall be in writing and occur prior to having any tangible personal property incorporated into the construction, improvement, or repair. The contractor who has been appointed as a purchasing agent may apply for a refund of or use as a credit against a future use tax liability the tax paid on inventory items incorporated into the construction, improvement, or repair of a project for a licensed not-for-profit institution.

(iv)(A) Any person purchasing, storing, using, or otherwise consuming tangible personal property in the performance of any construction, improvement, or repair by or for any institution enumerated in subdivision (i)(i) of this subsection which is licensed upon completion although not licensed at the time of construction or improvement, which tangible personal property is incorporated into a structure and becomes the property of the owner of the institution, shall pay any applicable sales or use tax thereon.

(B) Upon becoming licensed and receiving a numbered certificate of exemption, the institution organized not for profit shall be entitled to a refund of the amount of taxes so paid in the performance of such construction, improvement, or repair and shall submit whatever evidence is required by the Tax Commissioner sufficient to establish the total sales and use tax paid upon the tangible personal property physically incorporated into the construction, improvement, or repair;

(j) Sales and purchases of electricity, coal, gas, fuel oil, diesel fuel, tractor fuel, propane, gasoline, coke, nuclear fuel, and butane when more than fifty percent of the amount purchased is for use directly in processing, manufacturing, or refining of tangible personal property, in irrigation, farming, or the generation of electricity, or by any hospital;

(k) The use of coin-operated machines used for laundering and cleaning;

(l)(i) Purchases by the state, including public educational institutions recognized or established under the provisions of Chapter 85, or by any county, township, city, village, or rural or suburban fire protection district, except for purchases for use in the business of furnishing gas, water,

electricity, or heat, or by any irrigation or reclamation district, the irrigation division of any public power and irrigation district, or public schools established under Chapter 79.

(ii) The appointment of purchasing agents shall be recognized for the purpose of altering the status of the construction contractor as the ultimate consumer of tangible personal property which is physically incorporated into the structure and becomes the property of the state or the governmental unit. The appointment of purchasing agents shall be in writing and occur prior to purchasing any tangible personal property incorporated into the construction, improvement, or repair. The contractor who has been appointed as a purchasing agent may apply for a refund of or use as a credit against a future use tax liability the tax paid on inventory items incorporated into the construction, improvement, or repair of a project for the state or a governmental unit;

(m) The entire purchase price of a motor vehicle purchased when the maximum amount allowed by law is contributed by the United States Department of Veterans Affairs or the Department of Social Services for a disabled person. If the amount contributed is less than the maximum amount, the exemption shall be based on the portion of the purchase price contributed;

(n) The sale and purchase, by subscription, of any magazine or journal that is issued at average intervals not exceeding once each month;

(o) Sales and purchases of semen for use in ranching, farming, commercial, or industrial uses;

(p) Purchases made by the State Board of Agriculture;

(q) Any organization listed in subdivision (i) of this subsection or any governmental unit listed in subdivision (l) of this subsection, except the state, which enters into a contract of construction, improvement, or repair upon real estate without first issuing a purchasing agent authorization to a contractor or repairperson prior to purchasing tangible personal property to be incorporated into the project may apply to the Tax Commissioner for a refund of any sales and use tax paid by the contractor or repairperson on the tangible personal property physically incorporated into the construction, improvement, or repair;

(r) Food or food products for human consumption which are eligible for purchase with food coupons issued by the United States Department of Agriculture pursuant to regulations in effect on October

1, 1983, regardless of whether the retailer from which the foods are purchased is participating in the food stamp program. As used in this subdivision, food does not include meals prepared for immediate consumption on or off the premises of the retailer and does not include foods sold through vending machines;

(s) Tangible personal property, except meals for human consumption, sold by parent-booster clubs, parent-teacher associations, parent-teacher-student associations, or school-operated stores approved by an elementary or secondary school, public or private, if the proceeds from such sale are used to support school activities or the school itself; and

(t) An aircraft delivered in this state to an individual who is a resident of another state or any other person who has a business location in another state when the aircraft is not to be registered or based in this state and it will not remain in this state more than ten days.

(2) The storage, use, or other consumption in this state of tangible personal property, the gross receipts from the sale, lease, or rental of which are required to be included in the measure of the sales tax and on which the sales tax has been paid, is exempted from the use tax.

(3) The use tax imposed in the Nebraska Revenue Act of 1967 shall not apply to:

(a) The use in this state of materials and replacement parts which are acquired outside this state and which are moved into this state for use directly in the repair and maintenance or manufacture of motor vehicles, watercraft, railroad rolling stock, whether owned by a railroad or by any person, whether a common or contract carrier or otherwise, or aircraft engaged as common or contract carriers of persons or property; and

(b) The storage, use, or consumption of tangible personal property which is acquired outside this state, the sale, lease, or rental or the storage, use, or consumption of which property would be exempt from the sales or use tax were it purchased within this state.

(4) If any person who causes tangible personal property to be brought into this state has already paid a tax in another state in respect to the sale or use of such property in an amount less than the tax imposed by section 77-2703, the provision of this section shall apply, but at a rate measured by the difference only between the rate imposed by section 77-2703 and the rate by which the previous tax on the sale or use was

computed. If such tax imposed and paid in such other state is equal to or more than the tax imposed by section 77-2703, then no use tax shall be due in this state on such personal property if such other state, territory, or possession grants a reciprocal exclusion or exemption to similar transactions in this state.

(5) A lease of tangible personal property from a subsidiary to the parent company, from a parent company to a subsidiary, from one subsidiary to another subsidiary of the same parent company, or between brother-sister companies shall not be subject to the sales and use tax imposed by the Nebraska Revenue Act of 1967. Such lessor company shall have the same sales and use tax liability on the purchase of property to be leased to the lessee company as the lessee company would have paid if the lessee company had purchased the property directly.

(6) There is exempted from the computation of the amount of sales and use taxes imposed by the Nebraska Revenue Act of 1967 the gross receipts from the sale, lease, or rental of and the storage, use, or other consumption in this state of railroad rolling stock whether owned by a railroad or by any other person.

(7) When a written contract exists for a construction, alteration, or improvement project outside the United States or its territories or possessions, a contractor may apply for a refund of the sales and use tax paid to the State of Nebraska on tangible personal property actually incorporated into the project outside of the United States or its territories or possessions.

(8) When a written contract exists for a fixed price for a construction, reconstruction, alteration, or improvement project and the sales tax rate is increased during the term of that fixed-price contract, the contractor may apply to the Department of Revenue for a refund of the increased sales tax amount if such refund amount exceeds ten dollars. The contractor shall be refunded such increased amount if the contractor certifies that the contract was entered into prior to the increase in the tax and that the increased tax for which the refund is requested was paid on the materials incorporated into the project. The contractor shall agree to submit a copy of the contract or other evidence necessary to prove the validity of the application to the satisfaction of the Tax Commissioner. In the event that the sales tax rate is decreased during the term of that fixed-price contract, the contractor shall pay to the Department of Revenue the decreased sales tax amount if the amount of such payment exceeds ten dollars.

Sec. 15. That original sections 68-1038, 71-507, 71-2017, 71-2017.01, 71-2017.03, 71-2017.06, 71-2020, 71-5801, 71-5803, 71-5810, 71-5830, and 77-2704, Reissue Revised Statutes of Nebraska, 1943, are repealed.

Sec. 16. Since an emergency exists, this act shall be in full force and take effect, from and after its passage and approval, according to law.