

AMENDMENTS TO LB 343

Introduced by Health and Human Services

1 1. Strike the original sections and insert the following
2 new sections:

3 Section 1. Section 21-610, Reissue Revised Statutes of
4 Nebraska, is amended to read:

5 21-610 When any such organization ~~shall have~~ has
6 established in this state an institution for the care of children
7 or persons who are incapacitated in any manner and such institution
8 ~~shall have~~ has been incorporated under the laws of Nebraska, such
9 corporation shall have power to act either by itself or jointly
10 with any natural person or persons (1) as administrator of the
11 estate of any deceased person whose domicile was within the county
12 in which the corporation is located or whose domicile was outside
13 the State of Nebraska, (2) as executor under a last will and
14 testament or as guardian of the property of any infant, person
15 with ~~mental retardation,~~ an intellectual disability, person with
16 a mental disorder, or person under other disability, or (3) as
17 trustee for any person or of the estate of any deceased person
18 under the appointment of any court of record having jurisdiction of
19 the estate of such person.

20 Sec. 2. Section 23-104.03, Reissue Revised Statutes of
21 Nebraska, is amended to read:

22 23-104.03 Each county shall have the authority (1)
23 to plan, initiate, fund, maintain, administer, and evaluate

1 facilities, programs, and services that meet the rehabilitation,
2 treatment, care, training, educational, residential, diagnostic,
3 evaluation, community supervision, and protective service needs of
4 dependent, aged, blind, disabled, ill, or infirm persons, persons
5 with a mental disorder, and persons with ~~mental retardation~~ an
6 intellectual disability domiciled in the county, (2) to purchase
7 outright by installment contract or by mortgage with the power to
8 borrow funds in connection with such contract or mortgage, hold,
9 sell, and lease for a period of more than one year real estate
10 necessary for use of the county to plan, initiate, fund, maintain,
11 administer, and evaluate such facilities, programs, and services,
12 (3) to lease personal property necessary for such facilities,
13 programs, and services, and such lease may provide for installment
14 payments which extend over a period of more than one year,
15 notwithstanding the provisions of section 23-132 or 23-916, (4)
16 to enter into compacts with other counties, state agencies, other
17 political subdivisions, and private nonprofit agencies to exercise
18 and carry out the powers to plan, initiate, fund, maintain,
19 administer, and evaluate such facilities, programs, and services,
20 and (5) to contract for such services from agencies, either public
21 or private, which provide such services on a vendor basis. Compacts
22 with other public agencies pursuant to subdivision (4) of this
23 section shall be subject to the Interlocal Cooperation Act.

24 Sec. 3. Section 28-105.01, Reissue Revised Statutes of
25 Nebraska, is amended to read:

26 28-105.01 (1) Notwithstanding any other provision of law,
27 the death penalty shall not be imposed upon any person who was

1 under the age of eighteen years at the time of the commission of
2 the crime.

3 (2) Notwithstanding any other provision of law, the
4 death penalty shall not be imposed upon any person with ~~mental~~
5 ~~retardation~~, an intellectual disability.

6 (3) As used in subsection (2) of this section, ~~mental~~
7 ~~retardation~~ intellectual disability means significantly subaverage
8 general intellectual functioning existing concurrently with
9 deficits in adaptive behavior. An intelligence quotient of seventy
10 or below on a reliably administered intelligence quotient test
11 shall be presumptive evidence of ~~mental retardation~~, intellectual
12 disability.

13 (4) If (a) a jury renders a verdict finding the
14 existence of one or more aggravating circumstances as provided
15 in section 29-2520 or (b) (i) the information contains a notice of
16 aggravation as provided in section 29-1603 and (ii) the defendant
17 waives his or her right to a jury determination of the alleged
18 aggravating circumstances, the court shall hold a hearing prior
19 to any sentencing determination proceeding as provided in section
20 29-2521 upon a verified motion of the defense requesting a ruling
21 that the penalty of death be precluded under subsection (2) of
22 this section. If the court finds, by a preponderance of the
23 evidence, that the defendant is a person with ~~mental retardation~~,
24 an intellectual disability, the death sentence shall not be
25 imposed. A ruling by the court that the evidence of diminished
26 intelligence introduced by the defendant does not preclude the
27 death penalty under subsection (2) of this section shall not

1 restrict the defendant's opportunity to introduce such evidence
2 at the sentencing determination proceeding as provided in section
3 29-2521 or to argue that such evidence should be given mitigating
4 significance.

5 Sec. 4. Section 28-401, Revised Statutes Cumulative
6 Supplement, 2012, is amended to read:

7 28-401 As used in the Uniform Controlled Substances Act,
8 unless the context otherwise requires:

9 (1) Administer shall mean to directly apply a controlled
10 substance by injection, inhalation, ingestion, or any other means
11 to the body of a patient or research subject;

12 (2) Agent shall mean an authorized person who acts on
13 behalf of or at the direction of another person but shall not
14 include a common or contract carrier, public warehouse keeper, or
15 employee of a carrier or warehouse keeper;

16 (3) Administration shall mean the Drug Enforcement
17 Administration, United States Department of Justice;

18 (4) Controlled substance shall mean a drug, biological,
19 substance, or immediate precursor in Schedules I to V of section
20 28-405. Controlled substance shall not include distilled spirits,
21 wine, malt beverages, tobacco, or any nonnarcotic substance if such
22 substance may, under the Federal Food, Drug, and Cosmetic Act, 21
23 U.S.C. 301 et seq., as such act existed on January 1, 2009, and
24 the law of this state, be lawfully sold over the counter without a
25 prescription;

26 (5) Counterfeit substance shall mean a controlled
27 substance which, or the container or labeling of which, without

1 authorization, bears the trademark, trade name, or other
2 identifying mark, imprint, number, or device, or any likeness
3 thereof, of a manufacturer, distributor, or dispenser other than
4 the person or persons who in fact manufactured, distributed, or
5 dispensed such substance and which thereby falsely purports or is
6 represented to be the product of, or to have been distributed by,
7 such other manufacturer, distributor, or dispenser;

8 (6) Department shall mean the Department of Health and
9 Human Services;

10 (7) Division of Drug Control shall mean the personnel of
11 the Nebraska State Patrol who are assigned to enforce the Uniform
12 Controlled Substances Act;

13 (8) Dispense shall mean to deliver a controlled substance
14 to an ultimate user or a research subject pursuant to a medical
15 order issued by a practitioner authorized to prescribe, including
16 the packaging, labeling, or compounding necessary to prepare the
17 controlled substance for such delivery;

18 (9) Distribute shall mean to deliver other than by
19 administering or dispensing a controlled substance;

20 (10) Prescribe shall mean to issue a medical order;

21 (11) Drug shall mean (a) articles recognized in
22 the official United States Pharmacopoeia, official Homeopathic
23 Pharmacopoeia of the United States, official National Formulary,
24 or any supplement to any of them, (b) substances intended for use
25 in the diagnosis, cure, mitigation, treatment, or prevention of
26 disease in human beings or animals, and (c) substances intended for
27 use as a component of any article specified in subdivision (a) or

1 (b) of this subdivision, but shall not include devices or their
2 components, parts, or accessories;

3 (12) Deliver or delivery shall mean the actual,
4 constructive, or attempted transfer from one person to another
5 of a controlled substance, whether or not there is an agency
6 relationship;

7 (13) Marijuana shall mean all parts of the plant of
8 the genus cannabis, whether growing or not, the seeds thereof,
9 and every compound, manufacture, salt, derivative, mixture, or
10 preparation of such plant or its seeds, but shall not include
11 the mature stalks of such plant, hashish, tetrahydrocannabinols
12 extracted or isolated from the plant, fiber produced from such
13 stalks, oil or cake made from the seeds of such plant, any other
14 compound, manufacture, salt, derivative, mixture, or preparation of
15 such mature stalks, or the sterilized seed of such plant which is
16 incapable of germination. When the weight of marijuana is referred
17 to in the Uniform Controlled Substances Act, it shall mean its
18 weight at or about the time it is seized or otherwise comes into
19 the possession of law enforcement authorities, whether cured or
20 uncured at that time;

21 (14) Manufacture shall mean the production, preparation,
22 propagation, conversion, or processing of a controlled substance,
23 either directly or indirectly, by extraction from substances of
24 natural origin, independently by means of chemical synthesis, or
25 by a combination of extraction and chemical synthesis, and shall
26 include any packaging or repackaging of the substance or labeling
27 or relabeling of its container. Manufacture shall not include

1 the preparation or compounding of a controlled substance by an
2 individual for his or her own use, except for the preparation or
3 compounding of components or ingredients used for or intended to
4 be used for the manufacture of methamphetamine, or the preparation,
5 compounding, conversion, packaging, or labeling of a controlled
6 substance: (a) By a practitioner as an incident to his or her
7 prescribing, administering, or dispensing of a controlled substance
8 in the course of his or her professional practice; or (b) by a
9 practitioner, or by his or her authorized agent under his or her
10 supervision, for the purpose of, or as an incident to, research,
11 teaching, or chemical analysis and not for sale;

12 (15) Narcotic drug shall mean any of the following,
13 whether produced directly or indirectly by extraction from
14 substances of vegetable origin, independently by means of chemical
15 synthesis, or by a combination of extraction and chemical
16 synthesis: (a) Opium, opium poppy and poppy straw, coca leaves,
17 and opiates; (b) a compound, manufacture, salt, derivative, or
18 preparation of opium, coca leaves, or opiates; or (c) a substance
19 and any compound, manufacture, salt, derivative, or preparation
20 thereof which is chemically equivalent to or identical with any
21 of the substances referred to in subdivisions (a) and (b) of this
22 subdivision, except that the words narcotic drug as used in the
23 Uniform Controlled Substances Act shall not include decocainized
24 coca leaves or extracts of coca leaves, which extracts do not
25 contain cocaine or ecgonine, or isoquinoline alkaloids of opium;

26 (16) Opiate shall mean any substance having an
27 addiction-forming or addiction-sustaining liability similar to

1 morphine or being capable of conversion into a drug having
2 such addiction-forming or addiction-sustaining liability. Opiate
3 shall not include the dextrorotatory isomer of 3-methoxy-n
4 methylmorphinan and its salts. Opiate shall include its racemic and
5 levorotatory forms;

6 (17) Opium poppy shall mean the plant of the species
7 *Papaver somniferum* L., except the seeds thereof;

8 (18) Poppy straw shall mean all parts, except the seeds,
9 of the opium poppy after mowing;

10 (19) Person shall mean any corporation, association,
11 partnership, limited liability company, or one or more individuals;

12 (20) Practitioner shall mean a physician, a physician
13 assistant, a dentist, a veterinarian, a pharmacist, a podiatrist,
14 an optometrist, a certified nurse midwife, a certified registered
15 nurse anesthetist, a nurse practitioner, a scientific investigator,
16 a pharmacy, a hospital, or any other person licensed, registered,
17 or otherwise permitted to distribute, dispense, prescribe, conduct
18 research with respect to, or administer a controlled substance in
19 the course of practice or research in this state, including an
20 emergency medical service as defined in section 38-1207;

21 (21) Production shall include the manufacture, planting,
22 cultivation, or harvesting of a controlled substance;

23 (22) Immediate precursor shall mean a substance which is
24 the principal compound commonly used or produced primarily for use
25 and which is an immediate chemical intermediary used or likely
26 to be used in the manufacture of a controlled substance, the
27 control of which is necessary to prevent, curtail, or limit such

1 manufacture;

2 (23) State shall mean the State of Nebraska;

3 (24) Ultimate user shall mean a person who lawfully
4 possesses a controlled substance for his or her own use, for the
5 use of a member of his or her household, or for administration
6 to an animal owned by him or her or by a member of his or her
7 household;

8 (25) Hospital shall have the same meaning as in section
9 71-419;

10 (26) Cooperating individual shall mean any person, other
11 than a commissioned law enforcement officer, who acts on behalf of,
12 at the request of, or as agent for a law enforcement agency for the
13 purpose of gathering or obtaining evidence of offenses punishable
14 under the Uniform Controlled Substances Act;

15 (27) Hashish or concentrated cannabis shall mean: (a) The
16 separated resin, whether crude or purified, obtained from a plant
17 of the genus cannabis; or (b) any material, preparation, mixture,
18 compound, or other substance which contains ten percent or more by
19 weight of tetrahydrocannabinols;

20 (28) Exceptionally hazardous drug shall mean (a)
21 a narcotic drug, (b) thiophene analog of phencyclidine,
22 (c) phencyclidine, (d) amobarbital, (e) secobarbital, (f)
23 pentobarbital, (g) amphetamine, or (h) methamphetamine;

24 (29) Imitation controlled substance shall mean a
25 substance which is not a controlled substance but which, by way
26 of express or implied representations and consideration of other
27 relevant factors including those specified in section 28-445,

1 would lead a reasonable person to believe the substance is a
2 controlled substance. A placebo or registered investigational drug
3 manufactured, distributed, possessed, or delivered in the ordinary
4 course of practice or research by a health care professional shall
5 not be deemed to be an imitation controlled substance;

6 (30) (a) Controlled substance analogue shall mean a
7 substance (i) the chemical structure of which is substantially
8 similar to the chemical structure of a Schedule I or Schedule
9 II controlled substance as provided in section 28-405 or (ii)
10 which has a stimulant, depressant, analgesic, or hallucinogenic
11 effect on the central nervous system that is substantially similar
12 to or greater than the stimulant, depressant, analgesic, or
13 hallucinogenic effect on the central nervous system of a Schedule I
14 or Schedule II controlled substance as provided in section 28-405.
15 A controlled substance analogue shall, to the extent intended for
16 human consumption, be treated as a controlled substance under
17 Schedule I of section 28-405 for purposes of the Uniform Controlled
18 Substances Act; and

19 (b) Controlled substance analogue shall not include (i)
20 a controlled substance, (ii) any substance generally recognized as
21 safe and effective within the meaning of the Federal Food, Drug,
22 and Cosmetic Act, 21 U.S.C. 301 et seq., as such act existed on
23 January 1, 2009, (iii) any substance for which there is an approved
24 new drug application, or (iv) with respect to a particular person,
25 any substance if an exemption is in effect for investigational use
26 for that person, under section 505 of the Federal Food, Drug, and
27 Cosmetic Act, 21 U.S.C. 355, as such section existed on January

1 1, 2009, to the extent conduct with respect to such substance is
2 pursuant to such exemption;

3 (31) Anabolic steroid shall mean any drug or hormonal
4 substance, chemically and pharmacologically related to testosterone
5 (other than estrogens, progestins, and corticosteroids), that
6 promotes muscle growth and includes any controlled substance in
7 Schedule III(d) of section 28-405. Anabolic steroid shall not
8 include any anabolic steroid which is expressly intended for
9 administration through implants to cattle or other nonhuman species
10 and has been approved by the Secretary of Health and Human Services
11 for such administration, but if any person prescribes, dispenses,
12 or distributes such a steroid for human use, such person shall
13 be considered to have prescribed, dispensed, or distributed an
14 anabolic steroid within the meaning of this subdivision;

15 (32) Chart order shall mean an order for a controlled
16 substance issued by a practitioner for a patient who is in the
17 hospital where the chart is stored or for a patient receiving
18 detoxification treatment or maintenance treatment pursuant to
19 section 28-412. Chart order shall not include a prescription;

20 (33) Medical order shall mean a prescription, a
21 chart order, or an order for pharmaceutical care issued by a
22 practitioner;

23 (34) Prescription shall mean an order for a controlled
24 substance issued by a practitioner. Prescription shall not include
25 a chart order;

26 (35) Registrant shall mean any person who has a
27 controlled substances registration issued by the state or the

1 administration;

2 (36) Reverse distributor shall mean a person whose
3 primary function is to act as an agent for a pharmacy, wholesaler,
4 manufacturer, or other entity by receiving, inventorying, and
5 managing the disposition of outdated, expired, or otherwise
6 nonsaleable controlled substances;

7 (37) Signature shall mean the name, word, or mark of
8 a person written in his or her own hand with the intent to
9 authenticate a writing or other form of communication or a digital
10 signature which complies with section 86-611 or an electronic
11 signature;

12 (38) Facsimile shall mean a copy generated by a
13 system that encodes a document or photograph into electrical
14 signals, transmits those signals over telecommunications lines,
15 and reconstructs the signals to create an exact duplicate of the
16 original document at the receiving end;

17 (39) Electronic signature shall have the definition found
18 in section 86-621;

19 (40) Electronic transmission shall mean transmission
20 of information in electronic form. Electronic transmission may
21 include computer-to-computer transmission or computer-to-facsimile
22 transmission; and

23 (41) Long-term care facility shall mean an intermediate
24 care facility, an intermediate care facility for ~~the mentally~~
25 ~~retarded,~~ persons with intellectual disabilities, a long-term care
26 hospital, a mental health center, a nursing facility, or a skilled
27 nursing facility, as such terms are defined in the Health Care

1 Facility Licensure Act.

2 Sec. 5. Section 30-2624, Reissue Revised Statutes of
3 Nebraska, is amended to read:

4 30-2624 A visitor shall be trained in law, nursing,
5 social work, mental health, ~~mental retardation~~, gerontology, or
6 developmental disabilities and shall be an officer, employee, or
7 special appointee of the court with no personal interest in the
8 proceedings.

9 Any qualified person may be appointed visitor of a
10 proposed ward, except that it shall be unlawful for any owner, part
11 owner, manager, administrator, or employee, or any spouse of an
12 owner, part owner, manager, administrator, or employee of a nursing
13 home, room and board home, convalescent home, group care home,
14 or institution providing residential care to any person ~~physically~~
15 ~~or mentally handicapped, infirm, or~~ with a physical disability,
16 with an intellectual disability, with an infirmity, or who is aged
17 to be appointed visitor of any such person residing, being under
18 care, receiving treatment, or being housed in any such home or
19 institution within the State of Nebraska.

20 The court shall select the visitor who has the expertise
21 to most appropriately evaluate the needs of the person who is
22 allegedly incapacitated.

23 The court shall maintain a current list of persons
24 trained in or having demonstrated expertise in the areas of mental
25 health, ~~mental retardation~~, developmental disability, drug abuse,
26 alcoholism, gerontology, nursing, and social work, for the purpose
27 of appointing a suitable visitor.

1 Sec. 6. Section 31-113, Reissue Revised Statutes of
2 Nebraska, is amended to read:

3 31-113 The county board on actual view of the premises
4 shall fix and allow such compensation for land appropriated and
5 assess such damages as will in its judgment accrue from the
6 construction of the improvement to each person or corporation
7 making application as provided by section 31-112 and without such
8 application to each person with ~~mental retardation~~, an intellectual
9 disability, person with a mental disorder, or minor owning lands
10 taken or affected by such improvement.

11 Sec. 7. Section 38-2404, Reissue Revised Statutes of
12 Nebraska, is amended to read:

13 38-2404 Administrator or nursing home administrator means
14 any individual who meets the education and training requirements
15 of section 38-2419 and is responsible for planning, organizing,
16 directing, and controlling the operation of a nursing home or
17 an integrated system or who in fact performs such functions,
18 whether or not such functions are shared by one or more other
19 persons. Notwithstanding this section or any other provision of
20 law, the administrator of an intermediate care facility for ~~the~~
21 ~~mentally retarded persons with intellectual disabilities~~ may be
22 either a licensed nursing home administrator or a qualified ~~mental~~
23 ~~retardation~~ developmental disabilities professional.

24 Sec. 8. Section 38-2826.01, Revised Statutes Cumulative
25 Supplement, 2012, is amended to read:

26 38-2826.01 Long-term care facility means an intermediate
27 care facility, an intermediate care facility for ~~the mentally~~

1 ~~retarded,~~ persons with intellectual disabilities a long-term care
2 hospital, a mental health center, a nursing facility, or a skilled
3 nursing facility, as such terms are defined in the Health Care
4 Facility Licensure Act.

5 Sec. 9. Section 42-374, Reissue Revised Statutes of
6 Nebraska, is amended to read:

7 42-374 A marriage may be annulled for any of the
8 following causes:

9 (1) The marriage between the parties is prohibited by
10 law;

11 (2) Either party is impotent at the time of marriage;

12 (3) Either party had a spouse living at the time of
13 marriage; or

14 ~~(4) Either party was mentally ill or a person with mental~~
15 ~~retardation at the time of marriage; or~~

16 ~~(5)~~ (4) Force or fraud.

17 Sec. 10. Section 43-289, Reissue Revised Statutes of
18 Nebraska, is amended to read:

19 43-289 In no case shall a juvenile committed under the
20 terms of the Nebraska Juvenile Code be confined after he or she
21 reaches the age of majority. The court may, when the health or
22 condition of any juvenile adjudged to be within the terms of such
23 code shall require it, cause the juvenile to be placed in a public
24 hospital or institution for treatment or special care or in an
25 accredited and suitable private hospital or institution which will
26 receive the juvenile for like purposes. Whenever any juvenile has
27 been committed to the Department of Health and Human Services, the

1 department shall follow the court's orders, if any, concerning the
2 juvenile's specific needs for treatment or special care for his
3 or her physical well-being and healthy personality. If the court
4 finds any such juvenile to be a person with ~~mental retardation,~~
5 it an intellectual disability, the court may, upon attaching a
6 physician's certificate and a report as to the mental capacity of
7 such person, commit such juvenile directly to an authorized and
8 appropriate state or local facility or home.

9 The marriage of any juvenile committed to a state
10 institution under the age of nineteen years shall not make such
11 juvenile of the age of majority.

12 A juvenile committed to any such institution shall be
13 subject to the control of the superintendent thereof, and the
14 superintendent, with the advice and consent of the Department of
15 Health and Human Services, shall adopt and promulgate rules and
16 regulations for the promotion, paroling, and final discharge of
17 residents such as shall be considered mutually beneficial for
18 the institution and the residents. Upon final discharge of any
19 resident, such department shall file a certified copy of the
20 discharge with the court which committed the resident.

21 Sec. 11. Section 44-710.01, Reissue Revised Statutes of
22 Nebraska, is amended to read:

23 44-710.01 No policy of sickness and accident insurance
24 shall be delivered or issued for delivery to any person in
25 this state unless (1) the entire money and other considerations
26 therefor are expressed therein, (2) the time at which the insurance
27 takes effect and terminates is expressed therein, (3) it purports

1 to insure only one person, except that a policy may insure,
2 originally or by subsequent amendment, upon the application of an
3 adult member of a family who shall be deemed the policyholder,
4 any two or more eligible members of that family, including
5 husband, wife, dependent children, any children enrolled on a
6 full-time basis in any college, university, or trade school, or
7 any children under a specified age which shall not exceed thirty
8 years and any other person dependent upon the policyholder; any
9 individual policy hereinafter delivered or issued for delivery
10 in this state which provides that coverage of a dependent child
11 shall terminate upon the attainment of the limiting age for
12 dependent children specified in the policy shall also provide in
13 substance that attainment of such limiting age shall not operate
14 to terminate the coverage of such child during the continuance
15 of such policy and while the child is and continues to be both
16 (a) incapable of self-sustaining employment by reason of ~~mental~~
17 ~~retardation~~ an intellectual disability or a physical handicap
18 disability and (b) chiefly dependent upon the policyholder for
19 support and maintenance, if proof of such incapacity and dependency
20 is furnished to the insurer by the policyholder within thirty-one
21 days of the child's attainment of the limiting age and subsequently
22 as may be required by the insurer but not more frequently than
23 annually after the two-year period following the child's attainment
24 of the limiting age; such insurer may charge an additional premium
25 for and with respect to any such continuation of coverage beyond
26 the limiting age of the policy with respect to such child, which
27 premium shall be determined by the insurer on the basis of the

1 class of risks applicable to such child, (4) it contains a title
2 on the face of the policy correctly describing the policy, (5)
3 the exceptions and reductions of indemnity are set forth in
4 the policy and, except those which are set forth in sections
5 44-710.03 and 44-710.04, are printed, at the insurer's option,
6 either included with the benefit provision to which they apply
7 or under an appropriate caption such as EXCEPTIONS, or EXCEPTIONS
8 AND REDUCTIONS; if an exception or reduction specifically applies
9 only to a particular benefit of the policy, a statement of such
10 exception or reduction shall be included with the benefit provision
11 to which it applies, (6) each such form, including riders and
12 endorsements, shall be identified by a form number in the lower
13 left-hand corner of the first page thereof, (7) it contains no
14 provision purporting to make any portion of the charter, rules,
15 constitution, or bylaws of the insurer a part of the policy unless
16 such portion is set forth in full in the policy, except in the
17 case of the incorporation of, or reference to, a statement of
18 rates or classification of risks, or short-rate table filed with
19 the Director of Insurance, and (8) on or after January 1, 1999,
20 any restrictive rider contains a notice of the existence of the
21 Comprehensive Health Insurance Pool if the policy provides health
22 insurance as defined in section 44-4209.

23 Sec. 12. Section 68-911, Reissue Revised Statutes of
24 Nebraska, is amended to read:

25 68-911 (1) Medical assistance shall include coverage for
26 health care and related services as required under Title XIX of the
27 federal Social Security Act, including, but not limited to:

- 1 (a) Inpatient and outpatient hospital services;
- 2 (b) Laboratory and X-ray services;
- 3 (c) Nursing facility services;
- 4 (d) Home health services;
- 5 (e) Nursing services;
- 6 (f) Clinic services;
- 7 (g) Physician services;
- 8 (h) Medical and surgical services of a dentist;
- 9 (i) Nurse practitioner services;
- 10 (j) Nurse midwife services;
- 11 (k) Pregnancy-related services;
- 12 (l) Medical supplies; and
- 13 (m) Early and periodic screening and diagnosis and
- 14 treatment services for children.

15 (2) In addition to coverage otherwise required under this
16 section, medical assistance may include coverage for health care
17 and related services as permitted but not required under Title XIX
18 of the federal Social Security Act, including, but not limited to:

- 19 (a) Prescribed drugs;
- 20 (b) Intermediate care facilities for ~~the mentally~~
21 ~~retarded;~~ persons with intellectual disabilities;
- 22 (c) Home and community-based services for aged persons
23 and persons with disabilities;
- 24 (d) Dental services;
- 25 (e) Rehabilitation services;
- 26 (f) Personal care services;
- 27 (g) Durable medical equipment;

- 1 (h) Medical transportation services;
- 2 (i) Vision-related services;
- 3 (j) Speech therapy services;
- 4 (k) Physical therapy services;
- 5 (l) Chiropractic services;
- 6 (m) Occupational therapy services;
- 7 (n) Optometric services;
- 8 (o) Podiatric services;
- 9 (p) Hospice services;
- 10 (q) Mental health and substance abuse services;
- 11 (r) Hearing screening services for newborn and infant
- 12 children; and

13 (s) Administrative expenses related to administrative
14 activities, including outreach services, provided by school
15 districts and educational service units to students who are
16 eligible or potentially eligible for medical assistance.

17 (3) No later than July 1, 2009, the department
18 shall submit a state plan amendment or waiver to the federal
19 Centers for Medicare and Medicaid Services to provide coverage
20 under the medical assistance program for community-based secure
21 residential and subacute behavioral health services for all
22 eligible recipients, without regard to whether the recipient has
23 been ordered by a mental health board under the Nebraska Mental
24 Health Commitment Act to receive such services.

25 Sec. 13. Section 68-919, Reissue Revised Statutes of
26 Nebraska, is amended to read:

27 68-919 (1) The recipient of medical assistance under the

1 medical assistance program shall be indebted to the department for
2 the total amount paid for medical assistance on behalf of the
3 recipient if:

4 (a) The recipient was fifty-five years of age or older at
5 the time the medical assistance was provided; or

6 (b) The recipient resided in a medical institution and,
7 at the time of institutionalization or application for medical
8 assistance, whichever is later, the department determines that the
9 recipient could not have reasonably been expected to be discharged
10 and resume living at home. For purposes of this section, medical
11 institution means a nursing facility, an intermediate care facility
12 for the mentally retarded, persons with intellectual disabilities,
13 or an inpatient hospital.

14 (2) The debt accruing under subsection (1) of this
15 section arises during the life of the recipient but shall be held
16 in abeyance until the death of the recipient. Any such debt to the
17 department that exists when the recipient dies shall be recovered
18 only after the death of the recipient's spouse, if any, and only
19 when the recipient is not survived by a child who either is under
20 twenty-one years of age or is blind or totally and permanently
21 disabled as defined by the Supplemental Security Income criteria.

22 (3) The debt shall include the total amount of medical
23 assistance provided when the recipient was fifty-five years of age
24 or older or during a period of institutionalization as described in
25 subsection (1) of this section and shall not include interest.

26 (4) In any probate proceedings in which the department
27 has filed a claim under this section, no additional evidence of

1 foundation shall be required for the admission of the department's
2 payment record supporting its claim if the payment record bears the
3 seal of the department, is certified as a true copy, and bears the
4 signature of an authorized representative of the department.

5 (5) The department may waive or compromise its claim, in
6 whole or in part, if the department determines that enforcement of
7 the claim would not be in the best interests of the state or would
8 result in undue hardship as provided in rules and regulations of
9 the department.

10 Sec. 14. Section 68-921, Reissue Revised Statutes of
11 Nebraska, is amended to read:

12 68-921 For purposes of sections 68-921 to 68-925:

13 (1) Assets means property which is not exempt from
14 consideration in determining eligibility for medical assistance
15 under rules and regulations adopted and promulgated under section
16 68-922;

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

21 (3) Community spouse resource allowance means the amount
22 of assets determined in accordance with section 1924 of the federal
23 Social Security Act, as amended, Public Law 100-360, 42 U.S.C.
24 1396r-5. For purposes of 42 U.S.C. 1396r-5(f)(2)(A)(i), the amount
25 specified by the state shall be twelve thousand dollars;

26 (4) Home and community-based services means services
27 furnished under home and community-based waivers as defined in

1 Title XIX of the federal Social Security Act, as amended, 42 U.S.C.
2 1396;

3 (5) Qualified applicant means a person (a) who applies
4 for medical assistance on or after July 9, 1988, (b) who is
5 under care in a state-licensed hospital, a nursing facility, an
6 intermediate care facility for ~~the mentally retarded~~, persons
7 with intellectual disabilities, an assisted-living facility, or
8 a center for the developmentally disabled, as such terms are
9 defined in the Health Care Facility Licensure Act, or an adult
10 family home certified by the department or is receiving home
11 and community-based services, and (c) whose spouse is not under
12 such care or receiving such services and is not applying for or
13 receiving medical assistance;

14 (6) Qualified recipient means a person (a) who has
15 applied for medical assistance before July 9, 1988, and is eligible
16 for such assistance, (b) who is under care in a facility certified
17 to receive medical assistance funds or is receiving home and
18 community-based services, and (c) whose spouse is not under such
19 care or receiving such services and is not applying for or
20 receiving medical assistance; and

21 (7) Spouse means the spouse of a qualified applicant or
22 qualified recipient.

23 Sec. 15. Section 68-1202, Revised Statutes Cumulative
24 Supplement, 2012, is amended to read:

25 68-1202 Social services may be provided on behalf of
26 recipients with payments for such social services made directly
27 to vendors. Social services shall include those mandatory and

1 optional services to former, present, or potential social services
2 recipients provided for under the federal Social Security Act,
3 as amended, and described by the State of Nebraska in the
4 approved State Plan for Services. Such services may include, but
5 shall not be limited to, foster care for children, child care,
6 family planning, treatment for alcoholism and drug addiction,
7 treatment for persons with ~~mental retardation~~, an intellectual
8 disability, health-related services, protective services for
9 children, homemaker services, employment services, foster care
10 for adults, protective services for adults, transportation
11 services, home management and other functional education services,
12 housing improvement services, legal services, adult day services,
13 home delivered or congregate meals, educational services, and
14 secondary prevention services, including, but not limited to, home
15 visitation, child screening and early intervention, and parenting
16 education programs.

17 Sec. 16. Section 68-1801, Reissue Revised Statutes of
18 Nebraska, is amended to read:

19 68-1801 Sections 68-1801 to 68-1809 shall be known and
20 may be cited as the ~~ICF/MR~~ ICF/ID Reimbursement Protection Act.

21 Sec. 17. Section 68-1802, Reissue Revised Statutes of
22 Nebraska, is amended to read:

23 68-1802 For purposes of the ~~ICF/MR~~ ICF/ID Reimbursement
24 Protection Act:

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

27 (2) Intermediate care facility for ~~the mentally retarded~~

1 persons with intellectual disabilities has the definition found in
2 section 71-421;

3 (3) Medical assistance program means the program
4 established pursuant to the Medical Assistance Act; and

5 (4) Net revenue means the revenue paid to an intermediate
6 care facility for ~~the mentally retarded~~ persons with intellectual
7 disabilities for resident care, room, board, and services less
8 contractual adjustments and does not include revenue from sources
9 other than operations, including, but not limited to, interest and
10 guest meals.

11 Sec. 18. Section 68-1803, Reissue Revised Statutes of
12 Nebraska, is amended to read:

13 68-1803 (1) Each intermediate care facility for ~~the~~
14 ~~mentally retarded~~ persons with intellectual disabilities shall pay
15 a tax equal to a percentage of its net revenue for the most recent
16 State of Nebraska fiscal year. The percentage shall be (a) six
17 percent prior to January 1, 2008, (b) five and one-half percent
18 beginning January 1, 2008, through September 30, 2011, and (c) six
19 percent beginning October 1, 2011.

20 (2) Taxes collected under this section shall be
21 remitted to the State Treasurer for credit to the ~~ICF/MR~~ ICF/ID
22 Reimbursement Protection Fund.

23 (3) Taxes collected pursuant to this section shall be
24 reported on a separate line on the cost report of the intermediate
25 care facility for ~~the mentally retarded,~~ persons with intellectual
26 disabilities, regardless of how such costs are reported on any
27 other cost report or income statement. The department shall

1 recognize such tax as an allowable cost within the state plan
2 for reimbursement of intermediate care facilities for ~~the mentally~~
3 ~~retarded persons with intellectual disabilities~~ which participate
4 in the medical assistance program. The tax shall be a direct
5 pass-through and shall not be subject to cost limitations.

6 Sec. 19. Section 68-1804, Revised Statutes Cumulative
7 Supplement, 2012, is amended to read:

8 68-1804 (1) The ~~ICF/MR~~ ICF/ID Reimbursement Protection
9 Fund is created. Any money in the fund available for investment
10 shall be invested by the state investment officer pursuant to
11 the Nebraska Capital Expansion Act and the Nebraska State Funds
12 Investment Act. Interest and income earned by the fund shall be
13 credited to the fund.

14 (2) For fiscal year 2004-05, proceeds from the tax
15 imposed under section 68-1803 shall be allocated as follows:

16 (a) First, fifty-five thousand dollars to the department
17 for administration of the fund;

18 (b) Second, payment to intermediate care facilities for
19 ~~the mentally retarded persons with intellectual disabilities~~ for
20 the cost of the tax;

21 (c) Third, three hundred thousand dollars, in addition
22 to any federal medicaid matching funds, for increases in payments
23 to non-state-operated intermediate care facilities for ~~the mentally~~
24 ~~retarded persons with intellectual disabilities~~ which shall be such
25 facilities' only increase in payments for such fiscal year;

26 (d) Fourth, three hundred twelve thousand dollars, in
27 addition to any federal medicaid matching funds, for payment to

1 providers of community-based services for the purpose of reducing
2 the waiting list of persons with developmental disabilities; and

3 (e) Fifth, any money remaining in the fund after the
4 allocations required by subdivisions (2)(a) through (d) of this
5 section have been made shall be transferred to the General Fund.

6 (3) For FY2005-06 through FY2010-11, proceeds from the
7 tax imposed pursuant to section 68-1803 shall be remitted to the
8 State Treasurer for credit as follows:

9 (a) To the ~~ICF/MR~~ ICF/ID Reimbursement Protection Fund
10 for allocation as described in this subdivision: (i) Fifty-five
11 thousand dollars for administration of the fund; (ii) the amount
12 needed to reimburse intermediate care facilities for ~~the mentally~~
13 ~~retarded~~ persons with intellectual disabilities for the cost of
14 the tax; (iii) three hundred thousand dollars for payment of rates
15 to non-state-operated intermediate care facilities; and (iv) three
16 hundred twelve thousand dollars for community-based services for
17 persons with developmental disabilities; and

18 (b) To the General Fund: The remainder of the proceeds.

19 (4) For FY2011-12 and each fiscal year thereafter,
20 proceeds from the tax imposed pursuant to section 68-1803 shall be
21 remitted to the State Treasurer for credit to the ~~ICF/MR~~ ICF/ID
22 Reimbursement Protection Fund for allocation as follows:

23 (a) First, fifty-five thousand dollars for administration
24 of the fund;

25 (b) Second, the amount needed to reimburse intermediate
26 care facilities for ~~the mentally retarded~~ persons with intellectual
27 disabilities for the cost of the tax;

1 (c) Third, three hundred twelve thousand dollars
2 for community-based services for persons with developmental
3 disabilities;

4 (d) Fourth, six hundred thousand dollars or such lesser
5 amount as may be available in the fund for non-state-operated
6 intermediate care facilities for ~~the mentally retarded~~, persons
7 with intellectual disabilities, in addition to any continuation
8 appropriations percentage increase provided by the Legislature
9 to nongovernmental intermediate care facilities for ~~the mentally~~
10 ~~retarded~~ persons with intellectual disabilities under the medical
11 assistance program, subject to approval by the federal Centers
12 for Medicare and Medicaid Services of the department's annual
13 application amending the medicaid state plan reimbursement
14 methodology for intermediate care facilities for ~~the mentally~~
15 ~~retarded~~; persons with intellectual disabilities; and

16 (e) Fifth, the remainder of the proceeds to the General
17 Fund.

18 (5) The State Treasurer shall transfer money in the
19 ICF/MR Reimbursement Protection Fund on the effective date of this
20 act to the ICF/ID Reimbursement Protection Fund.

21 Sec. 20. Section 68-1805, Reissue Revised Statutes of
22 Nebraska, is amended to read:

23 68-1805 (1) On or before July 1, 2004, the department
24 shall submit an application to the Centers for Medicare and
25 Medicaid Services of the United States Department of Health and
26 Human Services amending the state medicaid plan to provide for
27 utilization of money in the ~~ICF/MR~~ ICF/ID Reimbursement Protection

1 Fund to increase medicaid payments to intermediate care facilities
2 for ~~the mentally retarded~~, persons with intellectual disabilities.

3 (2) The tax imposed under section 68-1803 is not due and
4 payable until such amendment to the state medicaid plan is approved
5 by the Centers for Medicare and Medicaid Services.

6 Sec. 21. Section 68-1806, Reissue Revised Statutes of
7 Nebraska, is amended to read:

8 68-1806 (1) Collection of the tax imposed by section
9 68-1803 shall be discontinued if:

10 (a) The amendment to the state medicaid plan described
11 in section 68-1805 is disapproved by the Centers for Medicare and
12 Medicaid Services;

13 (b) The department reduces rates paid to intermediate
14 care facilities for ~~the mentally retarded~~ persons with intellectual
15 disabilities to an amount less than the rates effective September
16 1, 2003; or

17 (c) The department or any other state agency attempts
18 to utilize the money in the ~~ICF/MR~~ ICF/ID Reimbursement Protection
19 Fund for any use other than uses permitted pursuant to the ~~ICF/MR~~
20 ICF/ID Reimbursement Protection Act.

21 (2) If collection of the tax is discontinued as provided
22 in subsection (1) of this section, all money in the fund shall
23 be returned to the intermediate care facilities for ~~the mentally~~
24 ~~retarded~~ persons with intellectual disabilities from which the tax
25 was collected on the same basis as the tax was assessed.

26 Sec. 22. Section 68-1807, Reissue Revised Statutes of
27 Nebraska, is amended to read:

1 68-1807 (1) An intermediate care facility for ~~the~~
2 ~~mentally retarded persons with intellectual disabilities~~ that fails
3 to pay the tax required by section 68-1803 shall be subject to a
4 penalty of five hundred dollars per day of delinquency. The total
5 amount of the penalty assessed under this section shall not exceed
6 five percent of the tax due from the intermediate care facility for
7 ~~the mentally retarded persons with intellectual disabilities~~ for
8 the year for which the tax is assessed.

9 (2) The department shall collect the penalties and remit
10 them to the State Treasurer for distribution in accordance with
11 Article VII, section 5, of the Constitution of Nebraska.

12 Sec. 23. Section 68-1808, Reissue Revised Statutes of
13 Nebraska, is amended to read:

14 68-1808 An intermediate care facility for ~~the mentally~~
15 ~~retarded persons with intellectual disabilities~~ that has paid a tax
16 that is not required by section 68-1803 may file a claim for refund
17 with the department. The department may by rule and regulation
18 establish procedures for filing and consideration of such claims.

19 Sec. 24. Section 68-1809, Reissue Revised Statutes of
20 Nebraska, is amended to read:

21 68-1809 The department may adopt and promulgate rules and
22 regulations to carry out the ~~ICF/MR~~ ICF/ID Reimbursement Protection
23 Act.

24 Sec. 25. Section 71-413, Reissue Revised Statutes of
25 Nebraska, is amended to read:

26 71-413 Health care facility means an ambulatory surgical
27 center, an assisted-living facility, a center or group home for

1 the developmentally disabled, a critical access hospital, a general
2 acute hospital, a health clinic, a hospital, an intermediate
3 care facility, an intermediate care facility for ~~the mentally~~
4 ~~retarded~~, persons with intellectual disabilities, a long-term care
5 hospital, a mental health center, a nursing facility, a pharmacy,
6 a psychiatric or mental hospital, a public health clinic, a
7 rehabilitation hospital, a skilled nursing facility, or a substance
8 abuse treatment center.

9 Sec. 26. Section 71-421, Reissue Revised Statutes of
10 Nebraska, is amended to read:

11 71-421 Intermediate care facility for ~~the mentally~~
12 ~~retarded~~ persons with intellectual disabilities means a facility
13 where shelter, food, and training or habilitation services, advice,
14 counseling, diagnosis, treatment, care, nursing care, or related
15 services are provided for a period of more than twenty-four
16 consecutive hours to four or more persons residing at such facility
17 who have ~~mental retardation or related conditions~~, including
18 ~~epilepsy, cerebral palsy, or other developmental disabilities~~. a
19 developmental disability.

20 Sec. 27. Section 71-434, Reissue Revised Statutes of
21 Nebraska, is amended to read:

22 71-434 (1) Licensure activities under the Health Care
23 Facility Licensure Act shall be funded by license fees. An
24 applicant for an initial or renewal license under section 71-433
25 shall pay a license fee as provided in this section.

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

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

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

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

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

11 Such additional fee shall be no more than two thousand
12 six hundred dollars for a hospital or a health clinic operating
13 as an ambulatory surgical center, no more than two thousand
14 dollars for an assisted-living facility, a health clinic providing
15 hemodialysis or labor and delivery services, an intermediate care
16 facility, an intermediate care facility for ~~the mentally retarded,~~
17 persons with intellectual disabilities, a nursing facility, or
18 a skilled nursing facility, no more than one thousand dollars
19 for home health agencies, hospice services, and centers for the
20 developmentally disabled, and no more than seven hundred dollars
21 for all other health care facilities and health care services.

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

27 (4) The department shall also collect the fee provided in

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

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

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

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

16 Sec. 28. Section 71-1107, Reissue Revised Statutes of
17 Nebraska, is amended to read:

18 71-1107 Developmental disability means ~~mental retardation~~
19 an intellectual disability or a severe chronic cognitive
20 impairment, other than mental illness, that is manifested before
21 the age of twenty-two years and is likely to continue indefinitely.

22 Sec. 29. Section 71-1110, Reissue Revised Statutes of
23 Nebraska, is amended to read:

24 71-1110 ~~Mental retardation~~ Intellectual disability
25 means a state of significantly subaverage general intellectual
26 functioning existing concurrently with deficits in adaptive
27 behavior which originates in the developmental period.

1 Sec. 30. Section 71-2102, Reissue Revised Statutes of
2 Nebraska, is amended to read:

3 71-2102 The Legislature finds that shaken baby syndrome
4 is the medical term used to describe the violent shaking of an
5 infant or child and the injuries or other results sustained by
6 the infant or child. The Legislature further finds that shaken
7 baby syndrome may occur when an infant or child is violently
8 shaken as part of a pattern of abuse or because an adult has
9 momentarily succumbed to the frustration of responding to a crying
10 infant or child. The Legislature further finds that these injuries
11 can include brain swelling and damage, subdural hemorrhage, ~~mental~~
12 ~~retardation,~~ intellectual disability, or death. The Legislature
13 further finds and declares that there is a present and growing need
14 to provide programs aimed at reducing the number of cases of shaken
15 baby syndrome in Nebraska.

16 Sec. 31. Section 71-2411, Reissue Revised Statutes of
17 Nebraska, is amended to read:

18 71-2411 For purposes of the Emergency Box Drug Act:

19 (1) Authorized personnel means any medical doctor, doctor
20 of osteopathy, registered nurse, licensed practical nurse, nurse
21 practitioner, pharmacist, or physician assistant;

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

24 (3) Drug means any prescription drug or device or legend
25 drug or device defined under section 38-2841, any nonprescription
26 drug as defined under section 38-2829, any controlled substance
27 as defined under section 28-405, or any device as defined under

1 section 38-2814;

2 (4) Emergency box drugs means drugs required to meet the
3 immediate therapeutic needs of patients when the drugs are not
4 available from any other authorized source in time to sufficiently
5 prevent risk of harm to such patients by the delay resulting from
6 obtaining such drugs from such other authorized source;

7 (5) Long-term care facility means an intermediate care
8 facility, an intermediate care facility for ~~the mentally retarded,~~
9 persons with intellectual disabilities, a long-term care hospital,
10 a mental health center, a nursing facility, or a skilled nursing
11 facility, as such terms are defined in the Health Care Facility
12 Licensure Act;

13 (6) Multiple dose vial means any bottle in which more
14 than one dose of a liquid drug is stored or contained;

15 (7) Pharmacist means a pharmacist as defined in section
16 38-2832 who is employed by a supplying pharmacy or who has
17 contracted with a long-term care facility to provide consulting
18 services; and

19 (8) Supplying pharmacy means a pharmacy that supplies
20 drugs for an emergency box located in a long-term care facility.
21 Drugs in the emergency box are owned by the supplying pharmacy.

22 Sec. 32. Section 71-2445, Reissue Revised Statutes of
23 Nebraska, is amended to read:

24 71-2445 For purposes of the Automated Medication Systems
25 Act:

26 (1) Automated medication distribution machine means a
27 type of automated medication system that stores medication to

1 be administered to a patient by a person credentialed under the
2 Uniform Credentialing Act;

3 (2) Automated medication system means a mechanical system
4 that performs operations or activities, other than compounding,
5 administration, or other technologies, relative to storage and
6 packaging for dispensing or distribution of medications and that
7 collects, controls, and maintains all transaction information
8 and includes, but is not limited to, a prescription medication
9 distribution machine or an automated medication distribution
10 machine. An automated medication system may only be used in
11 conjunction with the provision of pharmacist care;

12 (3) Chart order means an order for a drug or device
13 issued by a practitioner for a patient who is in the hospital
14 where the chart is stored or for a patient receiving detoxification
15 treatment or maintenance treatment pursuant to section 28-412.
16 Chart order does not include a prescription;

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

18 (5) Long-term care facility means an intermediate care
19 facility, an intermediate care facility for ~~the mentally retarded,~~
20 persons with intellectual disabilities, a long-term care hospital,
21 a mental health center, a nursing facility, or a skilled nursing
22 facility, as such terms are defined in the Health Care Facility
23 Licensure Act;

24 (6) Medical order means a prescription, a chart order, or
25 an order for pharmaceutical care issued by a practitioner;

26 (7) Pharmacist means any person who is licensed by the
27 State of Nebraska to practice pharmacy;

1 (8) Pharmacist care means the provision by a pharmacist
2 of medication therapy management, with or without the dispensing of
3 drugs or devices, intended to achieve outcomes related to the cure
4 or prevention of a disease, elimination or reduction of a patient's
5 symptoms, or arresting or slowing of a disease process;

6 (9) Pharmacist remote order entry means entering an order
7 into a computer system or drug utilization review by a pharmacist
8 licensed to practice pharmacy in the State of Nebraska and located
9 within the United States, pursuant to medical orders in a hospital,
10 long-term care facility, or pharmacy licensed under the Health Care
11 Facility Licensure Act;

12 (10) Practice of pharmacy means (a) the interpretation,
13 evaluation, and implementation of a medical order, (b) the
14 dispensing of drugs and devices, (c) drug product selection,
15 (d) the administration of drugs or devices, (e) drug utilization
16 review, (f) patient counseling, (g) the provision of pharmaceutical
17 care, and (h) the responsibility for compounding and labeling of
18 dispensed or repackaged drugs and devices, proper and safe storage
19 of drugs and devices, and maintenance of proper records. The active
20 practice of pharmacy means the performance of the functions set
21 out in this subdivision by a pharmacist as his or her principal or
22 ordinary occupation;

23 (11) Practitioner means a certified registered nurse
24 anesthetist, a certified nurse midwife, a dentist, an optometrist,
25 a nurse practitioner, a physician assistant, a physician, a
26 podiatrist, or a veterinarian;

27 (12) Prescription means an order for a drug or device

1 issued by a practitioner for a specific patient, for emergency use,
2 or for use in immunizations. Prescription does not include a chart
3 order;

4 (13) Prescription medication distribution machine means
5 a type of automated medication system that packages, labels, or
6 counts medication in preparation for dispensing of medications by a
7 pharmacist pursuant to a prescription; and

8 (14) Telepharmacy means the provision of pharmacist
9 care, by a pharmacist located within the United States, using
10 telecommunications, remote order entry, or other automations and
11 technologies to deliver care to patients or their agents who are
12 located at sites other than where the pharmacist is located.

13 Sec. 33. Section 71-5803.09, Reissue Revised Statutes of
14 Nebraska, is amended to read:

15 71-5803.09 Intermediate care facility has the same
16 meaning as in section 71-420 and includes an intermediate care
17 facility for ~~the mentally retarded~~ persons with intellectual
18 disabilities that has sixteen or more beds. Intermediate care
19 facility for ~~the mentally retarded~~ persons with intellectual
20 disabilities has the same meaning as in section 71-421.

21 Sec. 34. Section 71-6018.01, Reissue Revised Statutes of
22 Nebraska, is amended to read:

23 71-6018.01 (1) Unless a waiver is granted pursuant to
24 subsection (2) of this section, a nursing facility shall use the
25 services of (a) a licensed registered nurse for at least eight
26 consecutive hours per day, seven days per week and (b) a licensed
27 registered nurse or licensed practical nurse on a twenty-four-hour

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

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

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

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

27 (iii) The department finds that, for any periods in which

1 licensed nursing services are not available, a licensed registered
2 nurse or physician is obligated to respond immediately to telephone
3 calls from the facility or hospital; or

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

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

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

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

1 Sec. 35. Section 71-6039, Reissue Revised Statutes of
2 Nebraska, is amended to read:

3 71-6039 (1) No person shall act as a nursing assistant in
4 a nursing home unless such person:

5 (a) Is at least sixteen years of age and has not been
6 convicted of a crime involving moral turpitude;

7 (b) Is able to speak and understand the English language
8 or a language understood by a substantial portion of the nursing
9 home residents; and

10 (c) Has successfully completed a basic course of training
11 approved by the department for nursing assistants within one
12 hundred twenty days of initial employment in the capacity of a
13 nursing assistant at any nursing home.

14 (2)(a) A registered nurse or licensed practical nurse
15 whose license has been revoked, suspended, or voluntarily
16 surrendered in lieu of discipline may not act as a nursing
17 assistant in a nursing home.

18 (b) If a person registered as a nursing assistant becomes
19 licensed as a registered nurse or licensed practical nurse, his or
20 her registration as a nursing assistant becomes null and void as of
21 the date of licensure.

22 (c) A person listed on the Nurse Aide Registry with
23 respect to whom a finding of conviction has been placed on the
24 registry may petition the department to have such finding removed
25 at any time after one year has elapsed since the date such finding
26 was placed on the registry.

27 (3) The department may prescribe a curriculum for

1 training nursing assistants and may adopt and promulgate rules
2 and regulations for such courses of training. The content of
3 the courses of training and competency evaluation programs shall
4 be consistent with federal requirements unless exempted. The
5 department may approve courses of training if such courses of
6 training meet the requirements of this section. Such courses of
7 training shall include instruction on the responsibility of each
8 nursing assistant to report suspected abuse or neglect pursuant
9 to sections 28-372 and 28-711. Nursing homes may carry out
10 approved courses of training within the nursing home, except that
11 nursing homes may not conduct the competency evaluation part of
12 the program. The prescribed training shall be administered by a
13 licensed registered nurse.

14 (4) For nursing assistants at intermediate care
15 facilities for ~~the mentally retarded,~~ persons with intellectual
16 disabilities, such courses of training shall be no less than twenty
17 hours in duration and shall include at least fifteen hours of
18 basic personal care training and five hours of basic therapeutic
19 and emergency procedure training, and for nursing assistants at
20 all nursing homes other than intermediate care facilities for ~~the~~
21 ~~mentally retarded,~~ persons with intellectual disabilities, such
22 courses shall be no less than seventy-five hours in duration.

23 (5) This section shall not prohibit any facility from
24 exceeding the minimum hourly or training requirements.

25 Sec. 36. Section 71-6721, Reissue Revised Statutes of
26 Nebraska, is amended to read:

27 71-6721 For purposes of the Medication Aide Act:

1 (1) Ability to take medications independently means the
2 individual is physically capable of (a) the act of taking or
3 applying a dose of a medication, (b) taking or applying the
4 medication according to a specific prescription or recommended
5 protocol, and (c) observing and monitoring himself or herself for
6 desired effect, side effects, interactions, and contraindications
7 of the medication and taking appropriate actions based upon those
8 observations;

9 (2) Administration of medication includes, but is not
10 limited to (a) providing medications for another person according
11 to the five rights, (b) recording medication provision, and (c)
12 observing, monitoring, reporting, and otherwise taking appropriate
13 actions regarding desired effects, side effects, interactions, and
14 contraindications associated with the medication;

15 (3) Caretaker means a parent, foster parent, family
16 member, friend, or legal guardian who provides care for an
17 individual;

18 (4) Child care facility means an entity or a person
19 licensed under the Child Care Licensing Act;

20 (5) Competent individual means an adult who is the
21 ultimate recipient of medication and who has the capability and
22 capacity to make an informed decision about taking medications;

23 (6) Department means the Department of Health and Human
24 Services;

25 (7) Direction and monitoring means the acceptance
26 of responsibility for observing and taking appropriate action
27 regarding any desired effects, side effects, interactions, and

1 contraindications associated with the medication by a (a) competent
2 individual for himself or herself, (b) caretaker, or (c) licensed
3 health care professional;

4 (8) Facility means a health care facility or health
5 care service as defined in section 71-413 or 71-415 or an
6 entity or person certified by the department to provide home
7 and community-based services;

8 (9) Five rights means getting the right drug to the right
9 recipient in the right dosage by the right route at the right time;

10 (10) Health care professional means an individual for
11 whom administration of medication is included in the scope of
12 practice;

13 (11) Home means the residence of an individual but does
14 not include any facility or school;

15 (12) Intermediate care facility for ~~the mentally retarded~~
16 persons with intellectual disabilities has the definition found in
17 section 71-421;

18 (13) Informed decision means a decision made knowingly,
19 based upon capacity to process information about choices and
20 consequences, and made voluntarily;

21 (14) Medication means any prescription or nonprescription
22 drug intended for treatment or prevention of disease or to affect
23 body function in humans;

24 (15) Medication aide means an individual who is listed on
25 the medication aide registry operated by the department;

26 (16) Nonprescription drug has the definition found in
27 section 38-2829;

1 (17) Nursing home means any facility or a distinct part
2 of any facility that provides care as defined in sections 71-420,
3 71-422, 71-424, and 71-429;

4 (18) Prescription drug has the definition of prescription
5 drug or device as found in section 38-2841;

6 (19) Provision of medication means the component of the
7 administration of medication that includes giving or applying a
8 dose of a medication to an individual and includes helping an
9 individual in giving or applying such medication to himself or
10 herself;

11 (20) PRN means an administration scheme in which a
12 medication is not routine, is taken as needed, and requires
13 assessment for need and effectiveness;

14 (21) Recipient means a person who is receiving
15 medication;

16 (22) Routine, with reference to medication, means the
17 frequency of administration, amount, strength, and method are
18 specifically fixed; and

19 (23) School means an entity or person meeting the
20 requirements for a school set by Chapter 79.

21 Sec. 37. Section 71-6725, Reissue Revised Statutes of
22 Nebraska, is amended to read:

23 71-6725 (1) The minimum competencies for a medication
24 aide, a person licensed to operate a child care facility or a staff
25 member of a child care facility, or a staff member of a school
26 shall include (a) maintaining confidentiality, (b) complying with
27 a recipient's right to refuse to take medication, (c) maintaining

1 hygiene and current accepted standards for infection control, (d)
2 documenting accurately and completely, (e) providing medications
3 according to the five rights, (f) having the ability to understand
4 and follow instructions, (g) practicing safety in application
5 of medication procedures, (h) complying with limitations and
6 conditions under which a medication aide may provide medications,
7 and (i) having an awareness of abuse and neglect reporting
8 requirements and any other areas as shall be determined by rules or
9 regulations.

10 (2) The Department of Health and Human Services shall
11 adopt and promulgate rules and regulations setting minimum
12 standards for competencies listed in subsection (1) of this section
13 and methods for competency assessment of medication aides. The
14 Department of Health and Human Services shall adopt and promulgate
15 rules and regulations setting methods for competency assessment
16 of the person licensed to operate a child care facility or staff
17 of child care facilities. The State Department of Education shall
18 adopt and promulgate rules and regulations setting methods for
19 competency assessment of the school staff member.

20 (3) A medication aide, except ~~(except~~ one who is
21 employed by a nursing home, an intermediate care facility for
22 ~~the mentally retarded,~~ persons with intellectual disabilities,
23 or an assisted-living ~~facility)~~, facility, a person licensed to
24 operate a child care facility or a staff member of a child care
25 facility, or a staff member of a school shall not be required to
26 take a course. The medication aide shall be assessed to determine
27 that the medication aide has the competencies listed in subsection

1 (1) of this section.

2 (4) A medication aide providing services in an
3 assisted-living facility as defined in section 71-406, a nursing
4 home, or an intermediate care facility for ~~the mentally retarded~~
5 persons with intellectual disabilities shall be required to have
6 completed a forty-hour course on the competencies listed in
7 subsection (1) of this section and competency standards established
8 through rules and regulations as provided for in subsection (2)
9 of this section, except that a medication aide who has, prior
10 to January 1, 2003, completed a twenty-hour course and passed
11 an examination developed and administered by the Department of
12 Health and Human Services may complete a second twenty-hour course
13 supplemental to the first twenty-hour course in lieu of completing
14 the forty-hour course. The department shall adopt and promulgate
15 rules and regulations regarding the procedures and criteria
16 for curriculum. Competency assessment shall include passing an
17 examination developed and administered by the department. Criteria
18 for establishing a passing standard for the examination shall be
19 established in rules and regulations.

20 (5) Medication aides providing services in nursing homes
21 or intermediate care facilities for ~~the mentally retarded persons~~
22 with intellectual disabilities shall also meet the requirements set
23 forth in section 71-6039.

24 Sec. 38. Section 71-6727, Reissue Revised Statutes of
25 Nebraska, is amended to read:

26 71-6727 (1) The department shall list each medication
27 aide registration in the Medication Aide Registry as a Medication

1 Aide-40-Hour, Medication Aide-20-Hour, or Medication Aide. A
2 listing in the registry shall be valid for the term of the
3 registration and upon renewal unless such listing is refused
4 renewal or is removed as provided in section 71-6730.

5 (2) The registry shall contain the following information
6 on each individual who meets the conditions in section 71-6726:

7 (a) The individual's full name; (b) information necessary to
8 identify individuals, including those qualified to provide
9 medications in nursing homes, intermediate care facilities for
10 ~~the mentally retarded,~~ persons with intellectual disabilities, or
11 assisted-living facilities; (c) any conviction of a felony or
12 misdemeanor reported to the department; and (d) other information
13 as the department may require by rule and regulation.

14 Sec. 39. Section 77-1827, Reissue Revised Statutes of
15 Nebraska, is amended to read:

16 77-1827 The real property of persons with ~~mental~~
17 ~~retardation or~~ an intellectual disability or a mental disorder so
18 sold, or any interest they may have in real property sold for
19 taxes, may be redeemed at any time within five years after such
20 sale.

21 Sec. 40. Section 77-2704.12, Revised Statutes Cumulative
22 Supplement, 2012, is amended to read:

23 77-2704.12 (1) Sales and use taxes shall not be imposed
24 on the gross receipts from the sale, lease, or rental of
25 and the storage, use, or other consumption in this state of
26 purchases by (a) any nonprofit organization created exclusively
27 for religious purposes, (b) any nonprofit organization providing

1 services exclusively to the blind, (c) any nonprofit private
2 educational institution established under sections 79-1601 to
3 79-1607, (d) any regionally or nationally accredited, nonprofit,
4 privately controlled college or university with its primary campus
5 physically located in Nebraska, (e) any nonprofit (i) hospital,
6 (ii) health clinic when one or more hospitals or the parent
7 corporations of the hospitals own or control the health clinic
8 for the purpose of reducing the cost of health services or when
9 the health clinic receives federal funds through the United States
10 Public Health Service for the purpose of serving populations that
11 are medically underserved, (iii) skilled nursing facility, (iv)
12 intermediate care facility, (v) assisted-living facility, (vi)
13 intermediate care facility for ~~the mentally retarded,~~ persons
14 with intellectual disabilities, (vii) nursing facility, (viii)
15 home health agency, (ix) hospice or hospice service, (x) respite
16 care service, or (xi) mental health center licensed under the
17 Health Care Facility Licensure Act, (f) any nonprofit licensed
18 child-caring agency, (g) any nonprofit licensed child placement
19 agency, or (h) any nonprofit organization certified by the
20 Department of Health and Human Services to provide community-based
21 services for persons with developmental disabilities.

22 (2) Any organization listed in subsection (1) of this
23 section shall apply for an exemption on forms provided by the
24 Tax Commissioner. The application shall be approved and a numbered
25 certificate of exemption received by the applicant organization in
26 order to be exempt from the sales and use tax.

27 (3) The appointment of purchasing agents shall be

1 recognized for the purpose of altering the status of the
2 construction contractor as the ultimate consumer of building
3 materials which are physically annexed to the structure and
4 which subsequently belong to the owner of the organization or
5 institution. The appointment of purchasing agents shall be in
6 writing and occur prior to having any building materials annexed
7 to real estate in the construction, improvement, or repair. The
8 contractor who has been appointed as a purchasing agent may apply
9 for a refund of or use as a credit against a future use tax
10 liability the tax paid on inventory items annexed to real estate
11 in the construction, improvement, or repair of a project for a
12 licensed not-for-profit institution.

13 (4) Any organization listed in subsection (1) of this
14 section which enters into a contract of construction, improvement,
15 or repair upon property annexed to real estate without first
16 issuing a purchasing agent authorization to a contractor or
17 repairperson prior to the building materials being annexed to
18 real estate in the project may apply to the Tax Commissioner for
19 a refund of any sales and use tax paid by the contractor or
20 repairperson on the building materials physically annexed to real
21 estate in the construction, improvement, or repair.

22 (5) Any person purchasing, storing, using, or
23 otherwise consuming building materials in the performance of any
24 construction, improvement, or repair by or for any institution
25 enumerated in subsection (1) of this section which is licensed upon
26 completion although not licensed at the time of construction or
27 improvement, which building materials are annexed to real estate

1 and which subsequently belong to the owner of the institution,
2 shall pay any applicable sales or use tax thereon. Upon becoming
3 licensed and receiving a numbered certificate of exemption,
4 the institution organized not for profit shall be entitled to
5 a refund of the amount of taxes so paid in the performance
6 of such construction, improvement, or repair and shall submit
7 whatever evidence is required by the Tax Commissioner sufficient
8 to establish the total sales and use tax paid upon the building
9 materials physically annexed to real estate in the construction,
10 improvement, or repair.

11 Sec. 41. Section 79-712, Reissue Revised Statutes of
12 Nebraska, is amended to read:

13 79-712 Provisions shall be made by the proper local
14 school authorities for instructing the pupils in all public
15 schools in a comprehensive health education program which shall
16 include instruction (1) as to the physiological, psychological, and
17 sociological aspects of drug use, misuse, and abuse and (2) on
18 ~~mental retardation~~ intellectual disability and other developmental
19 disabilities, such as cerebral palsy, autism, and epilepsy, their
20 causes, and the prevention thereof through proper nutrition and
21 the avoidance of the consumption of drugs as defined in this
22 section. For purposes of this section, drugs means any and all
23 biologically active substances used in the treatment of illnesses
24 or for recreation or pleasure. Special emphasis shall be placed
25 upon the commonly abused drugs of tobacco, alcohol, marijuana,
26 hallucinogenics, amphetamines, barbiturates, and narcotics.

27 Sec. 42. Section 79-1118.01, Reissue Revised Statutes of

1 Nebraska, is amended to read:

2 79-1118.01 Disability means an impairment which causes
3 a child to be classified as ~~mentally retarded, hard of hearing,~~
4 ~~deaf, speech and language impaired, blind and visually impaired,~~
5 ~~behaviorally disordered, orthopedically impaired, other health~~
6 ~~impaired, deaf-blind, or developmentally delayed~~ diagnosed with
7 an intellectual disability, a hearing impairment, a speech
8 impairment, a language impairment, a visual impairment, a behavior
9 disorder, an orthopedic impairment, another health impairment,
10 deafness, blindness, or a developmental delay or as having multiple
11 disabilities or specific learning disabilities, traumatic brain
12 injury, or autism and causes such child to need special education
13 and related services. For purposes of this section:

14 (1) Autism means a developmental disability significantly
15 affecting verbal and nonverbal communication and social
16 interaction, generally evident before age three, that adversely
17 affects a child's educational performance. Other characteristics
18 often associated with autism are engagement in repetitive
19 activities and stereotyped movements, resistance to environmental
20 change or change in daily routines, and unusual responses to
21 sensory experiences. Autism does not apply if a child's educational
22 performance is adversely affected primarily because the child has
23 a serious emotional disturbance;

24 (2) ~~Behaviorally disordered~~ Behavior disorder means a
25 condition in which a child exhibits one or more of the following
26 characteristics over a long period of time and to a marked degree
27 which adversely affects educational performance:

1 (a) An inability to learn which cannot be explained by
2 intellectual, sensory, or health factors;

3 (b) An inability to build or maintain satisfactory
4 interpersonal relationships with peers and teachers;

5 (c) Inappropriate types of behavior or feelings under
6 normal circumstances;

7 (d) A general pervasive mood of unhappiness or
8 depression; or

9 (e) A tendency to develop physical symptoms or fears
10 associated with personal or school problems.

11 Behaviorally disordered Behavior disorder includes
12 schizophrenia but does not include social maladjustment unless
13 the characteristics defined in subdivision (a) or (b) of this
14 subdivision are also present;

15 (3) Blind and visually impaired means partially seeing
16 or blind, which visual impairment, even with correction, adversely
17 affects a child's educational performance;

18 (4) Deaf means a hearing impairment which is so severe
19 that processing linguistic information through hearing, with or
20 without amplification, is impaired to the extent that educational
21 performance is adversely affected;

22 (5) Deaf-blind means concomitant hearing and visual
23 impairments, the combination of which causes such severe
24 communication and other developmental and educational problems
25 that such impairments cannot be accommodated in special education
26 programs solely for children who are deaf or blind;

27 (6) Developmental delay means either a significant

1 delay in function in one or more of the following areas: (a)
2 Cognitive development; (b) physical development; (c) communication
3 development; (d) social or emotional development; or (e) adaptive
4 behavior or skills development, or a diagnosed physical or mental
5 condition that has a high probability of resulting in a substantial
6 delay in function in one or more of such areas;

7 (7) Hard of hearing means a hearing impairment, whether
8 permanent or fluctuating, which adversely affects educational
9 performance but is not included under the term deaf in subdivision
10 (4) of this section;

11 (8) ~~Mentally retarded~~ Intellectual disability means a
12 condition in which a child exhibits significantly subaverage
13 general intellectual functioning existing concurrently with
14 deficits in adaptive behavior and manifested during the
15 developmental period which adversely affects educational
16 performance;

17 (9) Multiple disabilities means concomitant impairments,
18 such as ~~mentally retarded-blind~~ intellectual disability-blind
19 or ~~mentally retarded-orthopedically impaired,~~ intellectual
20 disability-orthopedic impairment, the combination of which causes
21 such severe educational problems that a child with such impairments
22 cannot be accommodated in special education programs for one of the
23 impairments. Multiple disabilities does not include deaf-blind;

24 (10) ~~Orthopedically impaired~~ Orthopedic impairment means
25 a severe orthopedic impairment which adversely affects a child's
26 educational performance. Severe orthopedic impairments include
27 impairments caused by (a) congenital anomaly, including, but

1 not limited to, clubfoot or absence of a member, (b) disease,
2 including, but not limited to, poliomyelitis or bone tuberculosis,
3 or (c) other causes, including, but not limited to, cerebral palsy,
4 amputations, and fractures and burns which cause contractures;

5 (11) Other health impaired means having limited strength,
6 vitality, or alertness due to chronic or acute health problems,
7 including, but not limited to, a heart condition, tuberculosis,
8 rheumatic fever, nephritis, asthma, sickle cell anemia, hemophilia,
9 epilepsy, lead poisoning, leukemia, or diabetes, which adversely
10 affects a child's educational performance;

11 (12) Specific learning disability means a disorder in
12 one or more of the basic psychological processes involved in
13 understanding or in using language, spoken or written, which may
14 manifest itself in an imperfect ability to listen, think, speak,
15 read, write, spell, or do mathematical calculations. Specific
16 learning disability includes, but is not limited to, perceptual
17 disabilities, brain injury, minimal brain dysfunction, dyslexia,
18 and developmental aphasia;

19 (13) Speech-and-language-impaired means having a
20 communication disorder such as stuttering, impaired articulation,
21 language impairments, or voice impairment which adversely affects a
22 child's educational performance; and

23 (14) Traumatic brain injury means an acquired injury
24 to the brain caused by an external physical force, resulting
25 in total or partial functional disability or psychosocial
26 impairment, or both, that adversely affects a child's educational
27 performance. Traumatic brain injury applies to open or closed

1 head injuries resulting in impairments in one or more areas,
2 including cognition; language; memory; attention; reasoning;
3 abstract thinking; judgment; problem solving; sensory, perceptual,
4 and motor abilities; psychosocial behavior; physical functions;
5 information processing; and speech. Traumatic brain injury does not
6 include brain injuries that are congenital or degenerative or brain
7 injuries induced by birth trauma.

8 The State Department of Education may group or subdivide
9 the classifications of children with disabilities for the purpose
10 of program description and reporting. The department shall
11 establish eligibility criteria and age ranges for the disability
12 classification of developmental delay.

13 Sec. 43. Section 79-1124, Revised Statutes Cumulative
14 Supplement, 2012, is amended to read:

15 79-1124 Service agency means the school district,
16 educational service unit, local or regional office of ~~mental~~
17 ~~retardation,~~ intellectual disability, interim-program school, or
18 some combination thereof or such other agency as may provide a
19 special education program approved by the State Department of
20 Education, including an institution not wholly owned or controlled
21 by the state or any political subdivision to the extent that
22 it provides educational or other services for the benefit of
23 children from the age of five to the age of twenty-one years with
24 disabilities if such services are nonsectarian in nature.

25 Sec. 44. Section 79-1128, Reissue Revised Statutes of
26 Nebraska, is amended to read:

27 79-1128 The special education programs required by

1 section 79-1127 may be provided by any school district, by
2 contracting with another school district or service agency, or by
3 some combination of school districts, an educational service unit,
4 combination of educational service units, the local or regional
5 office of ~~mental retardation~~, intellectual disability, any program
6 approved by the State of Nebraska, or any combination thereof,
7 except that only nonsectarian services shall be considered for
8 approval by the State of Nebraska. Any ~~office of mental retardation~~
9 program receiving funds under the Special Education Act shall not
10 use such funds to match state funds under the provisions of other
11 programs. The members of the school board of any school district
12 not offering continuous special education programs acceptable to
13 the State Board of Education shall be in violation of the law.
14 No state funds shall be paid to any school district as long as
15 such violation exists, but no deduction shall be made from any
16 funds required by the Constitution of Nebraska to be paid to such
17 district.

18 Sec. 45. Section 83-101.06, Reissue Revised Statutes of
19 Nebraska, is amended to read:

20 83-101.06 The Department of Health and Human Services
21 shall:

22 (1) Administer the clinical programs and services of the
23 Beatrice State Developmental Center, the Lincoln Regional Center,
24 the Norfolk Regional Center, the Hastings Regional Center, and
25 such other medical facilities, including skilled nursing care and
26 intermediate care facilities, as may be provided by the department;

27 (2) Plan, develop, administer, and operate mental health

1 and ~~mental retardation~~ intellectual disability clinics, programs,
2 and services;

3 (3) Plan, develop, and execute the clinical programs and
4 services carried on by the department; and

5 (4) Represent the department in its work with the
6 University of Nebraska Medical Center concerning psychiatric
7 services.

8 Sec. 46. Section 83-112, Reissue Revised Statutes of
9 Nebraska, is amended to read:

10 83-112 (1) The Department of Health and Human Services
11 shall gather information as to the expenditures of charitable
12 institutions in this and other countries and regarding the best
13 and most successful methods of caring for persons with ~~mental~~
14 ~~retardation~~ an intellectual disability and persons with a mental
15 disorder.

16 (2) The Department of Health and Human Services shall
17 encourage scientific investigation of the treatment of mental
18 problems, epilepsy, and all other diseases and causes that
19 contribute to mental disabilities by the medical staffs of the
20 state medical institutions. The department shall provide forms for
21 statistical returns to be made by the institutions. The department
22 shall make an investigation of the conditions, causes, prevention,
23 and cure of epilepsy, ~~mental retardation,~~ intellectual disability,
24 and mental disorders. The department shall give special attention
25 to the methods of care, treatment, education, and improvement of
26 the persons served by the institutions under its control and shall
27 exercise a careful supervision of the methods to the end that, so

1 far as practicable, the best treatment and care known to modern
2 science shall be given to such persons and that the best methods of
3 teaching, improving, and educating such persons shall be used.

4 Sec. 47. Section 83-217, Reissue Revised Statutes of
5 Nebraska, is amended to read:

6 83-217 The Nebraska institution for ~~children with~~
7 ~~mental retardation and adults requiring~~ persons with intellectual
8 disabilities who require residential care shall be known and
9 designated as the Beatrice State Developmental Center.

10 Sec. 48. Section 83-218, Reissue Revised Statutes of
11 Nebraska, is amended to read:

12 83-218 The Beatrice State Developmental Center shall
13 provide residential care and humane treatment for those persons
14 with ~~mental retardation~~ an intellectual disability who require
15 residential care, shall study to improve their condition, shall
16 classify them, and shall furnish such training in industrial,
17 mechanical, agricultural, and academic subjects as they may be
18 capable of learning. Whenever the Department of Health and Human
19 Services determines that continued residence in the Beatrice State
20 Developmental Center is no longer necessary for the welfare, care,
21 treatment, or training of such person, it shall have authority
22 to discharge or transfer such person as provided in section
23 83-387. The Department of Health and Human Services shall discharge
24 any person from the Beatrice State Developmental Center without
25 requiring sterilization of such person, if the discharge satisfies
26 the requirements of this section, notwithstanding any court order,
27 judgment, or decree rendered prior to December 25, 1969, requiring

1 sterilization as a condition of discharge.

2 Sec. 49. Section 83-363, Reissue Revised Statutes of
3 Nebraska, is amended to read:

4 83-363 As used in sections 83-227.01, 83-227.02, 83-350,
5 and 83-363 to 83-380, unless the context otherwise requires:

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

8 (2) State institution means the state hospitals at
9 Lincoln, Norfolk, and Hastings, the Beatrice State Developmental
10 Center, and such other institutions as may hereafter be established
11 by the Legislature for the care and treatment of persons with a
12 mental disorder or ~~mental retardation~~, persons with an intellectual
13 disability;

14 (3) Relative means the spouse of a patient or, if the
15 patient has no spouse and is under the age of majority at the
16 time he or she is admitted, the parents of a patient in a state
17 institution; and

18 (4) Parents means either or both of a patient's natural
19 parents unless such patient has been legally adopted by other
20 parents, in which case parents means either or both of the adoptive
21 parents.

22 Sec. 50. Section 83-381, Reissue Revised Statutes of
23 Nebraska, is amended to read:

24 83-381 As used in sections 83-217, 83-218, and 83-381 to
25 83-390, unless the context otherwise requires:

26 (1) Person with ~~mental retardation~~ an intellectual
27 disability means any person of subaverage general intellectual

1 functioning which is associated with a significant impairment in
2 adaptive behavior;

3 (2) Department means the Department of Health and Human
4 Services or such person or agency within the Department of Health
5 and Human Services as the chief executive officer of the department
6 may designate; and

7 (3) Residential facility means an institution specified
8 under section 83-217 to provide residential care by the State
9 of Nebraska for persons with ~~mental retardation~~ an intellectual
10 disability.

11 Sec. 51. Section 83-382, Reissue Revised Statutes of
12 Nebraska, is amended to read:

13 83-382 Except as provided in sections 79-1148 and
14 79-1149, the department shall have jurisdiction of the admission
15 of persons with ~~mental retardation~~ an intellectual disability to a
16 residential facility. Applications for admission to a residential
17 facility shall be filed with the department.

18 Sec. 52. Section 83-383, Reissue Revised Statutes of
19 Nebraska, is amended to read:

20 83-383 (1) An application for admission shall be made in
21 writing by one of the following persons:

22 (a) If the person applying for admission has a
23 court-appointed guardian, the application shall be made by the
24 guardian; and

25 (b) If the person applying for admission does not have a
26 court-appointed guardian and has not reached the age of majority,
27 as established by section 43-2101, as such section may from time to

1 time be amended, the application shall be made by both parents if
2 they are living together or by the parent having custody of such
3 person if both parents are not then living or are not then living
4 together.

5 (2) The county court of the county of residence of any
6 person with ~~mental retardation~~ an intellectual disability or the
7 county court of the county in which a state residential facility
8 is located shall have authority to appoint a guardian for any
9 person with ~~mental retardation~~ an intellectual disability upon the
10 petition of the husband, wife, parent, person standing in loco
11 parentis to such person, a county attorney, or any authorized
12 official of the department. If the guardianship proceedings are
13 initiated by an official of the department, the costs thereof may
14 be taxed to and paid by the department if the person with ~~mental~~
15 ~~retardation~~ an intellectual disability is without means to pay the
16 costs. The department shall pay such costs upon presentation of
17 a proper claim by the judge of the county court in which the
18 proceedings were initiated. The costs of such proceedings shall
19 include court costs, attorneys' fees, sheriffs' fees, psychiatric
20 fees, and other necessary expenses of the guardianship.

21 Sec. 53. Section 83-386, Reissue Revised Statutes of
22 Nebraska, is amended to read:

23 83-386 The department shall examine all information
24 concerning the person for whom admission is requested and shall
25 determine therefrom whether the person is a person with ~~mental~~
26 ~~retardation~~ an intellectual disability and whether residence in the
27 residential facility is necessary for the welfare, care, treatment,

1 or training of such person. Such determination shall be made in
2 writing and shall set forth the reasons for the determination. If
3 at any time it shall become necessary, for want of room or other
4 cause, to discriminate in the admission of persons with ~~mental~~
5 ~~retardation~~ an intellectual disability to residential facilities,
6 the selection shall be made as follows: (1) Persons whose care is
7 necessary in order to protect themselves or the public health and
8 safety; (2) persons who are most likely to be benefited thereby;
9 (3) persons shall next be admitted in the order in which their
10 applications for admission have been filed with the department; and
11 (4) when cases are equally meritorious in all other respects, an
12 indigent person or a person from an indigent family shall be given
13 preference.

14 Sec. 54. Section 83-387, Reissue Revised Statutes of
15 Nebraska, is amended to read:

16 83-387 At such time as the department determines
17 that continued residence in a residential facility will no
18 longer benefit a person with ~~mental retardation,~~ an intellectual
19 disability, the department shall arrange for the discharge or
20 transfer of such person from the residential facility. The
21 department shall give reasonable notice to the person authorized to
22 make an application for admission for such person under subsection
23 (1) of section 83-383 that the department intends to discharge
24 or transfer such person. The department shall also be responsible
25 for the placement of such person in any other available program
26 or facility and in the development of other methods for the care,
27 treatment, and training of such person.

1 Sec. 55. Section 83-389, Reissue Revised Statutes of
2 Nebraska, is amended to read:

3 83-389 A person admitted to a residential facility under
4 the provisions of sections 83-217, 83-218, and 83-381 to 83-390
5 shall be immediately discharged from the residential facility after
6 notice of intention to remove the person with ~~mental retardation~~ an
7 intellectual disability has been given by the person authorized to
8 make an application for admission under subsection (1) of section
9 83-383 and the normal discharge procedures are completed.

10 Sec. 56. Section 83-1205, Reissue Revised Statutes of
11 Nebraska, is amended to read:

12 83-1205 Developmental disability shall mean:

- 13 (1) ~~Mental retardation~~, Intellectual disability; or
14 (2) A severe, chronic disability other than ~~mental~~
15 ~~retardation~~ an intellectual disability or mental illness which:
16 (a) Is attributable to a mental or physical impairment
17 other than a mental or physical impairment caused solely by mental
18 illness;
19 (b) Is manifested before the age of twenty-two years;
20 (c) Is likely to continue indefinitely; and
21 (d) Results in:
22 (i) In the case of a person under three years of age, at
23 least one developmental delay; or
24 (ii) In the case of a person three years of age or older,
25 a substantial limitation in three or more of the following areas of
26 major life activity, as appropriate for the person's age:
27 (A) Self-care;

1 (B) Receptive and expressive language development and
2 use;

3 (C) Learning;

4 (D) Mobility;

5 (E) Self-direction;

6 (F) Capacity for independent living; and

7 (G) Economic self-sufficiency.

8 Sec. 57. Original sections 21-610, 23-104.03, 28-105.01,
9 30-2624, 31-113, 38-2404, 42-374, 43-289, 44-710.01, 68-911,
10 68-919, 68-921, 68-1801, 68-1802, 68-1803, 68-1805, 68-1806,
11 68-1807, 68-1808, 68-1809, 71-413, 71-421, 71-434, 71-1107,
12 71-1110, 71-2102, 71-2411, 71-2445, 71-5803.09, 71-6018.01,
13 71-6039, 71-6721, 71-6725, 71-6727, 77-1827, 79-712, 79-1118.01,
14 79-1128, 83-101.06, 83-112, 83-217, 83-218, 83-363, 83-381, 83-382,
15 83-383, 83-386, 83-387, 83-389, and 83-1205, Reissue Revised
16 Statutes of Nebraska, and sections 28-401, 38-2826.01, 68-1202,
17 68-1804, 77-2704.12, and 79-1124, Revised Statutes Cumulative
18 Supplement, 2012, are repealed.

19 Sec. 58. Since an emergency exists, this act takes effect
20 when passed and approved according to law.