

## LEGISLATIVE BILL 23

Approved by the Governor June 4, 2013

Introduced by Hadley, 37; Wallman, 30.

FOR AN ACT relating to intellectual disability; to amend sections 21-610, 23-104.03, 28-105.01, 30-2624, 31-113, 38-2404, 42-374, 43-289, 44-710.01, 68-911, 68-919, 68-921, 68-1801, 68-1802, 68-1803, 68-1805, 68-1806, 68-1807, 68-1808, 68-1809, 71-413, 71-421, 71-434, 71-1101, 71-1104, 71-1107, 71-1110, 71-2102, 71-2411, 71-2445, 71-5803.09, 71-6018.01, 71-6039, 71-6721, 71-6725, 71-6727, 77-1827, 79-712, 79-1118.01, 79-1128, 83-101.06, 83-112, 83-217, 83-218, 83-363, 83-381, 83-382, 83-383, 83-386, 83-387, 83-389, and 83-1205, Reissue Revised Statutes of Nebraska, and sections 28-401, 38-2826.01, 68-1202, 68-1804, 77-2704.12, and 79-1124, Revised Statutes Cumulative Supplement, 2012; to change terminology related to mental retardation; to define and redefine terms; to rename an act and a fund; to change allocation provisions for taxes on intermediate care facilities; to eliminate obsolete provisions; to harmonize provisions; and to repeal the original sections.

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

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

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

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

23-104.03 Each county shall have the authority (1) to plan, initiate, fund, maintain, administer, and evaluate facilities, programs, and services that meet the rehabilitation, treatment, care, training, educational, residential, diagnostic, evaluation, community supervision, and protective service needs of dependent, aged, blind, disabled, ill, or infirm persons, persons with a mental disorder, and persons with ~~mental retardation~~ an intellectual disability domiciled in the county, (2) to purchase outright by installment contract or by mortgage with the power to borrow funds in connection with such contract or mortgage, hold, sell, and lease for a period of more than one year real estate necessary for use of the county to plan, initiate, fund, maintain, administer, and evaluate such facilities, programs, and services, (3) to lease personal property necessary for such facilities, programs, and services, and such lease may provide for installment payments which extend over a period of more than one year, notwithstanding the provisions of section 23-132 or 23-916, (4) to enter into compacts with other counties, state agencies, other political subdivisions, and private nonprofit agencies to exercise and carry out the powers to plan, initiate, fund, maintain, administer, and evaluate such facilities, programs, and services, and (5) to contract for such services from agencies, either public or private, which provide such services on a vendor basis. Compacts with other public agencies pursuant to subdivision (4) of this section shall be subject to the Interlocal Cooperation Act.

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

28-105.01 (1) Notwithstanding any other provision of law, the death penalty shall not be imposed upon any person who was under the age of eighteen years at the time of the commission of the crime.

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

(3) As used in subsection (2) of this section, ~~mental retardation~~ intellectual disability means significantly subaverage general intellectual

functioning existing concurrently with deficits in adaptive behavior. An intelligence quotient of seventy or below on a reliably administered intelligence quotient test shall be presumptive evidence of ~~mental retardation~~, intellectual disability.

(4) If (a) a jury renders a verdict finding the existence of one or more aggravating circumstances as provided in section 29-2520 or (b) (i) the information contains a notice of aggravation as provided in section 29-1603 and (ii) the defendant waives his or her right to a jury determination of the alleged aggravating circumstances, the court shall hold a hearing prior to any sentencing determination proceeding as provided in section 29-2521 upon a verified motion of the defense requesting a ruling that the penalty of death be precluded under subsection (2) of this section. If the court finds, by a preponderance of the evidence, that the defendant is a person with ~~mental retardation~~, an intellectual disability, the death sentence shall not be imposed. A ruling by the court that the evidence of diminished intelligence introduced by the defendant does not preclude the death penalty under subsection (2) of this section shall not restrict the defendant's opportunity to introduce such evidence at the sentencing determination proceeding as provided in section 29-2521 or to argue that such evidence should be given mitigating significance.

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

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

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

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

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

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

(5) Counterfeit substance shall mean a controlled substance which, or the container or labeling of which, without authorization, bears the trademark, trade name, or other identifying mark, imprint, number, or device, or any likeness thereof, of a manufacturer, distributor, or dispenser other than the person or persons who in fact manufactured, distributed, or dispensed such substance and which thereby falsely purports or is represented to be the product of, or to have been distributed by, such other manufacturer, distributor, or dispenser;

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

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

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

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

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

(11) Drug shall mean (a) articles recognized in the official United States Pharmacopoeia, official Homeopathic Pharmacopoeia of the United States, official National Formulary, or any supplement to any of them, (b) substances intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in human beings or animals, and (c) substances intended for use as a component of any article specified in subdivision (a) or (b) of this subdivision, but shall not include devices or their components, parts, or accessories;

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

(13) Marijuana shall mean all parts of the plant of the genus

cannabis, whether growing or not, the seeds thereof, and every compound, manufacture, salt, derivative, mixture, or preparation of such plant or its seeds, but shall not include the mature stalks of such plant, hashish, tetrahydrocannabinols extracted or isolated from the plant, fiber produced from such stalks, oil or cake made from the seeds of such plant, any other compound, manufacture, salt, derivative, mixture, or preparation of such mature stalks, or the sterilized seed of such plant which is incapable of germination. When the weight of marijuana is referred to in the Uniform Controlled Substances Act, it shall mean its weight at or about the time it is seized or otherwise comes into the possession of law enforcement authorities, whether cured or uncured at that time;

(14) Manufacture shall mean the production, preparation, propagation, conversion, or processing of a controlled substance, either directly or indirectly, by extraction from substances of natural origin, independently by means of chemical synthesis, or by a combination of extraction and chemical synthesis, and shall include any packaging or repackaging of the substance or labeling or relabeling of its container. Manufacture shall not include the preparation or compounding of a controlled substance by an individual for his or her own use, except for the preparation or compounding of components or ingredients used for or intended to be used for the manufacture of methamphetamine, or the preparation, compounding, conversion, packaging, or labeling of a controlled substance: (a) By a practitioner as an incident to his or her prescribing, administering, or dispensing of a controlled substance in the course of his or her professional practice; or (b) by a practitioner, or by his or her authorized agent under his or her supervision, for the purpose of, or as an incident to, research, teaching, or chemical analysis and not for sale;

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

(16) Opiate shall mean any substance having an addiction-forming or addiction-sustaining liability similar to morphine or being capable of conversion into a drug having such addiction-forming or addiction-sustaining liability. Opiate shall not include the dextrorotatory isomer of 3-methoxy-n-methylmorphinan and its salts. Opiate shall include its racemic and levorotatory forms;

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

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

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

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

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

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

(23) State shall mean the State of Nebraska;

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

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

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

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

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

(29) Imitation controlled substance shall mean a substance which is not a controlled substance but which, by way of express or implied representations and consideration of other relevant factors including those specified in section 28-445, would lead a reasonable person to believe the substance is a controlled substance. A placebo or registered investigational drug manufactured, distributed, possessed, or delivered in the ordinary course of practice or research by a health care professional shall not be deemed to be an imitation controlled substance;

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

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

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

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

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

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

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

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

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

(38) Facsimile shall mean a copy generated by a system that encodes

a document or photograph into electrical signals, transmits those signals over telecommunications lines, and reconstructs the signals to create an exact duplicate of the original document at the receiving end;

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

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

(41) Long-term care facility shall mean an intermediate care facility, an intermediate care facility for ~~the mentally retarded,~~ persons with developmental disabilities, a long-term care hospital, a mental health center, a nursing facility, or a skilled nursing facility, as such terms are defined in the Health Care Facility Licensure Act.

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

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

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

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

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

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

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

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

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

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

38-2826.01 Long-term care facility means an intermediate care facility, an intermediate care facility for ~~the mentally retarded,~~ persons with developmental disabilities, a long-term care hospital, a mental health center, a nursing facility, or a skilled nursing facility, as such terms are defined in the Health Care Facility Licensure Act.

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

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

- (1) The marriage between the parties is prohibited by law;
- (2) Either party is impotent at the time of marriage;
- (3) Either party had a spouse living at the time of marriage; or
- ~~(4) Either party was mentally ill or a person with mental retardation at the time of marriage; or~~
- ~~(5) (4) Force or fraud.~~

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

43-289 In no case shall a juvenile committed under the terms of the Nebraska Juvenile Code be confined after he or she reaches the age of majority. The court may, when the health or condition of any juvenile adjudged to be within the terms of such code shall require it, cause the juvenile to be placed in a public hospital or institution for treatment or special care or in an accredited and suitable private hospital or institution which will receive the juvenile for like purposes. Whenever any juvenile has been committed to the Department of Health and Human Services, the department shall follow the court's orders, if any, concerning the juvenile's specific needs for treatment or special care for his or her physical well-being and healthy personality. If the court finds any such juvenile to be a person with ~~mental retardation,~~ an intellectual disability, the court may, upon attaching a physician's certificate and a report as to the mental capacity of such person, commit such juvenile directly to an authorized and appropriate state or local facility or home.

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

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

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

44-710.01 No policy of sickness and accident insurance shall be delivered or issued for delivery to any person in this state unless (1) the entire money and other considerations therefor are expressed therein, (2) the time at which the insurance takes effect and terminates is expressed therein, (3) it purports to insure only one person, except that a policy may insure, originally or by subsequent amendment, upon the application of an adult member of a family who shall be deemed the policyholder, any two or more eligible members of that family, including husband, wife, dependent children, any children enrolled on a full-time basis in any college, university, or trade school, or any children under a specified age which shall not exceed thirty years and any other person dependent upon the policyholder; any individual policy hereinafter delivered or issued for delivery in this state which provides that coverage of a dependent child shall terminate upon the attainment of the limiting age for dependent children specified in the policy shall also provide in substance that attainment of such limiting age shall not operate to terminate the coverage of such child during the continuance of such policy and while the child is and continues to be both (a) incapable of self-sustaining employment by reason of ~~mental retardation~~ an intellectual disability or a physical handicap disability and (b) chiefly dependent upon the policyholder for support and maintenance, if proof of such incapacity and dependency is furnished to the insurer by the policyholder within thirty-one days of the child's attainment of the limiting age and subsequently as may be required by the insurer but not more frequently than annually after the two-year period following the child's attainment of the limiting age; such insurer may charge an additional premium for and with respect to any such continuation of coverage beyond the limiting age of the policy with respect to such child, which premium shall be determined by the insurer on the basis of the class of risks applicable to such child, (4) it contains a title on the face of the policy correctly describing the policy, (5) the exceptions and reductions of indemnity are set forth in the policy and, except those which are set forth in sections 44-710.03 and 44-710.04, are printed, at the insurer's option, either included with the benefit provision to which they apply or under an appropriate caption such as EXCEPTIONS, or EXCEPTIONS AND REDUCTIONS; if an exception or reduction specifically applies only to a particular benefit of the policy, a statement of such exception or reduction shall be included with the benefit provision to which it applies, (6) each such form, including riders and endorsements, shall be identified by a form number in the lower left-hand corner of the first page thereof, (7) it contains no provision purporting to make any portion of the charter, rules, constitution, or bylaws of the insurer a part of the policy unless such portion is set forth in full in the policy, except in the case of the incorporation of, or reference to, a statement of rates or classification of risks, or short-rate table filed with the Director of Insurance, and (8) on

or after January 1, 1999, any restrictive rider contains a notice of the existence of the Comprehensive Health Insurance Pool if the policy provides health insurance as defined in section 44-4209.

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

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

- (a) Inpatient and outpatient hospital services;
- (b) Laboratory and X-ray services;
- (c) Nursing facility services;
- (d) Home health services;
- (e) Nursing services;
- (f) Clinic services;
- (g) Physician services;
- (h) Medical and surgical services of a dentist;
- (i) Nurse practitioner services;
- (j) Nurse midwife services;
- (k) Pregnancy-related services;
- (l) Medical supplies; and
- (m) Early and periodic screening and diagnosis and treatment services for children.

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

- (a) Prescribed drugs;
- (b) Intermediate care facilities for ~~the mentally retarded~~ persons with developmental disabilities;
- (c) Home and community-based services for aged persons and persons with disabilities;
- (d) Dental services;
- (e) Rehabilitation services;
- (f) Personal care services;
- (g) Durable medical equipment;
- (h) Medical transportation services;
- (i) Vision-related services;
- (j) Speech therapy services;
- (k) Physical therapy services;
- (l) Chiropractic services;
- (m) Occupational therapy services;
- (n) Optometric services;
- (o) Podiatric services;
- (p) Hospice services;
- (q) Mental health and substance abuse services;
- (r) Hearing screening services for newborn and infant children; and
- (s) Administrative expenses related to administrative activities, including outreach services, provided by school districts and educational service units to students who are eligible or potentially eligible for medical assistance.

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

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

68-919 (1) The recipient of medical assistance under the medical assistance program shall be indebted to the department for the total amount paid for medical assistance on behalf of the recipient if:

- (a) The recipient was fifty-five years of age or older at the time the medical assistance was provided; or
- (b) The recipient resided in a medical institution and, at the time of institutionalization or application for medical assistance, whichever is later, the department determines that the recipient could not have reasonably been expected to be discharged and resume living at home. For purposes of this section, medical institution means a nursing facility, an intermediate care facility for ~~the mentally retarded~~ persons with developmental disabilities, or an inpatient hospital.

(2) The debt accruing under subsection (1) of this section arises

during the life of the recipient but shall be held in abeyance until the death of the recipient. Any such debt to the department that exists when the recipient dies shall be recovered only after the death of the recipient's spouse, if any, and only when the recipient is not survived by a child who either is under twenty-one years of age or is blind or totally and permanently disabled as defined by the Supplemental Security Income criteria.

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

(4) In any probate proceedings in which the department has filed a claim under this section, no additional evidence of foundation shall be required for the admission of the department's payment record supporting its claim if the payment record bears the seal of the department, is certified as a true copy, and bears the signature of an authorized representative of the department.

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

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

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

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

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

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

(4) Home and community-based services means services furnished under home and community-based waivers as defined in Title XIX of the federal Social Security Act, as amended, 42 U.S.C. 1396;

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

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

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

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

68-1202 Social services may be provided on behalf of recipients with payments for such social services made directly to vendors. Social services shall include those mandatory and optional services to former, present, or potential social services recipients provided for under the federal Social Security Act, as amended, and described by the State of Nebraska in the approved State Plan for Services. Such services may include, but shall not be limited to, foster care for children, child care, family planning, treatment for alcoholism and drug addiction, treatment for persons with ~~mental retardation,~~ an intellectual disability, health-related services, protective services for children, homemaker services, employment services, foster care for adults, protective services for adults, transportation services, home management and other functional education services, housing improvement services, legal services, adult day services, home delivered or congregate meals, educational services, and secondary prevention services, including, but not limited to, home visitation, child screening and early intervention, and



parenting education programs.

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

68-1801 Sections 68-1801 to 68-1809 and section 22 of this act shall be known and may be cited as the ~~ICF/MR~~ ICF/DD Reimbursement Protection Act.

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

68-1802 For purposes of the ~~ICF/MR~~ ICF/DD Reimbursement Protection Act:

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

(2) Intermediate care facility for ~~the mentally retarded persons~~ with developmental disabilities has the definition found in section 71-421;

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

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

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

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

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

(3) Taxes collected pursuant to this section shall be reported on a separate line on the cost report of the intermediate care facility for ~~the mentally retarded, persons with developmental disabilities,~~ regardless of how such costs are reported on any other cost report or income statement. The department shall recognize such tax as an allowable cost within the state plan for reimbursement of intermediate care facilities for ~~the mentally retarded persons with developmental disabilities~~ which participate in the medical assistance program. The tax shall be a direct pass-through and shall not be subject to cost limitations.

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

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

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

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

~~(b) Second, payment to intermediate care facilities for the mentally retarded for the cost of the tax;~~

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

~~(d) Fourth, three hundred twelve thousand dollars, in addition to any federal medicaid matching funds, for payment to providers of community-based services for the purpose of reducing the waiting list of persons with developmental disabilities; and~~

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

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

~~(a) To the ICF/MR Reimbursement Protection Fund for allocation as described in this subdivision: (i) Fifty-five thousand dollars for administration of the fund; (ii) the amount needed to reimburse intermediate care facilities for the mentally retarded for the cost of the tax; (iii) three hundred thousand dollars for payment of rates to non-state-operated intermediate care facilities; and (iv) three hundred twelve thousand dollars~~

~~for community-based services for persons with developmental disabilities, and~~  
~~(b) To the General Fund. The remainder of the proceeds.~~

(2) Beginning July 1, 2014, the department shall use the ICF/DD Reimbursement Protection Fund, including the matching federal financial participation under Title XIX of the Social Security Act, as amended, for purposes of enhancing rates paid under the medical assistance program to intermediate care facilities for persons with developmental disabilities and for an annual contribution to community-based programs for persons with developmental disabilities as specified in subsection (4) of this section, exclusive of the reimbursement paid under the medical assistance program and any other state appropriations to intermediate care facilities for persons with developmental disabilities.

~~(4) (3) For FY2011-12 and each fiscal year thereafter, through FY2013-14, proceeds from the tax imposed pursuant to section 68-1803 shall be remitted to the State Treasurer for credit to the ICF/MR ICF/DD Reimbursement Protection Fund for allocation as follows:~~

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

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

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

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

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

(4) For FY2014-15 and each fiscal year thereafter, the ICF/DD Reimbursement Protection Fund shall be used as follows:

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

(b) Second, payment to the intermediate care facilities for persons with developmental disabilities for the cost of the tax;

(c) Third, three hundred twelve thousand dollars, in addition to any federal medicaid matching funds, for payment to providers of community-based services for persons with developmental disabilities;

(d) Fourth, one million dollars to the General Fund; and

(e) Fifth, rebase rates under the medical assistance program in accordance with the medicaid state plan as defined in section 68-907. In calculating rates, the proceeds of the tax provided for in section 68-1803 and not utilized under subdivisions (a), (b), (c), and (d) of this subsection shall be used to enhance rates in non-state-operated intermediate care facilities for persons with developmental disabilities by increasing the annual inflation factor to the extent allowed by such proceeds and any funds appropriated by the Legislature.

(5) The Division of Medicaid and Long-Term Care of the Department of Health and Human Services shall report electronically, no later than December 1 of each year, to the Health and Human Services Committee of the Legislature and the Revenue Committee of the Legislature the amounts collected from each payer of the tax pursuant to section 68-1803 and the amount of each disbursement from the ICF/DD Reimbursement Protection Fund.

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

68-1805 (1) On or before July 1, 2004, the department shall submit an application to the Centers for Medicare and Medicaid Services of the United States Department of Health and Human Services amending the state medicaid plan to provide for utilization of money in the ~~ICF/MR~~ ICF/DD Reimbursement Protection Fund to increase medicaid payments to intermediate care facilities for ~~the mentally retarded,~~ persons with developmental disabilities.

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

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

68-1806 (1) Until July 1, 2014:

~~(1)~~ (a) Collection of the tax imposed by section 68-1803 shall be discontinued if:

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

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

~~(c)~~ (iii) The department or any other state agency attempts to utilize the money in the ~~ICF/MR~~ ICF/DD Reimbursement Protection Fund for any use other than uses permitted pursuant to the ~~ICF/MR~~ ICF/DD Reimbursement Protection Act; and-

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

(2) Beginning on July 1, 2014:

(a) The department shall discontinue collection of the tax provided for in section 68-1803:

(i) If federal financial participation to match the payments by intermediate care facilities for persons with developmental disabilities pursuant to section 68-1803 becomes unavailable under federal law or the rules and regulations of the Centers for Medicare and Medicaid Services of the United States Department of Health and Human Services; or

(ii) If money in the ICF/DD Reimbursement Protection Fund is appropriated, transferred, or otherwise expended for any use other than uses permitted pursuant to the ICF/DD Reimbursement Protection Act; and

(b) If collection of the tax provided for in section 68-1803 is discontinued as provided in subdivision (a) of this subsection, the money in the ICF/DD Reimbursement Protection Fund shall be returned to the intermediate care facilities for persons with developmental disabilities from which the tax was collected on the same basis as collected.

Sec. 22. The department shall collect the tax provided for in section 68-1803 and remit the tax to the State Treasurer for credit to the ICF/DD Reimbursement Protection Fund. Beginning July 1, 2014, no proceeds from the tax provided for in section 68-1803, including the federal match, shall be placed in the General Fund unless otherwise provided in the ICF/DD Reimbursement Protection Act.

Sec. 23. Section 68-1807, Reissue Revised Statutes of Nebraska, is amended to read:

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

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

Sec. 24. Section 68-1808, Reissue Revised Statutes of Nebraska, is amended to read:

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

Sec. 25. Section 68-1809, Reissue Revised Statutes of Nebraska, is amended to read:

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

Sec. 26. Section 71-413, Reissue Revised Statutes of Nebraska, is amended to read:

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

treatment center.

Sec. 27. Section 71-421, Reissue Revised Statutes of Nebraska, is amended to read:

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

Sec. 28. Section 71-434, Reissue Revised Statutes of Nebraska, is amended to read:

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

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

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

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

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

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

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

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

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

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

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

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

Sec. 29. Section 71-1101, Reissue Revised Statutes of Nebraska, is amended to read:

71-1101 Sections 71-1101 to 71-1134 and section 32 of this act shall be known and may be cited as the Developmental Disabilities Court-Ordered Custody Act.

Sec. 30. Section 71-1104, Reissue Revised Statutes of Nebraska, is amended to read:

71-1104 For purposes of the Developmental Disabilities Court-Ordered Custody Act, the definitions in sections 71-1105 to 71-1116 and section 32 of this act apply.

Sec. 31. Section 71-1107, Reissue Revised Statutes of Nebraska, is amended to read:

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

Sec. 32. Section 71-1110, Reissue Revised Statutes of Nebraska, is amended to read:

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

Sec. 33. Section 71-2102, Reissue Revised Statutes of Nebraska, is amended to read:

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

Sec. 34. Section 71-2411, Reissue Revised Statutes of Nebraska, is amended to read:

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

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

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

(3) Drug means any prescription drug or device or legend drug or device defined under section 38-2841, any nonprescription drug as defined under section 38-2829, any controlled substance as defined under section 28-405, or any device as defined under section 38-2814;

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

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

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

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

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

Sec. 35. Section 71-2445, Reissue Revised Statutes of Nebraska, is amended to read:

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

(1) Automated medication distribution machine means a type of automated medication system that stores medication to be administered to a patient by a person credentialed under the Uniform Credentialing Act;

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

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

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

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

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

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

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

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

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

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

(12) Prescription means an order for a drug or device issued by a practitioner for a specific patient, for emergency use, or for use in immunizations. Prescription does not include a chart order;

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

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

Sec. 36. Section 71-5803.09, Reissue Revised Statutes of Nebraska, is amended to read:

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

Sec. 37. Section 71-6018.01, Reissue Revised Statutes of Nebraska, is amended to read:

71-6018.01 (1) Unless a waiver is granted pursuant to subsection (2) of this section, a nursing facility shall use the services of (a) a licensed registered nurse for at least eight consecutive hours per day, seven days per week and (b) a licensed registered nurse or licensed practical nurse on a twenty-four-hour basis seven days per week. Except when waived under subsection (2) of this section, a nursing facility shall designate a licensed registered nurse or licensed practical nurse to serve as a charge nurse on each tour of duty. The Director of Nursing Services shall be a licensed registered nurse, and this requirement shall not be waived. The Director of Nursing Services may serve as a charge nurse only when the nursing facility has an average daily occupancy of sixty or fewer residents.

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

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

(ii) The department determines that a waiver of the requirement will

not endanger the health or safety of individuals staying in the facility or hospital; and

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

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

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

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

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

Sec. 38. Section 71-6039, Reissue Revised Statutes of Nebraska, is amended to read:

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

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

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

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

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

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

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

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

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

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

Sec. 39. Section 71-6721, Reissue Revised Statutes of Nebraska, is

amended to read:

71-6721 For purposes of the Medication Aide Act:

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

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

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

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

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

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

(7) Direction and monitoring means the acceptance of responsibility for observing and taking appropriate action regarding any desired effects, side effects, interactions, and contraindications associated with the medication by a (a) competent individual for himself or herself, (b) caretaker, or (c) licensed health care professional;

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

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

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

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

(12) Intermediate care facility for the mentally retarded persons with developmental disabilities has the definition found in section 71-421;

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

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

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

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

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

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

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

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

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

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

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

Sec. 40. Section 71-6725, Reissue Revised Statutes of Nebraska, is amended to read:

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



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

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

(3) A medication aide, except ~~(except one who is employed by a nursing home, an intermediate care facility for the mentally retarded, persons with developmental disabilities, or an assisted-living facility)~~, facility, a person licensed to operate a child care facility or a staff member of a child care facility, or a staff member of a school shall not be required to take a course. The medication aide shall be assessed to determine that the medication aide has the competencies listed in subsection (1) of this section.

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

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

Sec. 41. Section 71-6727, Reissue Revised Statutes of Nebraska, is amended to read:

71-6727 (1) The department shall list each medication aide registration in the Medication Aide Registry as a Medication Aide-40-Hour, Medication Aide-20-Hour, or Medication Aide. A listing in the registry shall be valid for the term of the registration and upon renewal unless such listing is refused renewal or is removed as provided in section 71-6730.

(2) The registry shall contain the following information on each individual who meets the conditions in section 71-6726: (a) The individual's full name; (b) information necessary to identify individuals, including those qualified to provide medications in nursing homes, intermediate care facilities for the mentally retarded, persons with developmental disabilities, or assisted-living facilities; (c) any conviction of a felony or misdemeanor reported to the department; and (d) other information as the department may require by rule and regulation.

Sec. 42. Section 77-1827, Reissue Revised Statutes of Nebraska, is amended to read:

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

Sec. 43. Section 77-2704.12, Revised Statutes Cumulative Supplement, 2012, is amended to read:

77-2704.12 (1) Sales and use taxes shall not be imposed on the gross receipts from the sale, lease, or rental of and the storage, use, or other consumption in this state of purchases by (a) any nonprofit organization created exclusively for religious purposes, (b) any nonprofit organization providing services exclusively to the blind, (c) any nonprofit private educational institution established under sections 79-1601 to 79-1607, (d) any regionally or nationally accredited, nonprofit, privately controlled college

or university with its primary campus physically located in Nebraska, (e) any nonprofit (i) hospital, (ii) health clinic when one or more hospitals or the parent corporations of the hospitals own or control the health clinic for the purpose of reducing the cost of health services or when the health clinic receives federal funds through the United States Public Health Service for the purpose of serving populations that are medically underserved, (iii) skilled nursing facility, (iv) intermediate care facility, (v) assisted-living facility, (vi) intermediate care facility for ~~the mentally retarded,~~ persons with developmental disabilities, (vii) nursing facility, (viii) home health agency, (ix) hospice or hospice service, (x) respite care service, or (xi) mental health center licensed under the Health Care Facility Licensure Act, (f) any nonprofit licensed child-caring agency, (g) any nonprofit licensed child placement agency, or (h) any nonprofit organization certified by the Department of Health and Human Services to provide community-based services for persons with developmental disabilities.

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

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

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

(5) Any person purchasing, storing, using, or otherwise consuming building materials in the performance of any construction, improvement, or repair by or for any institution enumerated in subsection (1) of this section which is licensed upon completion although not licensed at the time of construction or improvement, which building materials are annexed to real estate and which subsequently belong to the owner of the institution, shall pay any applicable sales or use tax thereon. Upon becoming licensed and receiving a numbered certificate of exemption, the institution organized not for profit shall be entitled to a refund of the amount of taxes so paid in the performance of such construction, improvement, or repair and shall submit whatever evidence is required by the Tax Commissioner sufficient to establish the total sales and use tax paid upon the building materials physically annexed to real estate in the construction, improvement, or repair.

Sec. 44. Section 79-712, Reissue Revised Statutes of Nebraska, is amended to read:

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

Sec. 45. Section 79-1118.01, Reissue Revised Statutes of Nebraska, is amended to read:

79-1118.01 Disability means an impairment which causes a child to be ~~classified as mentally retarded, hard of hearing, deaf, speech and language impaired, blind and visually impaired, behaviorally disordered, orthopedically~~

~~impaired, other health impaired, deaf-blind, or developmentally delayed diagnosed with an intellectual disability; a hearing, speech, language, or visual impairment; a behavioral disorder; an orthopedic impairment; another health impairment; deafness or blindness; or a developmental delay~~ or as having multiple disabilities or specific learning disabilities, traumatic brain injury, or autism and causes such child to need special education and related services. For purposes of this section:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(10) ~~Orthopedically impaired~~ Orthopedic impairment means a severe orthopedic impairment which adversely affects a child's educational performance. Severe orthopedic impairments include impairments caused by (a) congenital anomaly, including, but not limited to, clubfoot or absence of a member, (b) disease, including, but not limited to, poliomyelitis or bone tuberculosis, or (c) other causes, including, but not limited to, cerebral palsy, amputations, and fractures and burns which cause contractures;

(11) Other health impaired means having limited strength, vitality,

or alertness due to chronic or acute health problems, including, but not limited to, a heart condition, tuberculosis, rheumatic fever, nephritis, asthma, sickle cell anemia, hemophilia, epilepsy, lead poisoning, leukemia, or diabetes, which adversely affects a child's educational performance;

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

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

(14) Traumatic brain injury means an acquired injury to the brain caused by an external physical force, resulting in total or partial functional disability or psychosocial impairment, or both, that adversely affects a child's educational performance. Traumatic brain injury applies to open or closed head injuries resulting in impairments in one or more areas, including cognition; language; memory; attention; reasoning; abstract thinking; judgment; problem solving; sensory, perceptual, and motor abilities; psychosocial behavior; physical functions; information processing; and speech. Traumatic brain injury does not include brain injuries that are congenital or degenerative or brain injuries induced by birth trauma.

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

Sec. 46. Section 79-1124, Revised Statutes Cumulative Supplement, 2012, is amended to read:

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

Sec. 47. Section 79-1128, Reissue Revised Statutes of Nebraska, is amended to read:

79-1128 The special education programs required by section 79-1127 may be provided by any school district, by contracting with another school district or service agency, or by some combination of school districts, an educational service unit, combination of educational service units, the local or regional office of ~~mental retardation~~, intellectual disability, any program approved by the State of Nebraska, or any combination thereof, except that only nonsectarian services shall be considered for approval by the State of Nebraska. Any ~~office of mental retardation~~ program receiving funds under the Special Education Act shall not use such funds to match state funds under the provisions of other programs. The members of the school board of any school district not offering continuous special education programs acceptable to the State Board of Education shall be in violation of the law. No state funds shall be paid to any school district as long as such violation exists, but no deduction shall be made from any funds required by the Constitution of Nebraska to be paid to such district.

Sec. 48. Section 83-101.06, Reissue Revised Statutes of Nebraska, is amended to read:

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

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

(2) Plan, develop, administer, and operate mental health and ~~mental retardation~~ intellectual disability clinics, programs, and services;

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

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

Sec. 49. Section 83-112, Reissue Revised Statutes of Nebraska, is

amended to read:

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

(2) The Department of Health and Human Services shall encourage scientific investigation of the treatment of mental problems, epilepsy, and all other diseases and causes that contribute to mental disabilities by the medical staffs of the state medical institutions. The department shall provide forms for statistical returns to be made by the institutions. The department shall make an investigation of the conditions, causes, prevention, and cure of epilepsy, ~~mental retardation,~~ intellectual disability, and mental disorders. The department shall give special attention to the methods of care, treatment, education, and improvement of the persons served by the institutions under its control and shall exercise a careful supervision of the methods to the end that, so far as practicable, the best treatment and care known to modern science shall be given to such persons and that the best methods of teaching, improving, and educating such persons shall be used.

Sec. 50. Section 83-217, Reissue Revised Statutes of Nebraska, is amended to read:

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

Sec. 51. Section 83-218, Reissue Revised Statutes of Nebraska, is amended to read:

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

Sec. 52. Section 83-363, Reissue Revised Statutes of Nebraska, is amended to read:

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

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

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

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

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

Sec. 53. Section 83-381, Reissue Revised Statutes of Nebraska, is amended to read:

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

(1) Person with ~~mental retardation~~ an intellectual disability means any person of subaverage general intellectual functioning which is associated with a significant impairment in adaptive behavior;

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

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

Sec. 54. Section 83-382, Reissue Revised Statutes of Nebraska, is

amended to read:

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

Sec. 55. Section 83-383, Reissue Revised Statutes of Nebraska, is amended to read:

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

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

(b) If the person applying for admission does not have a court-appointed guardian and has not reached the age of majority, as established by section 43-2101, as such section may from time to time be amended, the application shall be made by both parents if they are living together or by the parent having custody of such person if both parents are not then living or are not then living together.

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

Sec. 56. Section 83-386, Reissue Revised Statutes of Nebraska, is amended to read:

83-386 The department shall examine all information concerning the person for whom admission is requested and shall determine therefrom whether the person is a person with ~~mental retardation~~ an intellectual disability and whether residence in the residential facility is necessary for the welfare, care, treatment, or training of such person. Such determination shall be made in writing and shall set forth the reasons for the determination. If at any time it shall become necessary, for want of room or other cause, to discriminate in the admission of persons with ~~mental retardation~~ an intellectual disability to residential facilities, the selection shall be made as follows: (1) Persons whose care is necessary in order to protect themselves or the public health and safety; (2) persons who are most likely to be benefited thereby; (3) persons shall next be admitted in the order in which their applications for admission have been filed with the department; and (4) when cases are equally meritorious in all other respects, an indigent person or a person from an indigent family shall be given preference.

Sec. 57. Section 83-387, Reissue Revised Statutes of Nebraska, is amended to read:

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

Sec. 58. Section 83-389, Reissue Revised Statutes of Nebraska, is amended to read:

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

Sec. 59. Section 83-1205, Reissue Revised Statutes of Nebraska, is amended to read:

83-1205 Developmental disability shall mean:

- (1) ~~Mental retardation~~; Intellectual disability; or
- (2) A severe, chronic disability other than ~~mental retardation~~ an intellectual disability or mental illness which:
  - (a) Is attributable to a mental or physical impairment other than a mental or physical impairment caused solely by mental illness;
  - (b) Is manifested before the age of twenty-two years;
  - (c) Is likely to continue indefinitely; and
  - (d) Results in:
    - (i) In the case of a person under three years of age, at least one developmental delay; or
    - (ii) In the case of a person three years of age or older, a substantial limitation in three or more of the following areas of major life activity, as appropriate for the person's age:
      - (A) Self-care;
      - (B) Receptive and expressive language development and use;
      - (C) Learning;
      - (D) Mobility;
      - (E) Self-direction;
      - (F) Capacity for independent living; and
      - (G) Economic self-sufficiency.

Sec. 60. Original sections 21-610, 23-104.03, 28-105.01, 30-2624, 31-113, 38-2404, 42-374, 43-289, 44-710.01, 68-911, 68-919, 68-921, 68-1801, 68-1802, 68-1803, 68-1805, 68-1806, 68-1807, 68-1808, 68-1809, 71-413, 71-421, 71-434, 71-1101, 71-1104, 71-1107, 71-1110, 71-2102, 71-2411, 71-2445, 71-5803.09, 71-6018.01, 71-6039, 71-6721, 71-6725, 71-6727, 77-1827, 79-712, 79-1118.01, 79-1128, 83-101.06, 83-112, 83-217, 83-218, 83-363, 83-381, 83-382, 83-383, 83-386, 83-387, 83-389, and 83-1205, Reissue Revised Statutes of Nebraska, and sections 28-401, 38-2826.01, 68-1202, 68-1804, 77-2704.12, and 79-1124, Revised Statutes Cumulative Supplement, 2012, are repealed.