

LEGISLATIVE BILL 274

Approved by the Governor February 18, 1983

Introduced by Higgins, 9

AN ACT relating to nursing homes; to provide for the appointment of a receiver as prescribed; to establish powers and duties; to provide for termination of a receivership; to provide a penalty; and to provide severability.

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

Section 1. As used in this act, unless otherwise stated, (1) department shall mean the Department of Health and (2) director shall mean the Director of Health.

Sec. 2. The Department of Health may petition the district court for appointment of a receiver for a nursing home when any of the following conditions exist:

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

(2) The nursing home is operating without a license;

(3) The department has suspended, revoked, or refused to renew the existing license of the nursing home;

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

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

Sec. 3. (1) The petition for the appointment of a receiver provided for in section 2 of this act shall be filed in the district court of the county where the nursing home is located and shall request that an individual be appointed as a receiver for the nursing home with the responsibility of bringing the operation and condition of the nursing home into conformity with the provisions of this act and the rules and regulations adopted and promulgated pursuant thereto. The individual appointed as a receiver for a nursing home shall be licensed by the

State of Nebraska as a nursing home administrator or be a hospital administrator.

(2) The court shall expeditiously hold a hearing on the application, at which time the director shall present evidence in support of the application. The licensee against whose nursing home the petition is filed may also present evidence and both parties may subpoena witnesses. The court may appoint a receiver for the nursing home in advance of the hearing if the director, by affidavit, states that an emergency exists which presents an imminent danger of resultant death or physical harm to the residents of the nursing home. If the licensee against whose nursing home the receivership petition is filed informs the court at or before the time set for hearing that the licensee does not object to the application, the court shall waive the hearing and at once appoint a receiver for the nursing home.

(3) The court, on the basis of the petition, the director's affidavit, if any, and evidence presented at the hearing, may order the nursing home placed in receivership, and if so ordered, the court shall direct either that the receiver assume the duties of the administrator of the nursing home or that the receiver supervise the nursing home's administrator in conducting the day-to-day business of the nursing home. The receiver shall be empowered to control the nursing home's financial resources and to apply its revenue as the receiver deems necessary to the operation of the nursing home in compliance with this act and the rules and regulations adopted and promulgated pursuant thereto, but shall be accountable to the court for his or her management of the nursing home's financial resources.

Sec. 4. A receivership established pursuant to this act may be terminated by the district court which established it after a hearing upon an application for termination. The application may be filed:

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

(2) By the current licensee of the nursing home, alleging that termination of the receivership is merited for the reason set forth in subdivision (1) of this section, but that the receiver has declined to join in the petition for termination of the receivership; or

(3) By the receiver, stating that all residents of the facility have been relocated elsewhere and that there are reasonable grounds to believe it will not be feasible

to again operate the facility on a sound financial basis and in compliance with this act and any rules and regulations adopted and promulgated pursuant thereto, and asking that the court approve the surrender of the nursing home's license to the department and the subsequent return of the control of the nursing home's premises to the owner of the premises.

Sec. 5. Payment of the expenses of a receivership established pursuant to section 3 of this act shall be the responsibility of the nursing home for which the receiver is appointed unless the court directs otherwise.

Sec. 6. Sections 3 to 5 of this act shall not:

(1) Preclude the sale or lease of a nursing home and the transfer or assignment of the nursing home's license as otherwise provided by law; or

(2) Affect the civil or criminal liability of the licensee of the facility placed in receivership for any acts or omissions of the licensee which occurred before the receiver was appointed.

Sec. 7. (1) Any person who prevents or interferes with or attempts to impede in any way any duly authorized representative of the department in the lawful enforcement of this act or any rules and regulations adopted pursuant thereto shall be guilty of a Class IV misdemeanor. As used in this subsection, lawful enforcement includes, but is not limited to, (a) contacting or interviewing any resident of a nursing home in private at any reasonable hour and without advance notice, (b) examining any relevant books or records of a nursing home, or (c) preserving evidence of any violations of this act or any rules and regulations adopted and promulgated pursuant thereto.

(2) The county attorney of the county in which the nursing home is located or the Attorney General may be requested by the director to initiate prosecution.

Sec. 8. If any section in this act or any part of any section shall be declared invalid or unconstitutional, such declaration shall not affect the validity or constitutionality of the remaining portions thereof.