

LEGISLATIVE BILL 209

Approved by the Governor April 24, 1985

Introduced by Smith, 33

AN ACT relating to health care facilities; to amend sections 44-772, 44-3602, and 71-2017.01, Reissue Revised Statutes of Nebraska, 1943, and sections 71-2017, 71-2020, and 71-2021, Revised Statutes Supplement, 1984; to provide additional purposes; to define and redefine terms; to eliminate a definition; to provide for the applicability of definitions; to provide for waiver of rules, regulations, and standards; to change certain fees; to change provisions relating to licenses; to harmonize provisions; and to repeal the original sections.

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

Section 1. That section 44-772, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

44-772. Alcoholic treatment center shall mean an institution licensed as an alcoholic treatment center by the Department of Health and described in subdivision ~~(12)~~ (17) of section 71-2017.01, which provides a program for the inpatient or outpatient treatment of alcoholism pursuant to a written treatment plan approved and monitored by a physician and which is affiliated with a hospital under a contractual agreement with an established system for patient referral.

Sec. 2. That section 44-3602, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

44-3602. As used in ~~sections 44-3601 to 44-3611~~ the Medicare Supplement and Sickness and Accident Insurance Minimum Standards Act, unless the context otherwise requires:

(1) Policy shall mean the entire contract between the insurer and the insured, including the policy riders, endorsements, and the application, if attached, and also includes subscriber contracts issued by nonprofit hospital and medical service associations and by health maintenance organizations;

(2) Certificate shall mean any certificate issued under a group medicare supplement policy or group limited accident and sickness indemnity insurance policy, which policy has been delivered or issued for delivery in this state;

(3) Medicare shall mean the Health Insurance for the Aged Act, Title XVIII of the Social Security Amendments of 1965, as then constituted and later amended;

(4) Medicare supplement policy shall mean a group or individual policy which is designed to supplement Medicare substantially or in part, or is advertised, marketed, or otherwise purported to be a supplement to Medicare and which meets the requirements of sections 44-3601 to 44-3611 the Medicare Supplement and Sickness and Accident Insurance Minimum Standards Act and of rules and regulations authorized by sections 44-3601 to 44-3611 such act applicable to any such policy or certificate sold to a person eligible for Medicare by reason of age, except that such term does not include:

(a) A policy or contract of one or more employers or labor organizations, or of the trustees of a fund established by one or more employers or labor organizations, or combination thereof, for employees or former employees, or combination thereof, or for members or former members, or combination thereof, of the labor organizations;

(b) A policy or contract of any professional, trade, or occupational association for its members or former or retired members, or combination thereof, if such association is composed of individuals all of whom are actively engaged in the same profession, trade, or occupation, has been maintained in good faith for purposes other than obtaining insurance, and has been in existence for at least two years prior to the date of its initial offering of such policy or plan to its members; or

(c) Individual policies or contracts issued pursuant to a conversion privilege under a policy or contract of group or individual insurance when such group or individual policy or contract includes provisions which are inconsistent with the requirements of sections 44-3601 to 44-3611 the Medicare Supplement and Sickness and Accident Insurance Minimum Standards Act;

(5) Format shall mean style, arrangements, and overall appearance including, but not limited to, such items as the size, color, and prominence of type, and the arrangement of text and captions;

(6) Director shall mean the Director of Insurance;

(7) Department shall mean the Department of Insurance;

(8) Medicare benefit period shall mean the unit of time used in the Medicare program to measure use of services and availability of benefits under Part A, Medicare hospital insurance;

(9) Medicare eligible expenses shall mean health care expenses of the kinds covered by Medicare, to the extent recognized as reasonable under Medicare;

(10) Direct response insurance shall mean insurance issued to an applicant who has completed the application and forwarded it directly to the insurer in response to a solicitation coming into the applicant's

possession by any means of mass communication, including the United States mail; and

(11) Limited indemnity policy shall mean any group or individual accident and sickness policy, other than a Medicare supplement policy, which is issued to persons eligible for Medicare by reason of age and which is primarily designed to provide (a) hospital confinement indemnity coverage, (b) specified disease coverage, or (c) coverage for confinement in institutions or facilities defined in subdivision ~~(5)~~ (10), ~~(6)~~ (11), ~~(7)~~ (12), ~~(8)~~ (13), or ~~(9)~~ (14) of section 71-2017.01.

Sec. 3. That section 71-2017, Revised Statutes Supplement, 1984, be amended to read as follows:

71-2017. The ~~purpose~~ purposes of sections 71-2017 to 71-2029 and sections 5, 6, and 9 of this act, ~~71-6008 to 71-6037, and section 81-604.01, is to and the Nebraska Nursing Home Act are:~~ (1) To provide for the development, establishment, and enforcement of basic standards ~~(1)~~ (a) for the care of persons in hospitals, ~~maternity homes,~~ health clinics, skilled nursing facilities, intermediate care facilities one, intermediate care facilities two, domiciliary facilities, mental health centers, centers for the developmentally disabled, alcoholic treatment centers, residential care facilities, and drug treatment centers; ~~PROVIDED, any and~~ (b) for the construction, maintenance, and operation of such health care facilities which, in light of existing knowledge, will insure safe and adequate care of such persons in such health care facilities; (2) to recognize the coordinated development of health care facilities and services; (3) to promote the development of multi-institutional systems that will coordinate and consolidate the delivery of health care services and multi-institutional arrangements for the sharing of support services; and (4) to promote the development of capacity to provide various levels of care on a geographically integrated basis to meet the special needs of residents of the State of Nebraska for health services.

Any hospital or other health care facility owned or operated by a fraternal organization mentioned in section 21-608 and amendments thereof exclusively for its own members shall be exempt, ~~except~~ unless any such fraternal organization owning or operating such a hospital or other health care facility ~~may be~~ is issued a license for such hospital or other health care facility upon its written application and upon its agreeing to comply with the provisions of sections 71-2017 to 71-2029 and sections 5, 6, and 9 of this act and ~~71-6008 to 71-6037, and (2) for the construction, maintenance, and operation of such health care facilities which, in the light of existing knowledge, will insure safe and adequate care of such persons in such health care facilities. the Nebraska Nursing Home Act.~~

Nothing in sections 71-2017 to 71-2029 and sections 5, 6, and 9 of this act, sections 71-2031 to 71-2040, ~~71-6000 to 71-6037~~, and section 81-604.01, the Nebraska Nursing Home Act, or in any rule or regulation adopted and promulgated pursuant thereto, shall be construed to authorize or require any facility which is operated by and for members of a church which includes healing by prayer and spiritual means as a part of its religious practices to be licensed or inspected by the Department of Health except as such licensure and inspection pertain solely to sanitation, fire prevention, and safety standards, and building and construction codes applicable to the facilities mentioned in subdivision (1) of this section, nor shall any patients, residents, or personnel thereof be subjected to any medical supervision, regulation, or control in connection with the operation of any such facility.

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

71-2017.01. As used in sections 71-2017 to 71-2029 and sections 5, 6, and 9 of this act, unless the context otherwise requires:

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

(2) Hospital shall mean (a) any institution, facility, place, or building which is devoted primarily to the maintenance and operation of facilities for the diagnosis, treatment, or medical care over a period exceeding twenty-four consecutive hours of two or more nonrelated individuals suffering from illness, condition, injury, or deformity, or (b) a place which is devoted primarily to the rendering over a period exceeding twenty-four consecutive hours of obstetrical or other medical care for two or more nonrelated individuals, or (c) any institution, facility, place, or building in which any accommodation is primarily maintained, furnished, or offered for the medical and nursing care over a period exceeding twenty-four consecutive hours of two or more nonrelated aged or infirm persons requiring or receiving convalescent care, and shall include, but not be

restricted to, facilities or parts of facilities which provide space for general acute hospitals, osteopathic hospitals, convalescent short-term hospitals, rehabilitation hospitals, long-term care hospitals, psychiatric or mental hospitals, tuberculosis hospitals, and emergency hospitals or treatment centers, and infirmaries, and shall not be construed to include the residence, office, or clinic of a private physician or of an association of physicians, of any other health practitioner, or of any practitioner or association of practitioners licensed pursuant to the provisions of Chapter 71, in which residence, office, or clinic patients are not treated or given care for a period in excess of twenty-four consecutive hours;

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

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

(5) Rehabilitation hospital shall mean an inpatient facility which is operated for the primary purpose of assisting in the rehabilitation of disabled persons through an integrated program of medical and other services provided under professional supervision;

(6) Long-term care hospital shall mean any hospital, any distinct part of any hospital, or any portion of a hospital which is primarily devoted to providing the care and services as set forth in subdivisions (10), (11), and (12) of this section;

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

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

transfers and quality assurance programs;

(3) Maternity home shall mean any institution, facility, place, or building devoted to the care of maternity patients primarily or exclusively;

(4) (9) Health clinic shall mean any institution, facility, place, building, or agency which is operated under the name or title of health clinic, health center, or any other word or phrase of like or similar import, either independently or in connection with any other purpose, for the purpose of providing or making available at such institution, facility, place, building, or agency on an outpatient basis and for a period not exceeding twenty-four consecutive hours advice, counseling, diagnosis, treatment, care, or services relating to the preservation or maintenance of health primarily or exclusively to persons not residing or confined in such institution, facility, place, or building; and which is not licensed as a hospital. Specific types or categories of health clinics may be further defined by appropriate regulation of the Department of Health not inconsistent with this definition; and in no case shall be construed to include the residence, office, or clinic of a private physician or of an association of physicians, of any other health practitioner or association of practitioners, or of any practitioner licensed pursuant to the provisions of Chapter 71 unless ten or more abortions, as defined in subdivision (1) of section 28-326, are performed during any one calendar week in such residence, office, or clinic;

(5) (10) Skilled nursing facility shall mean any institution or facility, or a distinct part of any institution or facility, which is primarily devoted to providing to inpatients skilled nursing care and related services for patients who require medical or nursing care or rehabilitation services for the rehabilitation of injured, disabled, or sick persons;

(6) (11) Intermediate care facility one shall mean any institution, facility, place, or building in which accommodation and board for a period exceeding twenty-four consecutive hours and also nursing care and related medical services are provided for two or more nonrelated individuals who are ill, injured, or disabled but not in need of hospital care, but who, by reason of illness, disease, injury, deformity, disability, convalescence, or physical or mental infirmity require such nursing care;

(7) (12) Intermediate care facility two shall mean any institution, facility, place, or building in which there are provided for a period exceeding twenty-four consecutive hours accommodation, board, and care, but not nursing care, for two or more nonrelated individuals who are ill, injured, or disabled but not in need of hospital or nursing care, but who, by reason of

illness, disease, injury, deformity, disability, convalescence, or physical or mental infirmity need care and need assistance in taking their medication;

~~(8)~~ (13) Residential care facility shall mean any institution, facility, place, or building in which there is provided for a period exceeding twenty-four consecutive hours accommodation, board, and care, such as personal assistance in feeding, dressing, and other essential daily living activities, to four or more nonrelated individuals who by reason of illness, disease, injury, deformity, disability, or physical or mental infirmity are unable to sufficiently or properly care for themselves or manage their own affairs, but do not require the daily services of a licensed registered or practical nurse;

~~(9)~~ (14) Domiciliary facility shall mean any institution, facility, place, or building in which there are provided for a period exceeding twenty-four consecutive hours accommodation and supervision to four or more individuals, not related to the owner, occupant, manager, or administrator thereof, who are essentially capable of managing their own affairs, but who are in need of supervision, including supervision of nutrition, by the facility on a regular, continuing basis, but not necessarily on a consecutive twenty-four hour basis. This definition shall not include those homes or facilities providing casual care at irregular intervals;

~~(10)~~ (15) Mental health center shall mean any institution, facility, place, or building which is used to provide, for a period exceeding twenty-four consecutive hours, accommodation, board, and advice, counseling, diagnosis, treatment, care, or services primarily or exclusively to persons residing or confined in the facility who are afflicted with a mental disease, disorder, or disability; and which is not licensed as a hospital;

~~(11)~~ (16) Center for the developmentally disabled shall mean any residential facility, place, or building, not licensed as a hospital, which is used to provide accommodation, board, and training, advice, counseling, diagnosis, treatment, care, including medical care when appropriate, or services primarily or exclusively to four or more persons residing in the facility who are developmentally disabled, which term shall include those persons suffering from mental retardation, cerebral palsy, epilepsy, or other neurological handicapping conditions which require care similar to the care required for persons suffering from such ~~aforementioned~~ conditions;

~~(12)~~ (17) Alcoholic treatment center shall mean any institution, facility, place, or building, not licensed as a hospital, including any private dwelling, which is used to provide residential care, treatment,

services, maintenance, accommodation, or board, ~~or any of them~~, in a group setting primarily or exclusively for individuals having any type of habituation, dependency, or addiction to the use of alcohol and provides in which there is provided guidance, supervision, and personal services relating to those areas of adjustment which enable the alcohol dependent or alcoholic to move into independent living in normal surroundings, but ~~in which there are not provided these~~ services that can be rendered only by a physician or within the confines of a hospital, and ~~in which there is not provided~~ a permanent residence but only a temporary one, and shall include facilities in which there are provided nonresidential programs and services primarily or exclusively to nonresidents of the facility having any type of habituation, dependency, or addiction to the use of alcohol. Specific and specific types or categories of alcoholic treatment centers may be further defined by appropriate regulation of the Department of Health not inconsistent with this definition; and

~~(13)~~ (18) Drug treatment center shall mean any institution, facility, place, or building, not licensed as a hospital, including any private dwelling, which is used to provide residential care, treatment, services, maintenance, accommodation, or board, ~~or any of them~~, in a group setting primarily or exclusively for individuals who have any type of habituation, dependency, or addiction to the use of any kind of controlled substance, narcotic drug, or other type of drug and provides in which there is provided guidance, supervision, and personal services relating to those areas of adjustment which enable the drug user, dependent, or addict to move into independent living in normal surroundings, but ~~in which there are not provided these~~ services that can be rendered only by a physician or within the confines of a hospital, and ~~in which there is not provided~~ a permanent residence but only a temporary one, and shall include facilities in which there are provided nonresidential programs and services primarily or exclusively to nonresidents of the facility having any type of habituation, dependency, or addiction to the use of any kind of controlled substance, narcotic drug, or other type of drug, and specific types or categories of drug treatment centers may be further defined by appropriate regulation of the Department of Health not inconsistent with this definition.

Sec. 5. The changes to definitions in section 71-2017.01 made by Laws 1985, LB 209, shall not apply to or affect definitions contained in contracts or policies providing hospital, medical, surgical, major medical, or dental benefits or contracts or policies providing benefits for the treatment of alcoholism, drug addiction, or chemical dependency issued for delivery or providing benefits for persons living in the State of Nebraska until January 1, 1987.

Sec. 6. The Department of Health may waive any rule, regulation, or standard adopted and promulgated by the department relating to licensed health services or hospitals when in the opinion of the department the waiver of such rule, regulation, or standard will not unduly jeopardize the health or welfare of the patients or residents and the closing of the service or facility would create an undue hardship on the community in taking care of the needs of such persons. Any such waiver shall be under such terms and conditions and for such period of time, not to exceed one year at a time, as the department may prescribe.

The department may each year waive such rule, regulation, or standard for an additional year if the department determines that the continued waiver of such rule, regulation, or standard for an additional year will not constitute an imminent hazard to the health or welfare of the patients or residents by continued operation of the service or hospital and the closing of the service or hospital would create an undue hardship on the community in taking care of the needs of such persons. No waiver shall be allowed if it would cause the State of Nebraska to fail to comply with any of the applicable requirements of Medicare or Medicaid so as to make the state ineligible for the receipt of all funds to which it might otherwise be entitled.

Sec. 7. That section 71-2020, Revised Statutes Supplement, 1984, be amended to read as follows:

71-2020. Applicants for license shall file applications under oath with the Department of Health upon forms prescribed and shall pay a license fee of fifty dollars as a base fee and in addition thereto, except that hospitals, skilled nursing facilities, intermediate care facilities one, intermediate care facilities two, and intermediate care facilities three shall pay a license fee of one hundred twenty five dollars as a base fee. In addition to such base fee, ~~for~~ hospitals, skilled nursing facilities, intermediate care facilities one, and intermediate care facilities two, and intermediate care facilities three shall pay a fee of five dollars for each bed available for patients of the facility, and ~~for~~ all other types of facilities shall pay a fee of one dollar for each bed available for patients thereof. Such ~~fee fees~~ shall be paid into the state treasury and by the State Treasurer credited to the General Fund, or if the license is denied that part of the fees paid for beds available shall be returned to the applicant.

Applications shall be signed (1) by the owner, if an individual or partnership, (2) by two of its officers, if a corporation, or (3) by the head of the governmental department having jurisdiction over it, if a governmental unit. Applications shall set forth the full name and address of the institution for which license is

sought, and of the owner in case of different address, the names of the persons in control thereof, and such additional information as the Department of Health may require, including affirmative evidence of ability to comply with such reasonable standards, rules, and regulations as may be lawfully prescribed hereunder.

Sec. 8. That section 71-2021, Revised Statutes Supplement, 1984, be amended to read as follows:

71-2021. Licenses issued pursuant to sections 71-2017 to 71-2029 and sections 5, 6, and 9 of this act shall expire one year after date of issuance, or upon such uniform dates annually as the Department of Health may prescribe by regulation. Licenses shall be issued only for the premises and persons named in the application, shall not be transferable or assignable, and shall be posted in a conspicuous place on the licensed premises. Separate buildings or structures on the same premises under one management shall require only one license, but, upon request by the applicant or licensee, separate licenses shall be issued.

Sec. 9. Any hospital may be licensed in more than one category under sections 71-2017.01 and 71-5901 to 71-5905 if it meets all of the applicable requirements for the applicable category. Multiple categories shall be evidenced by separate licenses or by notation of the various categories on one single licensure document or certificate as requested by the applicant or licensee. License fees shall be charged on a per bed basis for the highest licensure category applicable to the hospital. Nursery bassinets and surgical recovery beds shall be excluded and intensive care beds shall be included in determining the license fees.

In the case of a hospital operating under multiple categories, only that portion of the hospital actually operating as the highest licensure category shall be required to comply with departmental standards for the highest licensure category, and all other portions of such hospital need comply only with the departmental standards for the care provided in that portion of the hospital. The director of nursing of a facility licensed as a hospital may serve as director of nursing for other categories if the patient care requirements for the categories for which the facility is licensed under sections 71-2017.01 and 71-5901 to 71-5905 are satisfied.

The Department of Health may adopt and promulgate rules and regulations necessary to implement this section.

Sec. 10. That original sections 44-772, 44-3602, and 71-2017.01, Reissue Revised Statutes of Nebraska, 1943, and sections 71-2017, 71-2020, and 71-2021, Revised Statutes Supplement, 1984, are repealed.