

LEGISLATIVE BILL 1070

Approved by the Governor April 13, 1998

Introduced by Wesely, 26; Hillman, 48; Jensen, 20; Matzke, 47; Maurstad, 30;
at the request of the Governor

AN ACT relating to health and human services; to amend section 71-6050, Reissue Revised Statutes of Nebraska; to adopt the Nebraska Health Care Trust Fund Act and the Native American Public Health Act; to create funds; to harmonize provisions; to provide operative dates; to repeal the original section; and to declare an emergency.
Be it enacted by the people of the State of Nebraska,

Section 1. Sections 1 to 10 of this act shall be known and may be cited as the Nebraska Health Care Trust Fund Act.

Sec. 2. The Legislature finds that:

(1) The preservation, improvement, and coordination of the health infrastructure of Nebraska is critical to the health and safety of all Nebraskans;

(2) An increasing number of elderly persons and persons with disabilities in the State of Nebraska are in need of long-term care services;

(3) Alternatives to traditional long-term care services provided by nursing facilities are necessary in providing cost-effective services to those requiring assistance;

(4) The development of alternatives to nursing facility care such as assisted-living facility services is critical in areas of the state where such alternatives are unlikely to be available;

(5) Children without health insurance coverage are in jeopardy of receiving substandard health care;

(6) Cost containment in the provision of health care is necessary to achieve improved health services and insure access by all Nebraska residents;

(7) There is a need for community public health services which emphasize prevention, coordinate the use of community health resources, and extend health services into the community; and

(8) There is a need for grants for expenditures which will improve access to or delivery of health care services to medically underserved individuals or in medically underserved areas or which will help contain or reduce the cost or improve the quality of health care services.

Sec. 3. The Nebraska Health Care Trust Fund is created. The fund shall include revenue received on or after January 1, 1998, from governmental nursing facilities participating under the requirements for payments for nursing facility services under the medical assistance program established pursuant to section 68-1018. The Department of Health and Human Services Finance and Support shall remit such revenue to the State Treasurer for credit to the fund. The department shall administer the fund and shall adopt and promulgate rules and regulations to establish the procedures for participation by governmental nursing facilities. 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.

Sec. 4. The Nebraska Tobacco Settlement Trust Fund is created. The fund shall include revenue received from a settlement or judgment awarded to the State of Nebraska as a result of tobacco-related litigation for compensation for the costs of treating smoking-related illnesses. The Department of Health and Human Services Finance and Support shall remit such revenue to the State Treasurer for credit to the fund. Subject to the terms and conditions of the settlement or judgment, the interest on the revenue shall be transferred to the Excellence in Health Care Trust Fund to be used for grants or loan guarantees as provided in section 10 of this act. Any money in the Nebraska Tobacco Settlement Trust 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.

Sec. 5. The Nursing Facility Conversion Cash Fund is created. The fund shall include revenue transferred from the Nebraska Health Care Trust Fund. The Nursing Facility Conversion Cash Fund shall be used for grants or loan guarantees as provided in section 9 of this act after deducting expenses incurred in the administration of the grants or loan guarantees. 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.

Sec. 6. The Children's Health Insurance Cash Fund is created. The

fund shall include revenue transferred from the Nebraska Health Care Trust Fund. The Children's Health Insurance Cash Fund shall be used for the state's matching share for children's health insurance under Title XXI of the federal Social Security Act and for expenses incurred in the administration of the program. 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.

Sec. 7. The Excellence in Health Care Trust Fund is created. The fund shall include revenue transferred from the Nebraska Health Care Trust Fund and the Nebraska Tobacco Settlement Trust Fund. The Excellence in Health Care Trust Fund shall be used for grants or loan guarantees as provided in section 10 of this act after deducting any expenses incurred in the administration of the grants or loan guarantees. 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.

Sec. 8. (1) The Department of Health and Human Services Finance and Support shall administer the distribution of the money in the Nebraska Health Care Trust Fund as provided in this section.

(2) The department shall:

(a) Direct the State Treasurer to transfer the first forty million dollars placed in the fund, plus interest accruing prior to the transfer, to the Nursing Facility Conversion Cash Fund;

(b) Direct the State Treasurer to transfer the next twenty-five million dollars placed in the Nebraska Health Care Trust Fund, plus interest accruing prior to the transfer, to the Children's Health Insurance Cash Fund; and

(c) Beginning January 15, 1999, direct the State Treasurer to transfer only the interest accruing on the money in the Nebraska Health Care Trust Fund in excess of the first sixty-five million dollars placed in the fund to the Excellence in Health Care Trust Fund.

(3) If there is an unanticipated reduction in federal medicaid funds pursuant to the generation of revenue from governmental nursing facilities as described in section 3 of this act, the department may use money placed in the Nebraska Health Care Trust Fund for medicaid expenses where the unanticipated reduction occurred.

Sec. 9. (1) For purposes of this section:

(a) Alternatives to nursing facility care means those services included in the program of home and community-based waiver services for aged persons or adults or children with disabilities under the medical assistance program established pursuant to section 68-1018;

(b) Conversion means (i) the remodeling of existing space and, if necessary, the construction of additional space required to accommodate assisted-living facility services or other alternatives to nursing facility care or (ii) new construction of an assisted-living facility or other alternative to nursing facility care if existing nursing facility beds are no longer licensed and the Department of Health and Human Services Finance and Support determines that new construction is more cost effective than the conversion of existing space; and

(c) Nursing facility means a facility licensed as a nursing facility, a skilled nursing facility, or an intermediate care facility as such terms are defined in section 71-2017.01 or a long-term care hospital or a distinct part of a hospital, as such terms are defined in section 71-2017.01, which is primarily devoted to providing the care and services enumerated in subdivision (10), (11), or (20) of section 71-2017.01, but does not include an intermediate care facility for the mentally retarded as defined in section 71-2017.01.

(2) The Department of Health and Human Services Finance and Support, with the advice of the Policy Cabinet created in section 81-3009 and the Nursing Home Advisory Council, shall award grants or make guarantees of loans from the Nursing Facility Conversion Cash Fund for capital or one-time expenditures, including, but not limited to, startup and training expenses and operating losses for the first year, to any nursing facility which has been approved for at least three years as a provider under the medical assistance program established pursuant to section 68-1018 to convert all or a portion of the facility licensed to provide such care to a licensed assisted-living facility or to other types of alternatives to nursing facility care.

(3) During each calendar year in which grants or loan guarantees are available under this section, the department, with the advice of the Policy Cabinet and the Nursing Home Advisory Council, shall award grants or make guarantees of loans first to governmental nursing facilities, second to nonprofit nursing facilities, and then to other nursing facilities. A

nongovernmental nursing facility shall only be eligible for a grant or loan guarantee for conversion to assisted-living services if it is located in underserved areas as determined by the department and if no governmental nursing facility can or is willing to be converted. To be eligible for a grant or loan guarantee under this section, the nongovernmental nursing facilities shall provide twenty percent of the total cost of any conversion. The department shall establish policies and procedures for certification of the required matching funds. The department shall annually establish a calendar for receiving and evaluating proposals and awarding grants or making loan guarantees.

(4) No grant or loan guarantee application shall be approved by the department unless (a) the applicant can demonstrate that (i) conversion of the nursing facility or portion of the facility to an assisted-living facility or other alternatives to nursing facility care will offer efficient and economical care to individuals requiring long-term care services in the area, (ii) assisted-living services or other alternatives to nursing facility care are unlikely to be available in the area for individuals eligible for services under the medical assistance program established pursuant to section 68-1018, and (iii) the resulting reduction in the availability of nursing facility services is not expected to cause undue hardship on those individuals requiring nursing facility services, and (b) the department can demonstrate that the conversion will result in a lower reimbursement rate under the medical assistance program established under section 68-1018 from the State of Nebraska to the applicant. No grant shall be awarded or loan guarantee made unless the applicant agrees to maintain a minimum occupancy rate by individuals eligible for services under the medical assistance program established pursuant to section 68-1018 and, in the event the applicant or its successor in interest ceases to operate an assisted-living facility or other alternative to nursing facility care during the ten-year period after the date the applicant began operation of its facility as an assisted-living facility or other alternative to nursing facility care, to refund to the Nursing Facility Conversion Cash Fund, on an amortized basis, the amount of the grant or loan guarantee. In addition to other remedies provided by law, the department may deduct the amount of any refund due from a recipient of grant or loan guarantee funds from any money owed by the department to such recipient or the recipient's successor in interest.

(5) The department shall adopt and promulgate rules and regulations which establish (a) an application process for grants or loan guarantees, (b) criteria for nursing facilities to receive funding, including, but not limited to, minimum occupancy rates, allowable costs, and refund methods, (c) criteria for the rates and amounts of funding, and (d) other procedures as the department deems necessary for the proper administration of this section.

(6) This section does not create an entitlement to any funds available for grants or loan guarantees under this section, and the department may award grants or make loan guarantees to the extent funds are available and, within its discretion, to the extent such applications are approved.

(7) Nongovernmental recipients of grants and loan guarantees under this section shall annually submit cost reports to the department regarding the conversion project for a period of ten years after the date the recipient began operation of its facility as an assisted-living facility or other alternative to nursing facility care. The department shall develop the cost report which shall include, but not be limited to, revenue, costs, loans undertaken by the facility, fixed assets of the facility, a balance sheet, and a profit and loss statement.

(8) The department shall provide annual reports to the Governor and the Legislature concerning grants awarded or loan guarantees made under this section. Each report shall include the number of applicants and approved applicants, an overview of the various grants awarded or loan guarantees made, and detailed reports of the cost of each project funded by a grant or loan guarantee and information received under subsection (7) of this section.

(9) It is the intent of the Legislature to review projects which receive grants or loan guarantees under this section to ensure that the goal to provide alternatives to traditional long-term care services is being met and that an adequate number of nursing facility services remain to meet the needs of Nebraskans. After January 1, 2002, no money shall be allocated for conversion of nursing facilities to assisted-living facilities or other alternatives to nursing facility care under this section without reaffirmation of this program by the Legislature. Money allocated for the purpose of conversion before January 1, 2002, may be awarded to eligible applicants.

Sec. 10. (1) Beginning January 15, 1999, the Excellence in Health Care Trust Fund shall be used for (a) awarding grants or making loan guarantees as described in section 9 of this act for conversion of nursing

facilities to assisted-living facilities or other alternatives to nursing facility care, (b) awarding grants for public health services which focus on health education, preventive health measures, and environmental health, assessment, and assurance, including services for reservation or service areas of federally recognized Native American tribes in Nebraska and organizations that focus on the health of minority groups, (c) awarding grants for activities related to the design, maintenance, or enhancement of the statewide trauma system, support of emergency medical services programs, and support for the emergency medical services programs for children, (d) awarding grants for conversion of hospitals in rural areas of the state to limited-service rural hospitals, (e) awarding grants for education, recruitment, and retention of primary care professionals, behavioral health professionals, and nurses for medically underserved areas, (f) awarding grants for health infrastructure development which is supportive of telemedicine capability, including, but not limited to, high-speed data and medical information transmission, (g) awarding grants for the development and expansion of community-based aging services designed to promote the independent living status of and delay institutional care for elderly persons, including, but not limited to, personal care, respite care, homemaker care, and chore and transportation services, and (h) the state's matching share for children's health insurance under Title XXI of the federal Social Security Act in excess of the funds distributed under subdivision (2)(b) of section 8 of this act. No more than one-half of the money in the Excellence in Health Care Trust Fund may be used for conversion projects under subdivision (a) of this subsection. No funds shall be used under this section for abortion, abortion counseling, referral for abortion, or school-based health clinics.

(2) The Governor shall establish the Excellence in Health Care Council within the Department of Health and Human Services Finance and Support. The Director of Finance and Support or his or her designee shall be an ex officio member of the council. The Governor shall appoint a chairperson and five additional members to the council. The chairperson and additional members shall be appointed for three-year terms, except that of the initial members, two shall be appointed for one-year terms and two for two-year terms. The membership shall include at least one consumer and one health care provider. Any vacancy shall be filled in the same manner as the original appointment for the unexpired term. The Department of Health and Human Services Finance and Support shall provide staff support for the council. The Department of Health and Human Services and the Department of Health and Human Services Regulation and Licensure shall also assist the Department of Health and Human Services Finance and Support and the council as may be necessary. Members of the council shall be reimbursed for their actual and necessary expenses as provided in sections 81-1174 to 81-1177.

(3) The council, with the approval of the Director of Finance and Support, shall award grants or make loan guarantees under subdivision (1)(a) of this section and shall award grants under subdivisions (1)(b) through (g) of this section to a person or entity for expenditures, including, but not limited to, startup and training expenses and operating losses, which will improve access to or delivery of health care services to medically underserved individuals or in medically underserved areas or which will help contain or reduce the cost or improve the quality of health care services. The Director of Finance and Support, with the advice of the Nursing Home Advisory Council and the Policy Cabinet created in section 81-3009, shall use the procedures and criteria of section 9 of this act to make recommendations for grants to be awarded or loan guarantees to be made by the Excellence in Health Care Council under subdivision (1)(a) of this section.

(4) Eligible activities under subdivision (1)(b) of this section shall include, but not be limited to, (a) projects to implement the Community Health Care Act, (b) the hiring of school nurses by educational service units, school districts, public health entities, or partnerships between schools and public health entities in order to identify children for medicaid eligibility and to provide immunizations and other public health services, (c) health education and activities that focus on prenatal care, proper diet, physical activity, the reduction of teen and other unintended pregnancies, the prevention of disease, and other public health problems, (d) staffing needs for public health services or education, including recruitment and training, (e) pregnancy testing, (f) tests and screenings for blood pressure, cholesterol, sexually transmitted diseases, cervical cancer, breast cancer, communicable diseases, and other potential public health problems, (g) matching funds for state and federal health programs designed to address public health needs, (h) laboratory equipment to enable the Department of Health and Human Services Regulation and Licensure to carry out its powers and duties relating to laboratory services, (i) public health environmental

services, and (j) education, research, and outreach programs that specifically address the cause and prevention of smoking-related diseases and smoking prevention and cessation.

(5) This section does not create an entitlement to any funds available for grants or loan guarantees under this section, and the council may award grants or make loan guarantees to the extent funds are available and, within its discretion, to the extent such applications are approved.

(6) The department shall:

(a) In consultation with the Excellence in Health Care Council, develop criteria for the awarding of grants from the Excellence in Health Care Trust Fund pursuant to subdivisions (1)(b) through (g) of this section;

(b) Have the power to approve or disapprove decisions by the council regarding the selection of projects to be funded and the distribution and duration of project funding;

(c) In consultation with the council, establish standards, formats, procedures, and timelines for the successful implementation of approved projects;

(d) In consultation with the council, assist grant recipients in determining the effectiveness of the project and measure the accomplishment of the grant objectives; and

(e) Provide annual reports to the Governor and the Legislature concerning the projects. Each report shall include the number of applicants and approved applicants, an overview of the various projects, and detailed reports of the cost of each project.

(7) The department shall, in consultation with the council, adopt and promulgate rules and regulations establishing criteria, standards, and procedures regarding the selection and administration of projects funded from the fund pursuant to subdivisions (1)(b) through (g) of this section. Recipients of such grants shall be required to provide, upon request, such data relating to the funded projects as the department deems necessary.

Sec. 11. Sections 11 to 18 of this act shall be known and may be cited as the Native American Public Health Act.

Sec. 12. The Legislature finds that members of Nebraska's federally recognized Native American tribes are not receiving adequate basic public health services, especially in the areas of education and prevention. The leading causes of death among Native American people are largely preventable. Many Native American people suffer from preventable diseases such as diabetes, cardiovascular disease, and alcohol-related fatalities. An alarming number of tribal members engage in health-threatening activities such as smoking, substance abuse, and poor diet. Births to teenaged Native Americans are higher than any other racial group. Unintentional injuries are costing Native American people years of productivity and potential. As a result, the life expectancy among Native Americans is low while the infant mortality rate is high when compared to Nebraska's general population. The problems and future costs associated with a lack of adequate public health services will continue to escalate as seventy percent of tribal members on reservations and in service areas are children.

To protect a generation of Native American children and to provide for a safe, healthy future for future generations of Native American people, the Legislature declares that public health infrastructure focusing on health education and preventative health measures for Native Americans must be addressed.

Sec. 13. The Department of Health and Human Services shall contract with the health clinics of Nebraska's federally recognized Native American tribes, Indian health organizations, or other public health organizations that have a substantial Native American clientele to provide educational and public health services targeted to Native American populations. The following educational and public health services may be considered by the department for such contracts:

(1) Identification and enrollment of children in state and federal programs providing access to health insurance or health care;

(2) Efforts to educate children and adults about the health risks associated with smoking and tobacco use, alcohol abuse, and other substances that threaten health and well-being and other activities designed to reduce the rate of substance abuse;

(3) Prenatal care education for women and notification of programs that improve prenatal care;

(4) Education focusing on proper diet and the importance of physical activity to good health;

(5) Blood pressure and cholesterol screenings;

(6) Support of efforts to identify children and adults at risk for depression and other mental health conditions and provide mental health

counseling to prevent suicide;

(7) Parenting classes and the promotion of such programs;

(8) Efforts to discourage drinking and driving and to encourage the use of seat belts;

(9) Tests and education for acquired immunodeficiency syndrome and other sexually transmitted diseases;

(10) Tests for pregnancy and referrals to prenatal care when directed;

(11) Educational efforts aimed at reducing teen pregnancies and other unintended pregnancies;

(12) Case management for pregnant women, children, or adults with special health care needs;

(13) Efforts to make health care prevention services more affordable or accessible;

(14) Matching funds for state and federal programs designed to address public health needs;

(15) Staffing needs for public health services or education including the recruitment and training of Native American providers;

(16) Cervical and breast cancer detection services and other prevention components of comprehensive women's health services;

(17) Education to prevent and reduce the occurrence of diabetes; and

(18) Other prevention or educational activities or programs that address the health, safety, or self-sufficiency of Native American persons.

Sec. 14. During each fiscal year, the Director of Health and Human Services shall contract with the health clinics of Nebraska's federally recognized Native American tribes as approved by the tribal councils, Indian health organizations, or other public health organizations that have a substantial Native American clientele to provide educational and public health services pursuant to section 13 of this act. The director shall fund all eligible contracts until the appropriation to this program is depleted, but shall give priority to contracts which meet the following criteria:

(1) Programs or activities that directly impact the health and well-being of children;

(2) Programs or activities which serve the greater number of people over the longest period of time;

(3) Programs or activities that are part of a larger plan for strategic public health planning and implementation;

(4) Current programs or activities that have demonstrated success in improving public health or new programs or activities modeled on successful programs and activities; and

(5) Programs or activities that focus on primary prevention and show promise in reducing future health care expenditures.

Sec. 15. The Department of Health and Human Services shall provide technical assistance and assessment of needs evaluations upon request to aid tribal councils in the development of contract proposals.

Sec. 16. The recipients of funds under the Native American Public Health Act shall submit a report on the activities funded each fiscal year. The report shall provide information as required by the Director of Health and Human Services to determine the effectiveness of the contract in meeting the goals of the Native American Public Health Act.

Sec. 17. If the Director of Health and Human Services determines that services are not being delivered in accordance with the contract, the director may seek to recapture all or a portion of funds expended.

Sec. 18. The Department of Health and Human Services shall adopt and promulgate rules and regulations to carry out the Native American Public Health Act and shall adhere to already established or adopted and promulgated rules and regulations for contracted services under the act.

Sec. 19. Section 71-6050, Reissue Revised Statutes of Nebraska, is amended to read:

71-6050. (1) The council shall advise and make recommendations to the department on all matters pertaining to the licensure and regulation of nursing homes in this state, and in furtherance of such powers, the council shall:

(1) (a) Study, review, and make recommendations from time to time to the department for rules and standards governing the licensing and operation of nursing homes in this state;

(2) (b) Recommend procedures to the department in making inspections, reviewing applications, conducting hearings, and performing other duties of the department relative to nursing homes;

(3) (c) Assist the department in the formulation of minimum standards and regulations for nursing homes in this state; and

(4) (d) Perform such other duties as may be necessary to carry out

the purposes and intent of sections 71-2024 and 71-6043 to 71-6052.

(2) The council shall advise the Department of Health and Human Services Finance and Support and the Director of Finance and Support regarding the awarding of grants or making of loan guarantees under sections 9 and 10 of this act.

Sec. 20. Section 10 of this act becomes operative on January 15, 1999. The other sections of this act become operative on their effective date.

Sec. 21. Original section 71-6050, Reissue Revised Statutes of Nebraska, is repealed.

Sec. 22. Since an emergency exists, this act takes effect when passed and approved according to law.