

LEGISLATIVE BILL 1083

Approved by the Governor April 14, 2004

Introduced by Jensen, 20; Redfield, 12; Byars, 30; Johnson, 37; Maxwell, 9;
Stuthman, 22; Synowiecki, 7; Erdman, 47

AN ACT relating to public health and welfare; to amend sections 20-164, 23-3402, 29-434, 29-3705, 29-3915, 42-917, 43-248, 43-254.01, 44-773, 44-774, 48-1102, 53-1,120, 58-703, 58-706, 71-101, 71-102, 71-107, 71-110, 71-112, 71-113, 71-114, 71-116, 71-131, 71-139.02, 71-162, 71-1,312, 80-601, 81-1850, 81-2213, 83-305, 83-305.01, 83-314, 83-324, 83-336, 83-338, 83-340, 83-340.01, 83-349, 83-350, 83-351, 83-354, 83-364, 83-376, 83-1001, 83-1002, 83-1004, 83-1005, 83-1006, 83-1007, 83-1007.01, 83-1009, 83-1009.01, 83-1009.02, 83-1010, 83-1011, 83-1014, 83-1017, 83-1020, 83-1027, 83-1035, 83-1037, 83-1039, 83-1041, 83-1042, 83-1043, 83-1044, 83-1045, 83-1045.01, 83-1045.02, 83-1046, 83-1052, 83-1053, 83-1054, 83-1056, 83-1057, 83-1060, 83-1068, 83-1071, 83-1072, 83-1073, 83-1074, 83-1078, 83-1080, 84-1211, and 84-1326.01, Reissue Revised Statutes of Nebraska, sections 43-245, 43-247, 83-162.04, 83-4,157, 83-1016, 83-1019, 83-1024, 83-1026, 83-1047, 83-1048, 83-1049, 83-1050, 83-1051, 83-1055, 83-1058, 83-1059, 83-1061, 83-1062, 83-1064, 83-1066, and 83-1069, Revised Statutes Supplement, 2002, and sections 9-812, 28-416, 43-250, 60-6,209, and 83-1079, Revised Statutes Supplement, 2003; to adopt the Nebraska Behavioral Health Services Act; to change and eliminate provisions relating to state hospitals and mental health commitments; to transfer the Nebraska Mental Health Commitment Act; to provide for fund transfers from and an authorized use of the Affordable Housing Trust Fund; to provide for licensure of alcohol and drug abuse counselors; to create a board; to provide for fees; to provide and change powers and duties; to eliminate the Nebraska Comprehensive Community Mental Health Services Act, the Rehabilitation and Support Mental Health Services Incentive Act, the Alcoholism, Drug Abuse, and Addiction Services Act, the Nebraska Behavioral Health Reform Act, and provisions relating to behavioral health; to harmonize provisions; to provide severability; to provide operative dates; to repeal the original sections; to outright repeal sections 71-5001 to 71-5010, 71-5012 to 71-5053, 71-5055 to 71-5066, 83-158.01, 83-159, 83-160, 83-161.02, 83-162.01 to 83-162.03, 83-163 to 83-169, 83-305.05, 83-306, 83-307, 83-307.01, 83-308, 83-311, 83-312, 83-318, 83-321, 83-337, 83-339, 83-352.02, 83-1012, 83-1018, 83-1021, 83-1022, 83-1028, 83-1029, 83-1036, 83-1038, 83-1040, 83-1044.01, 83-1065, 83-1067, 83-1070, and 83-1077.01, Reissue Revised Statutes of Nebraska, and sections 83-1003, 83-1008, 83-1013, 83-1015, 83-1023, and 83-1025, Revised Statutes Supplement, 2002; and to declare an emergency.

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

Section 1. Sections 1 to 20 of this act shall be known and may be cited as the Nebraska Behavioral Health Services Act.

Sec. 2. The purposes of the Nebraska Behavioral Health Services Act are to: (1) Reorganize statutes relating to the provision of publicly funded behavioral health services; (2) provide for the organization and administration of the public behavioral health system within the department; (3) rename mental health regions as behavioral health regions; (4) provide for the naming of regional behavioral health authorities and ongoing activities of regional governing boards; (5) reorganize and rename the State Mental Health Planning and Evaluation Council, the State Alcoholism and Drug Abuse Advisory Committee, and the Nebraska Advisory Commission on Compulsive Gambling and create the State Behavioral Health Council; (6) change and add provisions relating to development of community-based behavioral health services and funding for behavioral health services; and (7) authorize the closure of regional centers.

Sec. 3. The purposes of the public behavioral health system are to ensure:

(1) The public safety and the health and safety of persons with behavioral health disorders;

(2) Statewide access to behavioral health services, including, but not limited to, (a) adequate availability of behavioral health professionals, programs, and facilities, (b) an appropriate array of community-based services

and continuum of care, and (c) integration and coordination of behavioral health services with primary health care services;

(3) High quality behavioral health services, including, but not limited to, (a) services that are research-based and consumer-focused, (b) services that emphasize beneficial treatment outcomes and recovery, with appropriate treatment planning, case management, community support, and consumer peer support, (c) appropriate regulation of behavioral health professionals, programs, and facilities, and (d) consumer involvement as a priority in all aspects of service planning and delivery; and

(4) Cost-effective behavioral health services, including, but not limited to, (a) services that are efficiently managed and supported with appropriate planning and information, (b) services that emphasize prevention, early detection, and early intervention, (c) services that are provided in the least restrictive environment consistent with the consumer's clinical diagnosis and plan of treatment, and (d) funding that is fully integrated and allocated to support the consumer and his or her plan of treatment.

Sec. 4. For purposes of the Nebraska Behavioral Health Services Act:

(1) Administrator means the administrator of the division;

(2) Behavioral health disorder means mental illness or alcoholism, drug abuse, problem gambling, or other addictive disorder;

(3) Behavioral health region means a behavioral health region established in section 7 of this act;

(4) Behavioral health services means services, including, but not limited to, consumer-provided services, support services, inpatient and outpatient services, and residential and nonresidential services, provided for the prevention, diagnosis, and treatment of behavioral health disorders and the rehabilitation and recovery of persons with such disorders;

(5) Community-based behavioral health services or community-based services means behavioral health services that are not provided at a regional center;

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

(7) Director means the Director of Health and Human Services;

(8) Division means the Division of Behavioral Health Services of the department;

(9) Nebraska Health and Human Services System means the Department of Health and Human Services, the Department of Health and Human Services Regulation and Licensure, and the Department of Health and Human Services Finance and Support;

(10) Policy Cabinet means the Policy Cabinet of the Nebraska Health and Human Services System established in section 81-3009;

(11) Public behavioral health system means the statewide array of behavioral health services for children and adults provided by the public sector or private sector and supported in whole or in part with funding received and administered by the Nebraska Health and Human Services System, including behavioral health services provided under the medical assistance program established in section 68-1018;

(12) Regional center means one of the state hospitals for the mentally ill designated in section 83-305; and

(13) Regional center behavioral health services or regional center services means behavioral health services provided at a regional center.

Sec. 5. (1) The Division of Behavioral Health Services is established within the department. The division shall establish and maintain a separate budget and shall separately account for all revenue and expenditures.

(2) The administrator of the division shall be appointed by the Governor and confirmed by a majority of the members of the Legislature. The administrator shall report to the director and shall be responsible for the administration and management of the division. The director shall appoint a chief clinical officer and a program administrator for consumer affairs for the division. The chief clinical officer shall be a board-certified psychiatrist and shall serve as the medical director for the division and all facilities and programs operated by the division. The program administrator for consumer affairs shall be a consumer or former consumer of behavioral health services and shall have specialized knowledge, experience, or expertise relating to consumer-directed behavioral health services, behavioral health delivery systems, and advocacy on behalf of consumers of behavioral health services and their families. The chief clinical officer and the program administrator for consumer affairs shall report to the administrator of the division. The Governor and the director shall conduct a search for qualified candidates and shall solicit and consider recommendations from interested parties for such positions prior to making such appointments.

(3) The administrator of the division shall establish and maintain an office of consumer affairs within the division. The program administrator for consumer affairs shall be responsible for the administration and management of the office.

Sec. 6. (1) The division shall act as the chief behavioral health authority for the State of Nebraska and shall direct the administration and coordination of the public behavioral health system, including, but not limited to: (a) Administration and management of the division, regional centers, and any other facilities and programs operated by the division; (b) integration and coordination of the public behavioral health system; (c) comprehensive statewide planning for the provision of an appropriate array of community-based behavioral health services and continuum of care; (d) coordination and oversight of regional behavioral health authorities, including approval of regional budgets and audits of regional behavioral health authorities; (e) development and management of data and information systems; (f) prioritization and approval of all expenditures of funds received and administered by the division, including the establishment of rates to be paid and reimbursement methodologies for behavioral health services and fees to be paid by consumers of such services; (g) cooperation with the Department of Health and Human Services Regulation and Licensure in the licensure and regulation of behavioral health professionals, programs, and facilities; (h) cooperation with the Department of Health and Human Services Finance and Support in the provision of behavioral health services under the medical assistance program established in section 68-1018; (i) audits of behavioral health programs and services; and (j) promotion of activities in research and education to improve the quality of behavioral health services, recruitment and retention of behavioral health professionals, and access to behavioral health programs and services.

(2) The department shall adopt and promulgate rules and regulations to carry out the Nebraska Behavioral Health Services Act.

Sec. 7. Six behavioral health regions are established, consisting of the following counties:

(1) Region 1 shall consist of Sioux, Dawes, Box Butte, Sheridan, Scotts Bluff, Morrill, Garden, Banner, Kimball, Cheyenne, and Deuel counties;

(2) Region 2 shall consist of Grant, Hooker, Thomas, Arthur, McPherson, Logan, Keith, Lincoln, Perkins, Chase, Hayes, Frontier, Dawson, Gosper, Dundy, Hitchcock, and Red Willow counties;

(3) Region 3 shall consist of Blaine, Loup, Garfield, Wheeler, Custer, Valley, Greeley, Sherman, Howard, Buffalo, Hall, Phelps, Kearney, Adams, Clay, Furnas, Harlan, Hamilton, Merrick, Franklin, Webster, and Nuckolls counties;

(4) Region 4 shall consist of Cherry, Keya Paha, Boyd, Brown, Rock, Holt, Knox, Cedar, Dixon, Dakota, Thurston, Wayne, Pierce, Antelope, Boone, Nance, Madison, Stanton, Cuming, Burt, Colfax, and Platte counties;

(5) Region 5 shall consist of Polk, Butler, Saunders, Seward, Lancaster, Otoe, Fillmore, Saline, Thayer, Jefferson, Gage, Johnson, Nemaha, Pawnee, York, and Richardson counties; and

(6) Region 6 shall consist of Dodge, Washington, Douglas, Sarpy, and Cass counties.

Sec. 8. (1) A regional behavioral health authority shall be established in each behavioral health region by counties acting under provisions of the Interlocal Cooperation Act. Each regional behavioral health authority shall be governed by a regional governing board consisting of one county board member from each county in the region. Board members shall serve for staggered terms of three years and until their successors are appointed and qualified. Board members shall serve without compensation but shall be reimbursed for their actual and necessary expenses as provided in sections 81-1174 to 81-1177.

(2) The regional governing board shall appoint a regional administrator who shall be responsible for the administration and management of the regional behavioral health authority. Each regional behavioral health authority shall encourage and facilitate the involvement of consumers in all aspects of service planning and delivery within the region and shall coordinate such activities with the office of consumer affairs within the division. Each regional behavioral health authority shall establish and utilize a regional advisory committee consisting of consumers, providers, and other interested parties and may establish and utilize such other task forces, subcommittees, or other committees as it deems necessary and appropriate to carry out its duties under this section.

(3) Each county in a behavioral health region shall provide funding for the operation of the behavioral health authority and for the provision of behavioral health services in the region. The total amount of funding

provided by counties under this subsection shall be equal to one dollar for every three dollars from the General Fund. The division shall annually certify the total amount of county matching funds to be provided. At least forty percent of such amount shall consist of local and county tax revenue, and the remainder shall consist of other nonfederal sources. The regional governing board of each behavioral health authority, in consultation with all counties in the region, shall determine the amount of funding to be provided by each county under this subsection. Any General Funds transferred from regional centers for the provision of community-based behavioral health services after the operative date of this section shall be excluded from any calculation of county matching funds under this subsection.

Sec. 9. (1) Each regional behavioral health authority shall be responsible for the development and coordination of publicly funded behavioral health services within the behavioral health region pursuant to rules and regulations adopted and promulgated by the department, including, but not limited to, (a) administration and management of the regional behavioral health authority, (b) integration and coordination of the public behavioral health system within the behavioral health region, (c) comprehensive planning for the provision of an appropriate array of community-based behavioral health services and continuum of care for the region, (d) submission for approval by the division of an annual budget and a proposed plan for the funding and administration of publicly funded behavioral health services within the region, (e) submission of annual reports and other reports as required by the division, (f) initiation and oversight of contracts for the provision of publicly funded behavioral health services, and (g) coordination with the division in conducting audits of publicly funded behavioral health programs and services.

(2) Except for services being provided by a regional behavioral health authority on the operative date of this section under applicable state law in effect prior to such date, no regional behavioral health authority shall provide behavioral health services funded in whole or in part with revenue received and administered by the division under the Nebraska Behavioral Health Services Act unless:

(a) There has been a public competitive bidding process for such services;

(b) There are no qualified and willing providers to provide such services; and

(c) The regional behavioral health authority receives written authorization from the administrator and enters into a contract with the division to provide such services.

(3) Each regional behavioral health authority shall comply with all applicable rules and regulations of the department relating to the provision of behavioral health services by such authority, including, but not limited to, rules and regulations which (a) establish definitions of conflicts of interest for regional behavioral health authorities and procedures in the event such conflicts arise, (b) establish uniform and equitable public bidding procedures for such services, and (c) require each regional behavioral health authority to establish and maintain a separate budget and separately account for all revenue and expenditures for the provision of such services.

Sec. 10. (1) The division shall encourage and facilitate the statewide development and provision of an appropriate array of community-based behavioral health services and continuum of care for the purposes of (a) providing greater access to such services and improved outcomes for consumers of such services and (b) reducing the necessity and demand for regional center behavioral health services.

(2) The division may reduce or discontinue regional center behavioral health services only if (a) appropriate community-based services or other regional center behavioral health services are available for every person receiving the regional center services that would be reduced or discontinued, (b) such services possess sufficient capacity and capability to effectively replace the service needs which otherwise would have been provided at such regional center, and (c) no further commitments, admissions, or readmissions for such services are required due to the availability of community-based services or other regional center services to replace such services.

(3) The division shall notify the Governor and the Legislature of any intended reduction or discontinuation of regional center services under this section. Such notice shall include detailed documentation of the community-based services or other regional center services that are being utilized to replace such services. The Behavioral Health Oversight Commission of the Legislature shall review such documentation and shall report to the Governor and the Health and Human Services Committee of the Legislature

whether, in its opinion, the requirements of subsection (2) of this section have been met with respect to such intended reduction or discontinuation of regional center services and shall enumerate the criteria used by the commission in making such determination.

(4) As regional center services are reduced or discontinued under this section, the division shall make appropriate corresponding reductions in regional center personnel and other expenditures related to the provision of such services. All funding related to the provision of regional center services that are reduced or discontinued under this section shall be reallocated and expended by the division for purposes related to the statewide development and provision of community-based services.

(5) The division may establish state-operated community-based services to replace regional center services that are reduced or discontinued under this section. The division shall provide regional center employees with appropriate training and support to transition such employees into positions as may be necessary for the provision of such state-operated services.

(6) When the occupancy of the licensed psychiatric hospital beds of any regional center reaches twenty percent or less of its licensed psychiatric hospital bed capacity on March 15, 2004, the division shall notify the Governor and the Legislature of such fact. Upon such notification, the division, with the approval of a majority of members of the Executive Board of the Legislative Council, may provide for the transfer of all remaining patients at such center to appropriate community-based services or other regional center services pursuant to this section and cease the operation of such regional center.

(7) The provisions of this section are self-executing and require no further authorization or other enabling legislation.

Sec. 11. The division shall coordinate the integration and management of all funds appropriated by the Legislature or otherwise received by the Nebraska Health and Human Services System from any other public or private source and designated by the Policy Cabinet for the provision of behavioral health services to ensure the statewide availability of an appropriate array of community-based behavioral health services and continuum of care and the allocation of such funds to support the consumer and his or her plan of treatment.

Sec. 12. (1) The Behavioral Health Services Fund is created. The fund shall be administered by the division and shall contain cash funds appropriated by the Legislature or otherwise received by the Nebraska Health and Human Services System for the provision of behavioral health services from any other public or private source and directed by the Policy Cabinet or the Legislature for credit to the fund.

(2) The fund shall be used to encourage and facilitate the statewide development and provision of community-based behavioral health services, including, but not limited to, (a) the provision of grants, loans, and other assistance for such purpose and (b) reimbursement to providers of such services.

(3) 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. 13. (1) The State Behavioral Health Council is created. The council shall consist of (a) ten members of the State Advisory Committee on Mental Health Services, (b) ten members of the State Advisory Committee on Substance Abuse Services, and (c) ten members of the State Advisory Committee on Problem Gambling and Addiction Services as appointed pursuant to sections 14 to 16 of this act. The Governor shall appoint three members from each such committee to serve on the council and each committee shall select seven of its members to serve on the council.

(2) Members of the council and such committees shall be appointed for staggered terms of three years and until their successors are appointed and qualified. Vacancies for any unexpired term shall be filled in the same manner as provided for the original appointment. Members shall serve without compensation but shall be reimbursed for their actual and necessary expenses as provided in sections 81-1174 to 81-1177. The council and each such committee shall annually elect a chairperson and other officers from among its members. No officer shall serve more than three consecutive one-year terms in any one office.

(3) The council shall be responsible to the division and shall (a) conduct regular meetings, (b) provide advice and assistance to the division relating to the provision of behavioral health services in the State of Nebraska, (c) promote the interests of consumers of behavioral health services and their families, and (d) report annually to the Governor and the Legislature.

Sec. 14. (1) The State Advisory Committee on Mental Health Services is created. Members of the committee shall have a demonstrated interest and commitment and specialized knowledge, experience, or expertise relating to the provision of mental health services in the State of Nebraska. The committee shall consist of twenty-three members appointed by the Governor as follows: (a) One regional governing board member, (b) one regional administrator, (c) twelve consumers of behavioral health services or their family members, (d) two providers of behavioral health services, (e) two representatives from the State Department of Education, including one representative from the Division of Vocational Rehabilitation of the State Department of Education, (f) three representatives from the Nebraska Health and Human Services System representing mental health, social services, and medicaid, (g) one representative from the Nebraska Commission on Law Enforcement and Criminal Justice, and (h) one representative from the Housing Office of the Community and Rural Development Division of the Department of Economic Development.

(2) The committee shall be responsible to the State Behavioral Health Council and shall (a) serve as the state's mental health planning council as required by Public Law 102-321, (b) conduct regular meetings, (c) provide advice and assistance to the council and the division relating to the provision of mental health services in the State of Nebraska, (d) promote the interests of consumers and their families, (e) provide reports as requested by the council or the division, and (f) engage in such other activities as directed or authorized by the council.

Sec. 15. (1) The State Advisory Committee on Substance Abuse Services is created. Members of the committee shall have a demonstrated interest and commitment and specialized knowledge, experience, or expertise relating to the provision of substance abuse services in the State of Nebraska. The committee shall consist of twelve members appointed by the Governor.

(2) The committee shall be responsible to the State Behavioral Health Council and shall (a) conduct regular meetings, (b) provide advice and assistance to the council and the division relating to the provision of substance abuse services in the State of Nebraska, (c) promote the interests of consumers and their families, (d) provide reports as requested by the council or the division, and (e) engage in such other activities as directed or authorized by the council.

Sec. 16. (1) The State Advisory Committee on Problem Gambling and Addiction Services is created. Members of the committee shall have a demonstrated interest and commitment and specialized knowledge, experience, or expertise relating to the provision of problem gambling and addiction services in the State of Nebraska. The committee shall consist of twelve members appointed by the Governor.

(2) The committee shall be responsible to the State Behavioral Health Council and shall (a) conduct regular meetings, (b) provide advice and assistance to the council and the division relating to the provision of problem gambling and addiction services in the State of Nebraska, (c) evaluate applications for funding from the Compulsive Gamblers Assistance Fund and make recommendations relating to disbursements from the fund, (d) promote the interests of consumers and their families, (e) provide reports as requested by the council or the division, and (f) engage in such other activities as directed or authorized by the council.

Sec. 17. Section 83-162.04, Revised Statutes Supplement, 2002, is amended to read:

83-162.04. The Compulsive Gamblers Assistance Fund is created. The fund shall include revenue transferred from the State Lottery Operation Trust Fund under section 9-812 and the Charitable Gaming Operations Fund under section 9-1,101 and any other revenue received by the division for credit to the fund from any other public or private source, including, but not limited to, appropriations, grants, donations, gifts, devises, or bequests. The division shall administer the fund for the treatment of compulsive problem gamblers as recommended by the ~~commission~~ the State Advisory Committee on Problem Gambling and Addiction Services established under section 16 of this act and shall spend no more than ten percent of the money appropriated to the fund for administrative costs. In addition to money transferred to the fund from the State Lottery Operation Trust Fund under section 9-812 and the Charitable Gaming Operations Fund under section 9-1,101, the department is authorized to accept for deposit in the Compulsive Gamblers Assistance Fund funds, donations, gifts, devises, or bequests from any federal, state, local, public, or private source to be used by the division in the exercise of this authority under and in the performance of its duties in carrying out the provisions of the Alcoholism, Drug Abuse, and Addiction Services Act which relate to compulsive gambling. The Director of Administrative Services shall

draw warrants upon the Compulsive Gamblers Assistance Fund upon the presentation of proper vouchers by the division. Money from the Compulsive Gamblers Assistance Fund shall be used exclusively for the purpose of providing assistance to agencies, groups, organizations, and individuals that provide education, assistance, and counseling to individuals and families experiencing difficulty as a result of problem ~~or pathological~~ gambling, to promote the awareness of gamblers assistance programs, and to pay the costs and expenses of the division ~~and the committee and the commission~~ with regard to ~~compulsive problem~~ gambling. ~~Neither the director of the division nor the~~ The division shall not provide any direct services to problem ~~or pathological~~ gamblers or their families. Funds appropriated from the Compulsive Gamblers Assistance Fund shall not be granted or loaned to or administered by any ~~of the mental health regional governing boards created pursuant to the Nebraska Comprehensive Community Mental Health Services Act unless the mental health region~~ regional behavioral health authority unless the authority is a direct provider of services dealing with the treatment of ~~compulsive gambling a~~ problem gamblers assistance 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. 18. (1) The Behavioral Health Oversight Commission of the Legislature is created. The commission shall consist of not more than twenty members appointed by the chairperson of the Health and Human Services Committee of the Legislature and confirmed by a majority of members of the committee. Members of the commission shall (a) include, but not be limited to, representatives of the Legislature, consumers and consumer advocacy organizations, behavioral health providers, the communities of Norfolk and Hastings, state employees, regional behavioral health authorities, mental health boards, and law enforcement, (b) possess a demonstrated interest and commitment and specialized knowledge, experience, or expertise relating to the provision of behavioral health services in the State of Nebraska, and (c) be broadly representative of all the behavioral health regions. Members of the commission shall serve without compensation but shall be reimbursed from the Nebraska Health Care Cash Fund for their actual and necessary expenses as provided in sections 81-1174 to 81-1177.

(2) The commission, under the direction of and in consultation with the Health and Human Services Committee of the Legislature, shall oversee and support implementation of the Nebraska Behavioral Health Services Act and shall administer such funds as appropriated by the Legislature from the Nebraska Health Care Cash Fund for such purpose. The commission may employ staff, enter into contracts, establish and utilize task forces and subcommittees, and perform such other activities as necessary and appropriate to carry out its duties under this section.

(3) The commission and this section terminate on June 30, 2008.

Sec. 19. (1) The division shall prepare and submit a behavioral health implementation plan to the Governor and the Legislature on or before July 1, 2004.

(2) The division shall communicate regularly with the Behavioral Health Oversight Commission and the Health and Human Services Committee of the Legislature and shall provide such reports and other information as requested by the commission or the committee during preparation of the plan. The commission shall review such plan and shall provide written recommendations relating to the plan to the division and the committee no later than October 1, 2004. The division shall provide written responses to such recommendations to the commission and the committee, including any proposed changes to the plan, no later than December 1, 2004.

(3) The division shall immediately advise the committee and the commission of any proposed changes to the plan as submitted and shall provide monthly and other reports as requested by the committee or the commission during implementation of the plan.

Sec. 20. The behavioral health implementation plan required under section 19 of this act shall be consistent with the Nebraska Behavioral Health Services Act and shall include, but not be limited to, a detailed description of all completed, current, and proposed activities by the division to:

(1) Select and appoint an administrator, chief clinical officer, program administrator for consumer affairs, and other staff within the division;

(2) Implement necessary and appropriate administrative and other changes within the Nebraska Health and Human Services System to carry out the Nebraska Behavioral Health Services Act;

(3) Describe and define the role and function of the office of consumer affairs within the division;

(4) Describe and define the relationship between the division and

regional behavioral health authorities, including, but not limited to, the nature and scope of the coordination and oversight of such authorities by the division;

(5) Encourage and facilitate the statewide development and provision of an appropriate array of community-based behavioral health services and continuum of care for both children and adults and the integration and coordination of such services with primary health care services;

(6) (a) Identify persons currently receiving regional center behavioral health services for whom community-based behavioral health services would be appropriate, (b) provide for the development and funding of appropriate community-based behavioral health services for such persons in each behavioral health region, (c) transition such persons from regional centers to appropriate community-based behavioral health services, (d) reduce new admissions and readmissions to regional centers, and (e) establish criteria, procedures, and timelines for the closure of the Norfolk Regional Center and the Hastings Regional Center and policies and procedures for the recruitment, retention, training, and support of regional center employees affected by such closures;

(7) Integrate all behavioral health funding within the Nebraska Health and Human Services System and allocate such funding to support the consumer and his or her plan of treatment;

(8) Establish (a) priorities for behavioral health services and funding, (b) rates and reimbursement methodologies for providers of behavioral health services and draft negotiated rulemaking policies and procedures for the development and implementation of such methodologies, and (c) fees to be paid by consumers of behavioral health services, which fees shall not exceed the actual costs of providing such services;

(9) Access additional public and private funding for the provision of behavioral health services in each behavioral health region, including additional federal funding through the medical assistance program established in section 68-1018, and establish programs and procedures for the provision of grants, loans, and other assistance for the provision of such services;

(10) Encourage and facilitate activities of the State Behavioral Health Council and the advisory committees making up such council; and

(11) Promote activities in research and education to improve the quality of behavioral health services, the recruitment and retention of behavioral health professionals, and the availability of behavioral health services.

Sec. 21. Section 83-1078, Reissue Revised Statutes of Nebraska, is amended to read:

~~83-1078.~~ Sections ~~83-312, 83-318, 83-337, 83-351, and 83-1001~~ to ~~83-1080~~ 21 to 82 of this act shall be known and may be cited as the Nebraska Mental Health Commitment Act.

Sec. 22. Section 83-1001, Reissue Revised Statutes of Nebraska, is amended to read:

~~83-1001.~~ It is hereby declared to be The purpose of the Nebraska Mental Health Commitment Act is to provide for the treatment of persons who are mentally ill and dangerous. It is the public policy of the State of Nebraska that mentally ill and dangerous persons be encouraged to obtain voluntary treatment. If voluntary treatment is not obtained, such persons shall be subject to lengthier and more restrictive involuntary custody and treatment only after mental health board proceedings as provided by the Nebraska Mental Health Commitment Act. Such persons shall be subjected to emergency protective custody under limited conditions and for a limited period of time. Procedures shall be changed to provide that while such persons are in custody or undergoing treatment, additional rights relating to restrictive conditions shall be instituted. It is also declared to be public policy that all personal records required by the act shall be confidential except as otherwise specifically provided.

Sec. 23. Section 83-1002, Reissue Revised Statutes of Nebraska, is amended to read:

~~83-1002.~~ For purposes of the Nebraska Mental Health Commitment Act, unless the context otherwise requires, the definitions found in sections ~~83-1003 to 83-1015~~ shall be used 24 to 34 of this act shall apply.

Sec. 24. Section 83-1005, Reissue Revised Statutes of Nebraska, is amended to read:

~~83-1005.~~ Director of a mental health center or state hospital, or director shall mean Administrator means the administrator or other chief administrative officer of such facility, or person designated by him to act in such capacity a treatment facility or his or her designee.

Sec. 25. Section 83-1004, Reissue Revised Statutes of Nebraska, is amended to read:

~~83-1004.~~ Mental health board ~~shall mean~~ means a board created by ~~section 83-1017~~ under section 35 of this act.

Sec. 26. Section 83-1010, Reissue Revised Statutes of Nebraska, is amended to read:

~~83-1010.~~ Mental health professional ~~shall mean~~ a practicing physician means a person licensed to practice medicine and surgery or psychology in this state under the provisions of section 71-102 or a practicing psychologist licensed to engage in the practice of psychology in this state as provided in section 71-1,206.14 Uniform Licensing Law.

Sec. 27. Section 83-1009.01, Reissue Revised Statutes of Nebraska, is amended to read:

~~83-1009.01.~~ For purposes of section ~~83-1009~~, alcoholic person shall mean a person addicted to the use of alcohol. Mentally ill means having a psychiatric disorder that involves a severe or substantial impairment of a person's thought processes, sensory input, mood balance, memory, or ability to reason which substantially interferes with such person's ability to meet the ordinary demands of living or interferes with the safety or well-being of others.

Sec. 28. Section 83-1009, Reissue Revised Statutes of Nebraska, is amended to read:

~~83-1009.~~ Mentally ill and dangerous person shall mean any mentally ill person, alcoholic person, or drug-abusing person who means a person who is mentally ill or substance dependent and because of such mental illness or substance dependence presents:

(1) A substantial risk of serious harm to another person or persons within the near future as manifested by evidence of recent violent acts or threats of violence or by placing others in reasonable fear of such harm; or

(2) A substantial risk of serious harm to himself or herself within the near future as manifested by evidence of recent attempts at, or threats of, suicide or serious bodily harm or evidence of inability to provide for his or her basic human needs, including food, clothing, shelter, essential medical care, or personal safety.

Sec. 29. Section 83-1007.01, Reissue Revised Statutes of Nebraska, is amended to read:

~~83-1007.01.~~ Outpatient treatment ~~shall mean treatment by order of~~ means treatment ordered by a mental health board directing a subject to comply with specified outpatient treatment requirements, including, but that are reasonably designed to alleviate or reduce the subject's illness or disability or to maintain or prevent deterioration of the subject's mental or emotional functioning. The requirements may include, but are not limited to, (1) taking prescribed medication, (2) reporting to a mental health professional or treatment facility for treatment or to permit for monitoring of the subject's condition, or (3) participating in individual or group therapy, or educational, rehabilitation, residential, or vocational programs.

Sec. 30. Section 83-1011, Reissue Revised Statutes of Nebraska, is amended to read:

~~83-1011.~~ Peace officer ~~shall mean~~ or law enforcement officer means a sheriff, coroner, a jailer, a marshal, a police officer, or member an officer of the Nebraska State Patrol.

Sec. 31. Section 83-1007, Reissue Revised Statutes of Nebraska, is amended to read:

~~83-1007.~~ State hospital ~~shall mean~~ a Regional center means a state hospital as defined for the mentally ill as designated in section 83-305. ~~or 83-306.~~

Sec. 32. Section 83-1014, Reissue Revised Statutes of Nebraska, is amended to read:

~~83-1014.~~ Subject ~~shall mean~~ any person against means any person concerning whom a certificate or petition has been filed under the Nebraska Mental Health Commitment Act. Subject shall does not include any person under eighteen years of age unless such person is an emancipated minor.

Sec. 33. Section 83-1009.02, Reissue Revised Statutes of Nebraska, is amended to read:

~~83-1009.02.~~ For purposes of section ~~83-1009~~, drug-abusing person shall mean a person addicted to the use of controlled substances. Substance dependent means having a behavioral disorder that involves a maladaptive pattern of repeated use of controlled substances, illegal drugs, or alcohol, usually resulting in increased tolerance, withdrawal, and compulsive using behavior and including a cluster of cognitive, behavioral, and physiological symptoms involving the continued use of such substances despite significant adverse effects resulting from such use.

Sec. 34. Section 83-1006, Reissue Revised Statutes of Nebraska, is amended to read:

~~83-1006. Mental health center shall mean Treatment facility means a facility which provides services as defined in sections 71-5001 to 71-5041 and the Alcoholism, Drug Abuse, and Addiction Services Act is licensed to provide services for persons who are mentally ill or substance dependent or both.~~

Sec. 35. Section 83-1017, Reissue Revised Statutes of Nebraska, is amended to read:

~~83-1017. (1) At least one mental health board shall be created for each judicial district established pursuant to section 24-301.02. No judicial district shall have more than three mental health boards, except that four mental health boards may be created in a judicial district if the presiding judge of the judicial district demonstrates to the Chief Justice of the Supreme Court that four mental health boards are necessary to meet the needs of the judicial district. The number of boards shall be determined by the district court judge or judges after considering the distribution of the population in that judicial district and the number of qualified persons available for board membership. The presiding judge in each district court judicial district shall create at least one but not more than three mental health boards in such district and shall appoint sufficient members and alternate members to such boards. Members and alternate members of a mental health board shall be appointed for four-year terms. The presiding judge may remove members and alternate members of the board at his or her discretion. Vacancies shall be filled for the unexpired term in the same manner as provided for the original appointment. Members of the mental health board shall have the same immunity as judges of the district court.~~

~~(2) Each mental health board shall consist of an attorney licensed to practice law in this state and any two of the following but not more than one from each category: A physician, a psychologist, a psychiatric social worker, a psychiatric nurse, a clinical social worker, or a layperson with a demonstrated interest in mental health and substance dependency issues. The attorney shall be chairperson of the board. Members and alternate members of a mental health board shall take and subscribe an oath to support the United States Constitution and the Constitution of Nebraska and to faithfully discharge the duties of the office according to law.~~

~~(2) (3) The mental health board shall have the power to issue subpoenas, to administer oaths, and to do any act necessary and proper for the board to carry out its duties. No mental health board hearing shall be conducted unless three members or alternate members are present and able to vote. Any action taken at any mental health board hearing shall be by majority vote.~~

~~(4) The mental health board shall prepare and file an annual inventory statement with the county board of its county of all county personal property in its custody or possession. Members of the mental health board shall be compensated and shall be reimbursed for their actual and necessary expenses by the county or counties being served by such board. Compensation shall be at an hourly rate to be determined by the presiding judge of the district court, except that such compensation shall not be less than fifty dollars for each hearing of the board. Members shall also be reimbursed for their actual and necessary expenses, not including charges for meals. Mileage shall be determined pursuant to section 23-1112.~~

Sec. 36. (1) The Department of Health and Human Services shall provide appropriate training to members and alternate members of each mental health board and shall consult with consumer and family advocacy groups in the development and presentation of such training. Members and alternate members shall be reimbursed for any actual and necessary expenses incurred in attending such training in a manner and amount determined by the presiding judge of the district court. No person shall remain on a mental health board or be eligible for appointment or reappointment as a member or alternate member of such board unless he or she has attended and satisfactorily completed such training pursuant to rules and regulations adopted and promulgated by the department.

(2) The Director of Health and Human Services shall provide the mental health boards with blanks for warrants, certificates, and other forms and printed copies of applicable rules and regulations of the department that will enable the boards to carry out their powers and duties under the Nebraska Mental Health Commitment Act.

Sec. 37. Section 83-1016, Revised Statutes Supplement, 2002, is amended to read:

~~83-1016. The clerk of the district court appointed for that purpose by the district judge or judges of that district shall sign and issue all notices, appointments, warrants, subpoenas, or other process required to be issued by the mental health board, affixing and shall affix his or her seal as clerk of the~~

district court. The clerk shall file and carefully preserve in his or her office all papers connected with any inquest by the board members and properly belonging to his or her office, together with all proceedings of the mental health board and all related notices, reports, and other communications. He or she shall keep separate books in which he or she shall enter the The clerk shall keep minutes of the all proceedings of the board. All required notices, reports, and communications required may be sent by mail, unless otherwise provided for in the Nebraska Mental Health Commitment Act. The fact and date that they are such notices, reports, and communications have been sent and that they are received shall be noted on the proper record.

Sec. 38. Section 83-1019, Revised Statutes Supplement, 2002, is amended to read:

~~83-1019.~~ Any person may voluntarily apply for his or her own voluntary admission to any public or private hospital, other treatment facility, or program for treatment of mental illness, alcoholism, or drug abuse or substance dependence in accordance with the regulations of such facilities or programs governing such admissions. Any person who is voluntarily admitted for voluntary inpatient or similar custodial treatment in such facility shall be entitled to such treatment shall be unconditionally discharged from the facility within such hospital, treatment facility, or program not later than forty-eight hours after delivery of his or her written request made to any official of such hospital, treatment facility, or program, unless action is taken under the Nebraska Mental Health Commitment Act to continue his or her custody.

Sec. 39. Section 83-1020, Reissue Revised Statutes of Nebraska, is amended to read:

~~83-1020.~~ (1) A law enforcement officer who has probable cause to believe that a person is mentally ill and dangerous and that the harm described in section 28 of this act is likely to occur before mental health board proceedings under the Nebraska Mental Health Commitment Act may be initiated to obtain custody of the person may take such person into emergency protective custody, cause him or her to be taken into emergency protective custody, or continue his or her custody if he or she is already in custody. Such person shall be admitted to the nearest appropriate and available medical facility and shall not be placed in a jail. Each county shall make arrangements with appropriate medical facilities inside or outside the county for such purpose and shall pay the cost of the emergency protective custody of persons from such county in such facilities. A mental health professional who has probable cause to believe that a person is mentally ill and dangerous may cause such person to be taken into custody and shall have a limited privilege to hold such person until a law enforcement officer or other authorized person arrives to take custody of such person.

(2) Upon admission to a medical facility of a person taken into emergency protective custody by a law enforcement officer under this section, such officer shall execute a written certificate prescribed and provided by the Director of Health and Human Services. The certificate shall allege the officer's belief that the person in custody is mentally ill and dangerous and shall contain a summary of the person's behavior supporting such allegations. A copy of such certificate shall be immediately forwarded to the county attorney.

(3) The administrator of the facility shall have such person evaluated by a mental health professional as soon as reasonably possible but not later than thirty-six hours after admission. The mental health professional shall not be the mental health professional who causes such person to be taken into custody under this section and shall not be a member or alternate member of the mental health board that will preside over any hearing under the Nebraska Mental Health Commitment Act with respect to such person. A person shall be released from emergency protective custody after completion of such evaluation unless the mental health professional determines, in his or her clinical opinion, that such person is mentally ill and dangerous. Whenever any peace officer believes that any individual is a mentally ill dangerous person and that the harm described by section ~~83-1009~~ is likely to occur before mental health board proceedings under the Nebraska Mental Health Commitment Act may be invoked to obtain custody of the individual, such peace officer may immediately take such individual into custody, cause him or her to be taken into custody, or continue his or her custody if he or she is already in custody. A physician or psychologist shall have a limited privilege to hold an individual until a peace officer arrives if such physician or psychologist has probable cause to believe such individual is a mentally ill dangerous person. When a mental health center, a state hospital, or other government or private hospital has the capability to detain such an individual in the county in which the individual is found, the

~~individual shall be placed in such facility.~~

~~(2) All counties shall contract with medical facilities inside or outside the county to provide a place where individuals subject to subsection (1) of this section shall be held. Such individuals in such counties shall not be placed in a jail.~~

Sec. 40. (1) A mental health professional who, upon evaluation of a person admitted for emergency protective custody under section 39 of this act, determines that such person is mentally ill and dangerous shall execute a written certificate as provided in subsection (2) of this section not later than twenty-four hours after the completion of such evaluation. A copy of such certificate shall be immediately forwarded to the county attorney.

(2) The certificate shall be in writing and shall include the following information:

(a) The subject's name and address, if known;

(b) The name and address of the subject's spouse, legal counsel, guardian or conservator, and next-of-kin, if known;

(c) The name and address of anyone providing psychiatric or other care or treatment to the subject, if known;

(d) The name and address of any other person who may have knowledge of the subject's mental illness or substance dependence who may be called as a witness at a mental health board hearing with respect to the subject, if known;

(e) The name and address of the medical facility in which the subject is being held for emergency protective custody and evaluation;

(f) The name and work address of the certifying mental health professional;

(g) A statement by the certifying mental health professional that he or she has evaluated the subject since the subject was admitted for emergency protective custody and evaluation; and

(h) A statement by the certifying mental health professional that, in his or her clinical opinion, the subject is mentally ill and dangerous and the clinical basis for such opinion.

Sec. 41. Section 83-1024, Revised Statutes Supplement, 2002, is amended to read:

~~83-1024.~~ (1) Any person who believes that another person is mentally ill and dangerous may communicate such belief to the county attorney. The filing of a certificate by a law enforcement officer under section 39 of this act shall be sufficient to communicate such belief. If the county attorney concurs that such person is mentally ill and dangerous and that neither voluntary hospitalization nor other treatment alternatives less restrictive of the subject's liberty than inpatient or outpatient treatment ordered by a mental health board is available or would suffice to prevent the harm described in section 28 of this act, he or she shall file a petition as provided in this section.

(2) The petition shall be filed with the clerk of the district court in any county within: (a) The judicial district in which the subject is located; (b) the judicial district in which the alleged behavior of the subject occurred which constitutes the basis for the petition; or (c) another judicial district in the State of Nebraska if authorized, upon good cause shown, by a district judge of the judicial district in which the subject is located. In such event, all proceedings before the mental health board shall be conducted by the mental health board serving such other county, and all costs relating to such proceedings shall be paid by the county of residence of the subject. In the order transferring such cause to another county, the judge shall include such directions as are reasonably necessary to protect the rights of the subject.

(3) The petition shall be in writing and shall include the following information:

(a) The subject's name and address, if known;

(b) The name and address of the subject's spouse, legal counsel, guardian or conservator, and next-of-kin, if known;

(c) The name and address of anyone providing psychiatric or other care or treatment to the subject, if known;

(d) A statement that the county attorney has probable cause to believe that the subject of the petition is mentally ill and dangerous;

(e) A statement that the beliefs of the county attorney are based on specific behavior, acts, attempts, or threats which shall be specified and described in detail in the petition; and

(f) The name and address of any other person who may have knowledge of the subject's mental illness or substance dependence and who may be called as a witness at a mental health board hearing with respect to the subject, if known. ~~Any person believing that any individual is a mentally ill dangerous~~

person may communicate his or her belief to the county attorney. Should the county attorney concur that the individual is a mentally ill dangerous person and that neither voluntary hospitalization nor other treatment alternatives less restrictive of the subject's liberty than a mental health board ordered treatment disposition are available or would suffice to prevent the harm described in section 83-1009, the county attorney shall cause a petition to be drafted and acted upon as provided in the Nebraska Mental Health Commitment Act.

Sec. 42. Section 83-1026, Revised Statutes Supplement, 2002, is amended to read:

~~83-1026.~~ The petition provided for in section ~~83-1024~~ shall be verified by the petitioner and approved by the county attorney, who shall state his or her belief whether the immediate custody of the subject of the petition is required to prevent the occurrence of the harm described by section 83-1009 before a summons could be served and the subject required to appear at a hearing under sections ~~83-1027, 83-1035, and 83-1036.~~ If the subject is in emergency protective custody under a certificate filed pursuant to sections ~~83-1020 to 83-1023~~ at the time of the filing of a petition, such certificate shall be attached to the petition. (1) A petition filed by the county attorney under section 41 of this act may contain a request for the emergency protective custody and evaluation of the subject prior to commencement of a mental health board hearing pursuant to such petition with respect to the subject. Upon receipt of such request and upon a finding of probable cause to believe that the subject is mentally ill and dangerous as alleged in the petition, the court or chairperson of the mental health board may issue a warrant directing the sheriff to take custody of the subject. If the subject is already in emergency protective custody under a certificate filed under section 39 of this act, a copy of such certificate shall be filed with the petition. The subject in such custody shall be held in the nearest appropriate and available medical facility and shall not be placed in a jail. Each county shall make arrangements with appropriate medical facilities inside or outside the county for such purpose and shall pay the cost of the emergency protective custody of persons from such county in such facilities.

(2) The petition and all subsequent pleadings and filings under the Nebraska Mental Health Commitment Act in the case shall be entitled In the Interest of, Alleged to be a Mentally Ill and Dangerous. Person, inserting the subject's name in the blank. The county attorney shall have the discretion to may dismiss the petition at any time prior to the commencement of the hearing provided by sections ~~83-1035 and 83-1036~~ of the mental health board under section 44 of this act, and upon such motion by the county attorney, the mental health board shall dismiss the petition.

Sec. 43. Section 83-1027, Reissue Revised Statutes of Nebraska, is amended to read:

~~83-1027.~~ Upon the filing of the petition provided by sections ~~83-1025 and 83-1026~~ stating the county attorney's belief that the immediate custody of the subject is not required for the reasons provided by sections ~~83-1025 and 83-1026~~ under section 41 of this act, the clerk of the district court shall cause a summons fixing the time and place for a hearing to be prepared and issued to the sheriff for service. The sheriff shall personally serve upon the subject, as well as his or her legal guardian, if he or she is legally incompetent and the subject's legal guardian or custodian, if any, the summons and copies of the petition, the list of rights provided by sections ~~83-1047 to 83-1067~~ 63 to 80 of this act, and a notice list of the names, addresses, and telephone numbers of the mental health professionals in that locale immediate vicinity by whom the subject may be evaluated prior to his or her hearing. The summons shall fix a time for the hearing within seven calendar days after the subject has been taken into emergency protective custody. Should the subject fail The failure of a subject to appear as required after proper service upon him or her of a summons under this section, such failure shall constitute grounds for the issuance by the mental health board of a warrant for his or her custody. as provided by section ~~83-1028.~~

Sec. 44. Section 83-1035, Reissue Revised Statutes of Nebraska, is amended to read:

~~83-1035.~~ A hearing shall be held by the mental health board to determine whether there is clear and convincing proof evidence that the subject of a petition is a is mentally ill and dangerous person and that neither voluntary hospitalization nor other alternatives less restrictive of his or her liberty than a mental health board ordered treatment disposition are available or would suffice to prevent the harm described in section ~~83-1009~~ as alleged in the petition. At the commencement of the hearing, the board shall inquire whether ~~he or she has received the~~ the subject has received a copy of the petition and list of rights accorded him or her by

sections ~~83-1047 to 83-1067~~, 63 to 80 of this act and whether he or she has read and understood them. ~~If he or she has not, the~~ The board shall explain to ~~him or her~~ the subject any part of the petition or list of rights which he or she has not read or understood. The board shall inquire of the subject whether he or she admits or denies the allegations of the petition. ~~If he or she admits them~~ the subject admits the allegations, the board shall proceed to enter an order of final disposition as provided by section ~~83-1037~~ a treatment order pursuant to section 45 of this act. If the subject denies the allegations of the petition, the board shall proceed with a hearing on the merits of the petition.

Sec. 45. Section 83-1037, Reissue Revised Statutes of Nebraska, is amended to read:

~~83-1037.~~ (1) The state has the burden to prove by clear and convincing evidence that (a) the subject is mentally ill and dangerous and (b) neither voluntary hospitalization nor other treatment alternatives less restrictive of the subject's liberty than inpatient or outpatient treatment ordered by the mental health board are available or would suffice to prevent the harm described in section 28 of this act.

(2) If the mental health board finds that the subject is not mentally ill and dangerous, the board shall dismiss the petition and order the unconditional discharge of the subject.

(3) If the mental health board finds that the subject is mentally ill and dangerous but that voluntary hospitalization or other treatment alternatives less restrictive of the subject's liberty than treatment ordered by the mental health board are available and would suffice to prevent the harm described in section 28 of this act, the board shall (a) dismiss the petition and order the unconditional discharge of the subject or (b) suspend further proceedings for a period of up to ninety days to permit the subject to obtain voluntary treatment. At any time during such ninety-day period, the county attorney may apply to the board for reinstatement of proceedings with respect to the subject, and after notice to the subject, the subject's counsel, and the subject's legal guardian or conservator, if any, the board shall hear the application. If no such application is filed or pending at the conclusion of such ninety-day period, the board shall dismiss the petition and order the unconditional discharge of the subject.

(4) If the subject admits the allegations of the petition or the mental health board finds that the subject is mentally ill and dangerous and that neither voluntary hospitalization nor other treatment alternatives less restrictive of the subject's liberty than inpatient or outpatient treatment ordered by the board are available or would suffice to prevent the harm described in section 28 of this act, the board shall, within forty-eight hours, (a) order the subject to receive outpatient treatment or (b) order the subject to receive inpatient treatment. If the subject is ordered by the board to receive inpatient treatment, the order shall commit the subject to the custody of the Department of Health and Human Services for such treatment.

(5) A subject who (a) is ordered by the mental health board to receive inpatient treatment and (b) has not yet been admitted for such treatment pursuant to such order may petition for a rehearing by the mental health board based on improvement in the subject's condition such that inpatient treatment ordered by the board would no longer be necessary or appropriate.

(6) A treatment order by the mental health board under this section shall represent the appropriate available treatment alternative that imposes the least possible restraint upon the liberty of the subject. The board shall consider all treatment alternatives, including any treatment program or conditions suggested by the subject, the subject's counsel, or other interested person. Inpatient hospitalization or custody shall only be considered as a treatment alternative of last resort. The county attorney and the subject may jointly offer a proposed treatment order for adoption by the board. The board may enter the proposed order without a full hearing.

(7) The mental health board may request the assistance of the Department of Health and Human Services or any other person or public or private entity to advise the board prior to the entry of a treatment order pursuant to this section and may require the subject to submit to reasonable psychiatric and psychological evaluation to assist the board in preparing such order. Any mental health professional conducting such evaluation at the request of the mental health board shall be compensated by the county or counties served by such board at a rate determined by the district judge and reimbursed for mileage at the rate provided in section 81-1176. If either the subject of the petition admits or the mental health board concludes from the evidence at the hearing that there is clear and convincing proof that the subject is a mentally ill dangerous person and that neither voluntary

hospitalization nor other treatment alternatives less restrictive of the subject's liberty than a mental health board ordered treatment disposition are available or would suffice to prevent the harm described in section 83-1009, the board shall so find and shall within forty-eight hours enter an order of final disposition providing for the treatment of the subject of the petition. The order of final disposition shall indicate whether the subject is a mentally ill dangerous person pursuant to either subdivision (1) or (2) of section 83-1009 or both.

Sec. 46. Section 83-1039, Reissue Revised Statutes of Nebraska, is amended to read:

~~83-1039.~~ (1) At the conclusion of a mental health board hearing under section 44 of this act and prior to the entry of a treatment order by the board under section 45 of this act, the board may (a) order that the subject be retained in custody until the entry of such order and the subject may be admitted for treatment pursuant to such order or (b) order the subject released from custody under such conditions as the board deems necessary and appropriate to prevent the harm described in section 28 of this act and to assure the subject's appearance at a later disposition hearing by the board. A subject shall be retained in custody under this section at the nearest appropriate and available medical facility and shall not be placed in a jail. Each county shall make arrangements with appropriate medical facilities inside or outside the county for such purpose and shall pay the cost of the emergency protective custody of persons from such county in such facilities.

(2) A subject who has been ordered to receive inpatient or outpatient treatment by a mental health board may be provided treatment while being retained in emergency protective custody and pending admission of the subject for treatment pursuant to such order. Following a subject's mental health board adjudication as a mentally ill dangerous person in need of board-ordered treatment and pending the entry of an order of final disposition, the mental health board may order the subject retained in custody upon finding that the harm described in section 83-1009 is otherwise likely to occur before the entry of an order of final disposition. In the absence of such finding, the board shall order the subject released from custody on whatever reasonable conditions may be imposed by the board short of total custody which are the least restrictive alternatives required to assure the subject's appearance at a later disposition hearing and to prevent the harm described by section 83-1009 from occurring before such later hearing. If a subject is to be retained in custody and a mental health center, a state hospital, or other government or private hospital has the capability to detain such subject in the county in which the subject is found, the subject shall be placed in such facility.

(2) All counties shall contract with medical facilities inside or outside the county to provide a place where subjects described in subsection (1) of this section shall be held. Such subjects in such counties shall not be placed in a jail.

Sec. 47. Section 83-1041, Reissue Revised Statutes of Nebraska, is amended to read:

~~83-1041.~~ If the mental health board finds the subject to be mentally ill and dangerous and commits the subject to the custody of the Department of Health and Human Services to receive inpatient treatment, the department shall secure placement of the subject in an appropriate inpatient treatment facility to receive such treatment. The board shall issue a warrant authorizing the administrator of such treatment facility to receive and keep the subject as a patient. The warrant shall state the findings of the board and the legal settlement of the subject, if known, or any available information relating thereto. Such warrant shall shield every official and employee of the treatment facility against all liability to prosecution of any kind on account of the reception and detention of the subject if the detention is otherwise in accordance with the Nebraska Mental Health Commitment Act, rules and regulations adopted and promulgated under the act, and policies of the treatment facility. ~~person to be a mentally ill dangerous person and in need of board-ordered treatment, it shall issue a warrant in duplicate authorizing the director of the facility to receive and keep the person as a patient. The warrant issued shall state the findings of the board and the legal settlement of the proposed patient if found or, if not found, its information, if any, in regard thereto.~~

Sec. 48. Section 83-1042, Reissue Revised Statutes of Nebraska, is amended to read:

~~83-1042.~~ When an order of a mental health board requires inpatient treatment of a subject within a treatment facility, the warrant filed under section 47 of this act, together with the findings of the mental health board, shall be delivered to the sheriff of the county who shall execute such warrant

by conveying and delivering the warrant, the findings, and the subject to the treatment facility. The administrator, over his or her signature, shall acknowledge the delivery on the original warrant which the sheriff shall return to the clerk of the district court with his or her costs and expenses endorsed thereon. If neither the sheriff nor deputy sheriff is available to execute the warrant, the chairperson of the mental health board may appoint some other suitable person to execute the warrant. Such person shall take and subscribe an oath or affirmation to faithfully discharge his or her duty and shall be entitled to the same fees as the sheriff. The sheriff, deputy sheriff, or other person appointed by the mental health board may take with him or her such assistance as may be required to execute the warrant. No female subject shall be taken to a treatment facility without being accompanied by another female or relative of the subject. The administrator in his or her acknowledgment of delivery shall record whether any person accompanied the subject and the name of such person. When involuntary treatment requires confinement within a facility, the warrant, together with the findings of the mental health board, shall be delivered to the sheriff of the county who shall execute it by conveying the subject of the petition to the facility and delivering the individual to the director of the facility. The chief executive officer, over his or her signature, shall acknowledge the delivery on the original warrant, which the sheriff shall return to the clerk of the board with his or her costs and expenses endorsed thereon. If neither the sheriff nor such sheriff's deputy is available to execute the warrant, the chairperson of the board may appoint some other suitable person to execute the warrant. The person appointed shall take and subscribe an oath or affirmation to faithfully discharge his duty, and shall be entitled to the same fees as the sheriff. The sheriff, or the person appointed in his stead, may take with him such assistance as he may need to execute the warrant. No female person shall be taken to the hospital without being accompanied by some other female or relative. The director of the facility in his acknowledgment of delivery must state whether any person accompanied the patient, and give the name of such person.

Sec. 49. (1) If a mental health board issues a warrant for the admission or return of a subject to a treatment facility and funds to pay the expenses thereof are needed in advance, the board shall estimate the probable expense of conveying the subject to the treatment facility, including the cost of any assistance that might be required, and shall submit such estimate to the county clerk of the county in which such person is located. The county clerk shall certify the estimate and shall issue an order on the county treasurer in favor of the sheriff or other person entrusted with the execution of the warrant.

(2) The sheriff or other person executing the warrant shall include in his or her return a statement of expenses actually incurred, including any excess or deficiency. Any excess from the amount advanced for such expenses under subsection (1) of this section shall be paid to the county treasurer, taking his or her receipt therefor, and any deficiency shall be obtained by filing a claim with the county board. If no funds are advanced, the expenses shall be certified on the warrant and paid when returned.

(3) The sheriff shall be reimbursed for mileage at the rate provided in section 33-117 for conveying a subject to a treatment facility under this section. For other services performed under the Nebraska Mental Health Commitment Act, the sheriff shall receive the same fees as for like services in other cases.

(4) All compensation and expenses provided for in this section shall be allowed and paid out of the treasury of the county by the county board.

Sec. 50. Section 83-1043, Reissue Revised Statutes of Nebraska, is amended to read:

~~83-1043.~~ The subject of a petition or the county attorney may appeal a final treatment order of the mental health board under section 45 of this act to the district court. Such appeals shall be de novo on the record. A final order of the district court may be appealed to the Court of Appeals in accordance with the procedure in criminal cases. The final judgment of the court shall be certified to and become a part of the records of the mental health board with respect to the subject.

Sec. 51. Section 83-1044, Reissue Revised Statutes of Nebraska, is amended to read:

~~83-1044.~~ (1) Any treatment order entered by a mental health board under section 45 of this act shall include directions for (a) the preparation and implementation of an individualized treatment plan for the subject and (b) documentation and reporting of the subject's progress under such plan.

(2) The individualized treatment plan shall contain a statement of (a) the nature of the subject's mental illness or substance dependence, (b)

the least restrictive treatment alternative consistent with the clinical diagnosis of the subject, and (c) intermediate and long-term treatment goals for the subject and a projected timetable for the attainment of such goals.

(3) A copy of the individualized treatment plan shall be filed with the mental health board for review and inclusion in the subject's file and served upon the county attorney, the subject, the subject's counsel, and the subject's legal guardian or conservator, if any, within five working days after the entry of the board's order. Treatment shall be commenced within two working days after preparation of the plan.

(4) The subject shall be entitled to know the contents of the individualized treatment plan and what the subject must do in order to meet the requirements of such plan.

(5) The subject shall be notified by the mental health board when the mental health board has changed the treatment order or has ordered the discharge of the subject from commitment. As part of its order of final disposition under section 83-1037, the mental health board shall designate one of the officials, agencies or other persons who may be requested for predisposition assistance under section 83-1040, or the director or other representative of the treatment program or facility to which the subject is assigned, to be responsible for supervising the preparation and implementation of an individualized treatment plan, recording the subject's progress under the plan, and reporting such progress to the mental health board and other interested parties. The individualized treatment plan shall contain a statement of the nature of the specific mental and physical problems and needs of the subject, a statement of the least restrictive treatment conditions necessary to achieve the purposes of the board's order of final disposition and a description of intermediate and long-range treatment goals, with a projected timetable for their attainment. A copy of such plan shall be completed, filed with the mental health board for review and inclusion in the subject's board file, and served upon the county attorney, the subject, his or her counsel, if he or she has counsel, and his or her legal guardian, if he or she is legally incompetent, within five working days after the entry of the board's order of final disposition. Treatment under such plan shall be commenced within two working days after the plan is completed. At the request of the mental health board, the treatment facility shall inform the mental health board, in writing, as to all aspects of the treatment and supervision of persons committed to the facility by the mental health board. Such reports shall include information regarding the time and location of periods spent outside of the treatment facility.

Sec. 52. Section 83-1045, Reissue Revised Statutes of Nebraska, is amended to read:

~~83-1045.~~ The person or entity designated by the mental health board under section 51 of this act to prepare and oversee the subject's individualized treatment plan shall submit periodic reports to the mental health board of the subject's progress under such plan and any modifications to the plan. The mental health board may distribute copies of such reports to other interested parties as permitted by law. With respect to a subject ordered by the mental health board to receive inpatient treatment, such initial report shall be filed with the mental health board for review and inclusion in the subject's file and served upon the county attorney, the subject, the subject's counsel, and the subject's legal guardian or conservator, if any, no later than ten days after submission of the subject's individualized treatment plan. With respect to each subject committed by the mental health board, such reports shall be so filed and served no less frequently than every ninety days for a period of one year following submission of the subject's individualized treatment plan and every six months thereafter. The official, agency or other person designated by the mental health board under section ~~83-1044~~ to be responsible for the subject's individualized treatment plan shall submit periodic progress reports to the board, which board shall distribute copies to other interested parties. Each progress report shall summarize progress which has been made under the plan and shall state whether the treatment plan has been modified. Such progress reports shall be filed with the board for review and inclusion in the subject's board file, and served upon the county attorney, the subject and his or her counsel, if he or she has counsel, and his or her legal guardian, if he or she is legally incompetent, within ten days of the submission of the individualized treatment plan of a subject whose order of final disposition requires full-time inpatient hospitalization or custody. Such progress reports shall be so filed and served, in the cases of all subjects undergoing board-ordered treatment pursuant to section ~~83-1040~~, no less frequently than every ninety days following the filing of their initial individualized treatment plans for a period of one year from the date of such filing and

~~every six months thereafter.~~

Sec. 53. Section 83-1045.01, Reissue Revised Statutes of Nebraska, is amended to read:

~~83-1045.01.~~ (1) Any provider of outpatient treatment to a subject ordered by a mental health board to receive such treatment shall report to the board and to the county attorney if (a) the subject is not complying with his or her individualized treatment plan, (b) the subject is not following the conditions set by the mental health board, (c) the treatment plan is not effective, or (d) there has been a significant change in the subject's mental illness or substance dependence. Such report may be transmitted by facsimile, but the original of the report shall be mailed to the board and the county attorney no later than twenty-four hours after the facsimile transmittal.

(2) (a) Upon receipt of such report, the county attorney shall have the matter investigated to determine whether there is a factual basis for the report.

(b) If the county attorney determines that there is no factual basis for the report or that no further action is warranted, he or she shall notify the board and the treatment provider and take no further action.

(c) If the county attorney determines that there is a factual basis for the report and that intervention by the mental health board is necessary to protect the subject or others, the county attorney may file a motion for reconsideration of the conditions set forth by the board and have the matter set for hearing.

(d) The county attorney may apply for a warrant to take immediate custody of the subject pending a rehearing by the board under subdivision (c) of this subsection if the county attorney has reasonable cause to believe that the subject poses a threat of danger to himself or herself or others prior to such rehearing. The application for a warrant shall be supported by affidavit or sworn testimony by the county attorney, a mental health professional, or any other informed person. The application for a warrant and the supporting affidavit may be filed with the board by facsimile, but the original shall be filed with the board not later than three days after the facsimile transmittal, excluding holidays and weekends. Sworn testimony in support of the warrant application may be taken over the telephone at the discretion of the board. If (a) the subject of outpatient commitment is not following the treatment plan, (b) the subject is not following the conditions set by the mental health board, (c) the treatment plan is not effective, or (d) there has been a significant change in the subject's mental illness, the outpatient treatment provider shall notify the board and the county attorney in writing forthwith. The report may be transmitted by facsimile mail, but the original of the report shall be mailed to the board and the county attorney within twenty-four hours of the facsimile transmittal.

~~(2)(a) The county attorney upon receipt of information indicating noncompliance with conditions set by the board shall have the matter investigated to determine whether there is a factual basis for the report.~~

~~(b) If the county attorney determines that there is no factual basis for the report or that no further action is warranted, the county attorney shall notify the person or program that made the report and take no further action.~~

~~(c) If the county attorney determines that there is a factual basis to believe (i) the subject is not following the treatment plan, (ii) the subject is not following the conditions set by the board, (iii) the treatment plan is not effective, or (iv) there has been a significant change in the subject's mental illness, and that board intervention is required to protect the subject or others, the county attorney may file a motion for reconsideration of the conditions set forth by the board and have the matter set for hearing.~~

~~(d) If the county attorney determines that there is a factual basis to believe that any of the conditions in subdivision (2)(c) of this section are present, that the subject poses a threat of danger to himself or herself or others as a result of his or her mental illness, and that there are reasonable grounds to believe that the subject or others will be injured prior to mental health board proceedings if the subject is not restrained, the county attorney may file an application for a warrant authorizing the seizure and holding of the subject supported by affidavit or sworn testimony. The application for a warrant shall be supported by affidavit or sworn testimony by the county attorney, a mental health professional, or any other informed person. The application for a warrant and the supporting affidavit may be filed by facsimile mail, but the original shall be filed with the board within three days, excluding holidays and weekends. Sworn testimony in support of the warrant may be taken over the telephone at the discretion of the board.~~

Sec. 54. Section 83-1045.02, Reissue Revised Statutes of Nebraska,

is amended to read:

~~83-1045.02.~~ The mental health board shall, upon motion of the county attorney, or may, upon its own motion, hold a hearing to determine whether a subject ordered by the board to receive outpatient treatment can be adequately and safely served by the individualized treatment plan for such subject on file with the board. The mental health board may issue a warrant directing any law enforcement officer in the state to take custody of the subject and directing the sheriff or other suitable person to transport the subject to a treatment facility or public or private hospital with available capacity specified by the board where he or she will be held pending such hearing. No person may be held in custody under this section for more than seven days except upon a continuance granted by the board. At the time of execution of the warrant, the sheriff or other suitable person designated by the board shall personally serve upon the subject, the subject's counsel, and the subject's legal guardian or conservator, if any, a notice of the time and place fixed for the hearing, a copy of the motion for hearing, and a list of the rights provided by the Nebraska Mental Health Commitment Act. The subject shall be accorded all the rights guaranteed to a subject by the act. Following the hearing, the board shall determine whether outpatient treatment will be continued, modified, or ended. The mental health board shall, upon the motion of the county attorney, or may, upon its own motion, hold a hearing to determine whether a subject committed to outpatient treatment can be adequately and safely served by the present treatment plan. The mental health board may issue a warrant directing any law enforcement officer in the state to take the subject into custody. The board shall order the sheriff to transport the subject to a mental health center or public or private hospital with available space specified by the board where he or she will be held pending the hearing. No person may be held in custody pending the hearing for a period exceeding seven days except upon a continuance granted by the board. At the time of execution of the warrant, the sheriff or a person designated by the board shall personally serve upon the subject, the subject's counsel, and the subject's legal guardian if the subject is legally incompetent a notice of the time and place fixed for the hearing, a copy of the petition, and a list of the rights provided by the Nebraska Mental Health Commitment Act. The subject of the hearing shall be accorded all the rights guaranteed to a subject by the act. Following the hearing, the board shall determine whether outpatient treatment will be continued, modified, or ended.

Sec. 55. Section 83-1046, Reissue Revised Statutes of Nebraska, is amended to read:

~~83-1046.~~ (1) Upon the filing of a periodic report under section 52 of this act, the subject, the subject's counsel, or the subject's legal guardian or conservator, if any, may request and shall be entitled to a review hearing by the mental health board and to seek from the board an order of discharge from commitment or a change in treatment ordered by the board. The mental health board shall schedule the review hearing no later than fourteen calendar days after receipt of such request. The mental health board may schedule a review hearing (a) at any time pursuant to section 57 or 58 of this act, (b) upon the request of the subject, the subject's counsel, the subject's legal guardian or conservator, if any, the county attorney, the official, agency, or other person or entity designated by the mental health board under section 51 of this act to prepare and oversee the subject's individualized treatment plan, or the mental health professional directly involved in implementing such plan, or (c) upon the board's own motion.

(2) The board shall immediately discharge the subject or enter a new treatment order with respect to the subject whenever it is shown by any person or it appears upon the record of the periodic reports filed under section 52 of this act to the satisfaction of the board that (a) cause no longer exists for the care or treatment of the subject or (b) a less restrictive treatment alternative exists for the subject. When discharge or a change in disposition is in issue, due process protections afforded under the Nebraska Mental Health Commitment Act shall attach to the subject. Following each filing of the periodic progress reports described in section ~~83-1045~~, the subject, the subject's counsel, or the subject's legal guardian if the subject is legally incompetent may request a review hearing and upon request shall have the right to a review hearing by the mental health board and to seek from the board an order of discharge from commitment or change in treatment disposition. The mental health board shall schedule the review hearing to be held within fourteen days of receipt of the written request. The mental health board may schedule such a review hearing (1) at any time pursuant to section ~~83-1079~~ or ~~83-1080~~, (2) upon the request of the subject, the subject's counsel, the subject's legal guardian if the subject is legally incompetent, the county attorney, the official, agency, or other person designated by the mental

health board under section 83-1044 to be responsible for the subject's individualized treatment plan, or the mental health professional directly involved in implementing the subject's individualized treatment plan, or (3) upon the board's own motion.

Whenever it is shown by any person or it appears upon the record of the periodic progress reports, to the satisfaction of the mental health board, that either cause no longer exists for the care or treatment or a less restrictive alternative exists for a person committed as a mentally ill dangerous person, the mental health board shall order the immediate discharge of that person or change the treatment disposition. When discharge or a change in disposition is in issue, due process protections afforded under the Nebraska Mental Health Commitment Act shall attach to the subject.

Sec. 56. Section 83-340.01, Reissue Revised Statutes of Nebraska, is amended to read:

~~83-340.01.~~ When the administrator of any regional center or treatment facility for the treatment of persons who are mentally ill or substance dependent determines that any involuntary patient in such facility may be safely and properly discharged or placed on convalescent leave, the administrator of such regional center or treatment facility shall immediately notify the mental health board of the judicial district from which such patient was committed. ~~superintendent of any state hospital for the mentally ill determines that any nonvoluntary patient in such hospital may be safely and properly discharged or placed on convalescent leave, the superintendent shall immediately notify the county committing board of mental health of the judicial district in which such patient has legal settlement pursuant to section 83-1079.~~

Sec. 57. Section 83-1079, Revised Statutes Supplement, 2003, is amended to read:

~~83-1079.~~ A mental health board shall be notified in writing of the release by the treatment facility of any individual committed by the mental health board. Such notice shall immediately be forwarded to the county attorney. The mental health board shall, upon the motion of the county attorney, or may upon its own motion, conduct a hearing to determine whether the individual is a mentally ill and dangerous person and consequently not a proper subject for release. Such hearing shall be conducted in accordance with the procedures established for a hearing in sections ~~83-312, 83-339 to 83-340.01, 83-380.01, 83-1011, 83-1016 to 83-1018, 83-1024, 83-1026 to 83-1037, 83-1044, 83-1048, 83-1049, 83-1053, 83-1056, 83-1058 to 83-1060, 83-1079, and 83-1080~~ hearings under the Nebraska Mental Health Commitment Act. The subject of such hearing shall be accorded all rights guaranteed to the subject of a petition under the Nebraska Mental Health Commitment Act act.

Sec. 58. Section 83-1080, Reissue Revised Statutes of Nebraska, is amended to read:

~~83-1080.~~ The mental health board shall, upon the motion of the county attorney, or may upon its own motion, hold a hearing to determine whether a person who has ~~received mental health board ordered~~ been ordered by the board to receive inpatient or outpatient treatment is adhering to the conditions of his or her release from such treatment, including the taking of medication. The subject of such hearing shall be accorded all rights guaranteed to a subject ~~pursuant to~~ under the Nebraska Mental Health Commitment Act, and such hearing shall apply the standards used in all other hearings held pursuant to the Nebraska Mental Health Commitment Act act. If the mental health board concludes from the evidence at the hearing that there is clear and convincing ~~proof~~ evidence that the subject is a mentally ill and dangerous, ~~person and that neither voluntary hospitalization nor other treatment alternatives less restrictive of the subject's liberty than a mental health board ordered treatment disposition are available or would suffice to prevent the harm described in section 83-1009,~~ the board shall so find and shall within forty-eight hours enter an order of final disposition providing for the treatment of such person in accordance with section 45 of this act.

Sec. 59. Section 83-1071, Reissue Revised Statutes of Nebraska, is amended to read:

~~83-1071.~~ When any person ~~committed to one of the state hospitals or any other~~ receiving treatment at a treatment facility or program for persons with mental illness or substance dependence pursuant to an order of a court or mental health board is absent without authorization from such ~~hospital or other treatment program,~~ hospital or other treatment facility or program, the administrator or program director of such treatment facility or program shall immediately notify the Nebraska State Patrol and the court or clerk of the mental health board of the county judicial district from which such person was committed. The notification shall include the person's

name and description and a determination by a psychiatrist, clinical director, ~~superintendent~~ administrator, or program director as to whether the person is believed to be currently dangerous to others. The clerk shall ~~forthwith~~ issue the warrant of the board, directed to the sheriff of the county, for the arrest and detention of such person. Such warrant may be executed by the sheriff or any other peace officer. Pending the issuance of the warrant of the mental health board, any peace officer may seize and detain such person when the peace officer has probable cause to believe that the person is reported to be absent without authorization as described in this section. Such person shall be returned to the ~~hospital~~ or treatment facility or program or shall be taken to a facility as described in section ~~83-1020~~ 39 of this act until he or she can be returned to ~~the hospital~~ or treatment such treatment facility or program.

Sec. 60. Section 83-1072, Reissue Revised Statutes of Nebraska, is amended to read:

~~83-1072.~~ The Governor may, upon demand from officials of another state, deliver to the executive authority of another state or his or her designee any person who is absent without authorization from a ~~hospital, facility, or treatment facility or program~~ for persons with mental illness or substance dependence to which such person has been committed under the laws of the other state either through civil commitment, as a result of being found not responsible for a criminal act by reason of insanity or mental illness, or as a result of being found not competent to stand trial for a criminal charge. The demand shall be accompanied by a certified copy of the commitment and sworn statement by the ~~superintendent or other director of the hospital, facility, or treatment administrator~~ of the treatment facility or program stating that (1) the person is absent without authorization, (2) the person is currently dangerous to himself, herself, or others, and (3) the demanding state is willing to accept the person back for further treatment. If the Governor is satisfied that the demand conforms to law, the Governor shall issue a warrant under seal of this state authorizing the return of such person to the demanding state at the expense of the demanding state.

Sec. 61. Section 83-1073, Reissue Revised Statutes of Nebraska, is amended to read:

~~83-1073.~~ (1) A person arrested upon a warrant pursuant to section ~~83-1072~~ 60 of this act shall not be delivered to a demanding state until he or she is notified of the demand for his or her surrender and has had an opportunity to apply for a writ of habeas corpus. If an application is filed, notice of the time and place for hearing on the writ shall be given to the county attorney of the county where the arrest was made. The person arrested shall have the right to counsel and the right to have counsel appointed for him or her if the person is indigent. Pending the determination of the court upon the application for the writ, the person detained shall be maintained in a suitable facility as described in section ~~83-1020~~ 39 of this act or a hospital for persons with mental illness.

(2) At a hearing on a writ of habeas corpus, the State of Nebraska shall show that there is probable cause to believe that (a) such person is absent without authorization from a ~~hospital, facility, or treatment facility or program~~ for persons with mental illness or substance dependence to which he or she was committed located in the demanding state, (b) the demanding state has reason to believe that such person is currently dangerous to himself, herself, or others, and (c) the demanding state is willing to accept the person back for further treatment.

Sec. 62. Section 83-1074, Reissue Revised Statutes of Nebraska, is amended to read:

~~83-1074.~~ The Governor may appoint an agent to demand of the executive authority of another state any person who is located in such other state, who is committed to a ~~hospital, facility, or~~ was receiving treatment at a treatment facility or program in this state pursuant to the Nebraska Mental Health Commitment Act or section 29-1823, 29-2203, or 29-3701 to 29-3704, and who is absent without authorization from a ~~hospital, facility, or~~ such treatment facility or program. ~~for persons with mental illness in this state.~~ The demand shall be accompanied by a certified copy of the order of commitment and a sworn statement by the ~~superintendent or other director of the hospital, facility, or treatment administrator~~ of the treatment facility or program stating that (1) the person is absent without authorization, (2) the ~~superintendent or director~~ administrator or program director of such treatment facility or program believes that such person is currently dangerous to himself, herself, or others, and (3) the ~~hospital, facility, or~~ treatment facility or program is willing to accept the person back for further treatment. This section does not prevent extradition under the Uniform Criminal Extradition Act if ~~the~~ such act applies.

Sec. 63. Section 83-1047, Revised Statutes Supplement, 2002, is amended to read:

~~83-1047.~~ In addition to the rights granted subjects of petitions by any other provisions of the Nebraska Mental Health Commitment Act, such subjects shall be entitled to the rights provided in sections ~~83-1048 to 83-1064~~ 63 to 80 of this act during proceedings against them concerning the subjects under the act.

Sec. 64. Section 83-1048, Revised Statutes Supplement, 2002, is amended to read:

~~83-1048.~~ The subject of a petition shall, in advance of the hearing, be entitled to written notice of the time and place of such hearing, the reasons alleged for believing that the person is a mentally ill dangerous person requiring mental health board ordered treatment, and all rights which such subject has under the Nebraska Mental Health Commitment Act. The notice requirements shall be deemed satisfied by personal service upon the subject of the summons or notice of time and place of the hearing and copies of the petition and list of rights, required by sections ~~83-1027, 83-1028, 83-1035, and 83-1036.~~ A subject shall, in advance of the mental health board hearing conducted under section 44 of this act, be entitled to written notice of the time and place of such hearing, the reasons alleged for believing that he or she is mentally ill and dangerous requiring inpatient or outpatient treatment ordered by the mental health board, and all rights to which such subject is entitled under the Nebraska Mental Health Commitment Act. The notice requirements shall be deemed satisfied by personal service upon the subject of the summons or notice of time and place of the hearing and copies of the petition and list of rights required by sections 43 and 44 of this act. If the subject of the petition has counsel and if the physician or mental health professional on the board determines that the nature of the alleged mental disorder, if true, is such that it is not prudent to disclose the label of the mental disorder to the subject, then notice of this label may be disclosed to the subject's counsel rather than to the subject. When the subject does not have counsel, the subject has a right to the information about his or her mental illness including its label. The clerk shall issue the summons by order of the mental health board.

Sec. 65. Section 83-1049, Revised Statutes Supplement, 2002, is amended to read:

~~83-1049.~~ A subject shall have the right to be represented by counsel in all proceedings under the Nebraska Mental Health Commitment Act. Counsel for a subject who is in custody shall have full access to and the right to consult privately with the subject at all reasonable times. As soon as possible after a subject is taken into emergency protective custody under section 39 of this act, or after the filing of a petition under section 41 of this act, whichever occurs first, and before the mental health board hearing conducted under section 44 of this act, the board shall determine whether the subject is indigent. If the subject is found to be indigent, the board shall certify that fact to the district or county court by causing to be delivered to the clerk of such court a certificate for appointment of counsel as soon as possible after a subject is taken into emergency protective custody or such petition is filed. The subject of a petition shall have the right to be represented by counsel in all proceedings under the Nebraska Mental Health Commitment Act. Counsel for a subject who is in custody shall have full access to and the right to consult privately with the subject at all reasonable times. As soon as possible after a subject is taken into emergency protective custody under sections ~~83-1020 to 83-1023,~~ or after the filing of a petition under sections ~~83-1025 and 83-1026,~~ whichever occurs first, and before the hearing, the board shall determine whether the subject of the petition is indigent. If the subject is found to be indigent, the board shall certify that fact to the district or county court by causing to be delivered to the clerk of the district court or the clerk of the county court a certificate for appointment of counsel as soon as possible after a subject is taken into emergency custody or a petition is filed.

Sec. 66. Section 83-1050, Revised Statutes Supplement, 2002, is amended to read:

~~83-1050.~~ The appointment of counsel under section 65 of this act shall be in accordance with the following procedures:

(1) Except in counties having a public defender, upon the receipt from the mental health board of a certificate for the appointment of counsel, the clerk of the district court shall notify the district judge or the county judge of the county in which the proceedings are pending of the receipt of the such certificate. The judge to whom the certificate was issued shall appoint an attorney to represent the person against concerning whom an application is filed before the mental health board, whereupon the clerk of the court shall

enter upon the certificate the name of the attorney appointed and deliver the certificate of appointment of counsel to the mental health board. The clerk of the district court or the clerk of the county court, ~~as the case may be,~~ shall also keep and maintain a record of all appointments which shall be conclusive evidence thereof. All appointments of counsel ~~provided in~~ under the Nebraska Mental Health Commitment Act may be made at any time or place in the state; and

(2) In counties having a public defender, upon receipt from the mental health board of a certificate for the appointment of counsel, the clerk of the district court shall notify the public defender of his or her appointment to represent the person and shall enter upon the certificate the name of the attorney appointed and deliver the certificate of appointment of counsel to the mental health board.

Sec. 67. Section 83-1051, Revised Statutes Supplement, 2002, is amended to read:

~~83-1051.~~ Counsel appointed as provided in subdivision (1) of section ~~83-1050~~ 66 of this act shall apply to the court in which his or her appointment is recorded for fees for services performed. Such counsel ~~also~~ may also apply to the court to secure separate professional examination of the person ~~whose liberty is involved~~ for whom counsel was appointed and shall be reimbursed for costs incurred in securing such separate examination or examinations or in having other professional persons as witnesses before the mental health board. The court, upon hearing the application, shall fix reasonable fees, including reimbursement of costs incurred. The county board of the county in which the application was filed shall allow the account, bill, or claim presented by the attorney for services performed under ~~the provisions of~~ the Nebraska Mental Health Commitment Act in the amount determined by the court. No such account, bill, or claim shall be allowed by the county board until the amount thereof ~~shall have~~ has been determined by the court.

Sec. 68. Section 83-1052, Reissue Revised Statutes of Nebraska, is amended to read:

~~83-1052.~~ The A subject of a petition or the subject's counsel shall have the right to employ ~~physicians or practicing psychologists licensed in Nebraska to engage in the practice of psychology of their mental health professionals of his or her choice to independently evaluate the subject's mental condition, and testify for and otherwise assist the subject in proceedings under the Nebraska Mental Health Commitment Act.~~ If the subject is indigent, only one such person may be employed, except with leave of the mental health board. Any person so employed by a subject ~~declared~~ determined by the board to be indigent, except a subject represented by the public defender, shall apply to the board for expenses reasonably necessary to ~~the~~ such person's effective assistance of the subject and for reasonable fees for services performed by ~~the~~ such person in assisting the subject. The board shall then fix reasonable fees and expenses, and the county board shall allow payment to ~~the~~ such person in the full amount fixed by the board.

Sec. 69. Section 83-1053, Reissue Revised Statutes of Nebraska, is amended to read:

~~83-1053.~~ Counsel for a subject, ~~shall,~~ upon request made to the county attorney at any time after the subject has been taken into emergency protective custody under ~~sections 83-1020 to 83-1023~~ the Nebraska Mental Health Commitment Act, or after the filing of a petition under ~~sections 83-1025 and 83-1026~~ section 41 of this act, whichever occurs first, shall have the right to be provided with (1) the names of all witnesses expected to testify in support of the petition, (2) knowledge of the location and access at reasonable times for review or copying of all written documents including reports of peace officers, law enforcement agencies, and mental health professionals, (3) access to all other tangible objects in the possession of the county attorney, or to which the county attorney has access, and (4) written records of any ~~mental health facility, physician, treatment facility~~ or mental health professional ~~that~~ which or who has at any time treated the subject for a ~~mental disability~~ mental illness or substance dependence, which records are relevant to the issues of whether the subject is a mentally ill and dangerous person and, if so, what treatment disposition should be ordered by the mental health board. The board may order further discovery at its discretion. The county attorney shall have a reciprocal right to discover items and information comparable to those first discovered by the subject. The county court and district court shall have the power to rule on objections to discovery in matters which are not self-activating. The right of appeal from denial of discovery shall be at the time of the ~~completion~~ conclusion of the mental health board hearing.

Sec. 70. Section 83-1054, Reissue Revised Statutes of Nebraska, is

amended to read:

~~83-1054.~~ Continuances shall be liberally granted at the request of the subject ~~of a petition.~~ Continuances may be granted to permit the subject to obtain voluntary treatment at a private facility.

Sec. 71. Section 83-1055, Revised Statutes Supplement, 2002, is amended to read:

~~83-1055.~~ All mental health board hearings under the Nebraska Mental Health Commitment Act shall be closed to the public except at the request of the subject and shall be held in a courtroom or at any convenient and suitable place designated by the mental health board. The board shall have the right to conduct the proceeding where the subject is currently residing if the subject is unable to travel.

Sec. 72. Section 83-1056, Reissue Revised Statutes of Nebraska, is amended to read:

~~83-1056.~~ ~~The subject of a petition~~ A subject shall appear personally and be afforded the opportunity to testify in his or her own behalf and to present witnesses and tangible evidence in defending against the petition at the hearing.

Sec. 73. Section 83-1057, Reissue Revised Statutes of Nebraska, is amended to read:

~~83-1057.~~ ~~The subject of a petition~~ A subject shall be entitled to compulsory process to obtain the testimony of witnesses in his or her favor.

Sec. 74. Section 83-1058, Revised Statutes Supplement, 2002, is amended to read:

~~83-1058.~~ ~~The subject of a petition~~ A subject shall have the right at a hearing held under the Nebraska Mental Health Commitment Act to confront and cross-examine adverse witnesses and evidence equivalent to the rights of confrontation granted by Amendments VI and XIV of the United States Constitution of the United States and Article I, section 11, of the Constitution of Nebraska.

Sec. 75. Section 83-1059, Revised Statutes Supplement, 2002, is amended to read:

~~83-1059.~~ The rules of evidence applicable in civil proceedings shall ~~be followed~~ apply at all hearings held under the Nebraska Mental Health Commitment Act. In no event shall evidence be considered which is inadmissible in criminal proceedings.

Sec. 76. Section 83-1060, Reissue Revised Statutes of Nebraska, is amended to read:

~~83-1060.~~ ~~The subject of a petition shall be entitled to written statements by the mental health board as to the evidence relied on and reasons for finding clear and convincing proof at the subject's hearing that he or she is a mentally ill dangerous person, that neither voluntary hospitalization nor other treatment alternatives less restrictive of the subject's liberty than a board-ordered treatment disposition are available or would suffice to prevent the harm described by section 83-1009, and for choosing the particular treatment specified by its order of final disposition. The board shall make similar written findings when it orders a subject held in custody rather than released on conditions pending hearings to determine whether he or she is a mentally ill dangerous person in need of board-ordered treatment or pending the entry of an order of final disposition. A subject shall be entitled to written statements by the mental health board as to the evidence relied on and reasons (1) for finding clear and convincing evidence at the subject's hearing that he or she is mentally ill and dangerous and that neither voluntary hospitalization nor other treatment alternatives less restrictive of the subject's liberty than inpatient or outpatient treatment ordered by the mental health board are available or would suffice to prevent the harm described in section 28 of this act and (2) for choosing the particular treatment specified by its order of final disposition. The mental health board shall make similar written findings when it orders a subject held in custody rather than released on conditions pending hearings to determine whether he or she is mentally ill and dangerous in need of treatment ordered by the mental health board or pending the entry of an order of final disposition under section 45 of this act.~~

Sec. 77. Section 83-1061, Revised Statutes Supplement, 2002, is amended to read:

~~83-1061.~~ All proceedings held under the Nebraska Mental Health Commitment Act shall be of record, and all oral proceedings shall be reported verbatim by either a qualified shorthand reporter or by tape-recording equipment equivalent in quality to that required in county courts by section 25-2732. The written findings of the mental health board shall be part of the subject's records and shall be available to the parties in the case and to the hospital if it is the decision of the board to commit the subject treatment

facility where the subject is receiving treatment pursuant to a commitment order of the mental health board under section 45 of this act. Any qualified shorthand reporter who reports proceedings presided over by a board or otherwise than in his or her capacity as an official district court stenographic reporter shall apply to the court for reasonable expenses and fees for services performed in such hearings. The court shall fix reasonable expenses and fees, and the county board shall allow payment to the reporter in the full amount fixed by the court.

Sec. 78. Section 83-1062, Revised Statutes Supplement, 2002, is amended to read:

~~83-1062.~~ Any qualified mental health professional, upon being authorized by the ~~director of the mental health center or government, private, or state hospital administrator~~ of the treatment facility having custody of the subject, may provide appropriate medical treatment for the subject while in custody, except that ~~the subject of a petition~~ a subject shall not be subjected to such quantities of medication or other treatment within such period of time prior to any hearing held under the Nebraska Mental Health Commitment Act as will substantially impair his or her ability to assist in his or her defense at such hearing.

Sec. 79. Section 83-1066, Revised Statutes Supplement, 2002, is amended to read:

~~83-1066.~~ ~~Subjects~~ A subject in custody or receiving treatment under the Nebraska Mental Health Commitment Act ~~shall have~~ has the right:

(1) To be considered legally competent for all purposes unless ~~they have~~ he or she has been declared legally incompetent. The mental health board shall not have the power to declare an individual incompetent;

(2) To receive prompt and adequate evaluation and treatment for mental illness and physical ailments and to participate in ~~their~~ his or her treatment planning activities to the extent determined to be appropriate by the mental health professional in charge of the subject's treatment; ~~of such subjects~~;

(3) To refuse treatment medication, except (a) in an emergency, such treatment medication as is essential in the judgment of the ~~medical~~ mental health professional in charge of such treatment to prevent the ~~patient~~ subject from causing injury to himself, herself, or others or ~~which~~ (b) following a hearing and order of a mental health board, such treatment medication as will substantially improve his or her mental illness;

(4) To communicate freely with ~~all persons~~ any other person by sealed mail, personal visitation, and private telephone conversations;

(5) To have reasonably private living conditions, including private storage space for personal belongings;

(6) To engage or refuse to engage in religious worship and political activity;

(7) To be compensated for ~~their~~ his or her labor in accordance with the federal Fair Labor Standards Act, 29 U.S.C. 206, as ~~amended~~ such section existed on January 1, 2004;

(8) To have access to a patient grievance procedure; and

(9) To file, either personally or by counsel, petitions or applications for writs of habeas corpus for the purpose of challenging the legality of ~~such subject's~~ his or her custody or treatment.

Sec. 80. Section 83-1064, Revised Statutes Supplement, 2002, is amended to read:

~~83-1064.~~ The subject of a petition may waive any of the proceedings or rights incident to proceedings granted him or her by section 83-1047 or any other provision of the Nebraska Mental Health Commitment Act by failing to request any right expressly required to be requested but, in the case of all other such rights, only if the record reflects that such waiver was made personally, intelligently, knowingly, understandingly, and voluntarily by the subject, and such subject's legal guardian if he or she is legally incompetent. When A subject may waive any of the proceedings or rights incident to proceedings granted him or her under the Nebraska Mental Health Commitment Act by failing to request any right expressly required to be requested but, in the case of all other such rights, only if the record reflects that such waiver was made personally, intelligently, knowingly, understandingly, and voluntarily by the subject and such subject's legal guardian or conservator, if any. Such rights may otherwise be denied only by a mental health board or court order for good cause shown after notice to the subject, the subject's counsel, and such subject's guardian or conservator, if any, and an opportunity to be heard. If the mental health board determines that the subject is not able to waive his or her rights under the conditions set forth in this section, it shall be up to the discretion of the subject's counsel to exercise the right such rights. When the subject is not

represented by counsel, the rights may not be waived.

Sec. 81. Section 83-1068, Reissue Revised Statutes of Nebraska, is amended to read:

~~83-1068.~~ (1) All records kept on any subject of a petition shall remain confidential except as may be provided otherwise by law. Such records shall be accessible to (a) the subject except as provided in subsection (2) of this section, (b) the subject's counsel, (c) the subject's guardian if the subject is legally incompetent, (d) the mental health board having jurisdiction over the subject, (e) persons authorized by an order of a judge or court, (f) persons authorized by written permission of the subject, or (g) the Nebraska State Patrol or the Department of Health and Human Services pursuant to section ~~69-2409.01~~.

(2) Upon application by the county attorney or by the director of the facility where the subject is in custody and upon a showing of good cause therefor, a judge of the district court of the county where the mental health board proceedings were held or of the county where the facility is located may order that the records shall not be made available to the subject if, in the judgment of the court, the availability of such records to the subject will adversely affect his or her mental state and the treatment thereof.

(3) When a subject is absent without authorization from a hospital or treatment program as described in section ~~83-1071~~ and is currently considered to be dangerous to others, the subject's name and description and a statement that the subject is believed to be considered currently dangerous to others may be disclosed in order to aid in the subject's apprehension and to warn of such dangerousness. Such records shall remain confidential except as otherwise provided by law. Such records shall be accessible to (a) the subject, except as otherwise provided in subsection (2) of this section, (b) the subject's legal counsel, (c) the subject's guardian or conservator, if any, (d) the mental health board having jurisdiction over the subject, (e) persons authorized by an order of a judge or court, (f) persons authorized by written permission of the subject, (g) agents or employees of the Department of Health and Human Services Regulation and Licensure upon delivery of a subpoena from the department in connection with a licensing or licensure investigation by the department, or (h) the Nebraska State Patrol or the Department of Health and Human Services pursuant to section 69-2409.01.

(2) Upon application by the county attorney or by the administrator of the treatment facility where the subject is in custody and upon a showing of good cause therefor, a judge of the district court of the county where the mental health board proceedings were held or of the county where the treatment facility is located may order that the records not be made available to the subject if, in the judgment of the court, the availability of such records to the subject will adversely affect his or her mental illness and the treatment thereof.

(3) When a subject is absent without authorization from a treatment facility or program described in section 59 of this act and is considered to be dangerous to others, the subject's name and description and a statement that the subject is believed to be considered dangerous to others may be disclosed in order to aid in the subject's apprehension and to warn the public of such danger.

Sec. 82. Section 83-1069, Revised Statutes Supplement, 2002, is amended to read:

~~83-1069.~~ Any person who willfully (1) files or causes to be filed a certificate or petition under the Nebraska Mental Health Commitment Act, knowing any of the allegations thereof to be false, (2) deprives a subject of any of the rights granted the subject by the act or section 83-390, or (3) breaches the confidentiality of records required by section ~~83-1068~~ 81 of this act shall be guilty of a Class II misdemeanor in addition to any civil liability which he or she may incur for such acts.

Sec. 83. Section 9-812, Revised Statutes Supplement, 2003, is amended to read:

9-812. (1) All money received from the operation of lottery games conducted pursuant to the State Lottery Act in Nebraska shall be credited to the State Lottery Operation Trust Fund, which fund is hereby created. All payments of expenses of the operation of the lottery games shall be made from the State Lottery Operation Cash Fund. In accordance with legislative appropriations, money for payments for expenses of the division shall be transferred from the State Lottery Operation Trust Fund to the State Lottery Operation Cash Fund, which fund is hereby created. All money necessary for the payment of lottery prizes shall be transferred from the State Lottery Operation Trust Fund to the State Lottery Prize Trust Fund, which fund is hereby created. The amount used for the payment of lottery prizes shall not be less than forty percent of the dollar amount of the lottery tickets which

have been sold. Until October 1, 2003, at least twenty-five percent and beginning October 1, 2003, and until January 1, 2008, a portion of the dollar amount of the lottery tickets which have been sold on an annualized basis shall be transferred from the State Lottery Operation Trust Fund to the Education Innovation Fund, the Nebraska Scholarship Fund, the Nebraska Environmental Trust Fund, and the Compulsive Gamblers Assistance Fund, except that the dollar amount transferred shall not be less than the dollar amount transferred to the funds in fiscal year 2002-03. On and after January 1, 2008, at least twenty-five percent of the dollar amount of the lottery tickets which have been sold on an annualized basis shall be transferred from the State Lottery Operation Trust Fund to the Education Innovation Fund, the Nebraska Scholarship Fund, the Nebraska Environmental Trust Fund, and the Compulsive Gamblers Assistance Fund. Of the money available to be transferred to the Education Innovation Fund, the Nebraska Scholarship Fund, the Nebraska Environmental Trust Fund, and the Compulsive Gamblers Assistance Fund, the first five hundred thousand dollars shall be transferred to the Compulsive Gamblers Assistance Fund to be used as provided in ~~sections 83-162.01 to 83-162.04~~ section 17 of this act. Twenty-four and three-fourths percent of the money remaining after the payment of prizes and operating expenses and the initial transfer to the Compulsive Gamblers Assistance Fund shall be transferred to the Education Innovation Fund. Twenty-four and three-fourths percent of the money remaining after the payment of prizes and operating expenses and the initial transfer to the Compulsive Gamblers Assistance Fund shall be transferred to the Nebraska Scholarship Fund. Forty-nine and one-half percent of the money remaining after the payment of prizes and operating expenses and the initial transfer to the Compulsive Gamblers Assistance Fund shall be transferred to the Nebraska Environmental Trust Fund to be used as provided in the Nebraska Environmental Trust Act. One percent of the money remaining after the payment of prizes and operating expenses and the initial transfer to the Compulsive Gamblers Assistance Fund shall be transferred to the Compulsive Gamblers Assistance Fund to be used as provided in ~~sections 83-162.01 to 83-162.04~~ section 17 of this act.

(2) The Education Innovation Fund is hereby created. At least seventy-five percent of the lottery proceeds allocated to the Education Innovation Fund shall be available for disbursement. For each fiscal year except fiscal years 2003-04 and 2004-05, the Education Innovation Fund shall be allocated in the following manner: Up to twenty percent to fund the mentor teacher program pursuant to the Quality Education Accountability Act; up to forty percent to the Attracting Excellence to Teaching Program Cash Fund to fund the Attracting Excellence to Teaching Program Act; and up to forty percent of the fund shall be allocated by the Governor. For fiscal years 2003-04 and 2004-05, the Education Innovation Fund shall be allocated to the General Fund after operating expenses for the Excellence in Education Council are deducted.

Allocations by the Governor shall be through incentive grants to encourage the development of strategic school improvement plans by school districts for accomplishing high performance learning and to encourage schools to establish innovations in programs or practices that result in restructuring of school organization, school management, and instructional programs which bring about improvement in the quality of education. Such incentive grants allocated by the Governor are intended to provide selected school districts, teachers or groups of teachers, nonprofit educational organizations, educational service units, or cooperatives funding for the allowable costs of implementing pilot projects and model programs.

From the funds allocated by the Governor, minigrants shall be available to school districts to support the development of strategic school improvement plans which shall include statements of purposes and goals for the districts. The plans shall also include the specific statements of improvement or strategic initiatives designed to improve quality learning for every student.

In addition to the minigrants granted for the development of strategic school improvement plans, school districts with annual budget expenditures of three hundred fifty thousand dollars or less are eligible for minigrants from the funds allocated by the Governor for the purposes allowed in subdivisions (2)(a) through (q) of this section. The amount of this type of minigrant shall not exceed five thousand dollars. The school district shall present a curriculum support plan with its application for the grant. The curriculum support plan must show how the district is working to achieve one or more of the allowed purposes and how the grant will be used to directly advance the plan to achieve one or more of these purposes. The plan must be signed by the school administrator and a school board representative. The application for the grant shall be brief. The Excellence in Education Council

shall select the recipients of this type of minigrant and shall administer such minigrants.

From the funds allocated by the Governor, major competitive grants shall be available to support innovative programs which are directly related to the strategic school improvement plans. The development of a strategic school improvement plan by a school district shall be required before a grant is awarded. Annual reports shall be made by program recipients documenting the effectiveness of the program in improving the quality of education as designed in the strategic school improvement plans. Special consideration shall be given to plans which contain public or private matching funds and cooperative agreements, including agreements for in-kind services. Purposes for which such major competitive grants would be offered shall include:

(a) Professional staff development programs to provide funds for teacher and administrator training and continuing education to upgrade teaching and administrative skills;

(b) The development of strategic school improvement plans by school districts;

(c) Educational technology assistance to public schools for the purchase and operation of computers, telecommunications equipment and services, and other forms of technological innovation which may enhance classroom teaching, instructional management, and districtwide administration. Telecommunications equipment, services, and forms of technical innovation shall be approved only after review by the technical panel created in section 86-521;

(d) An educational accountability program to develop an educational indicators system to measure the performance and outcomes of public schools and to ensure efficiency in operations;

(e) Alternative programs for students, including underrepresented groups, at-risk students, and dropouts;

(f) Programs that demonstrate improvement of student performance against valid national and international achievement standards;

(g) Early childhood and parent education which emphasizes child development;

(h) Programs using decisionmaking models that increase involvement of parents, teachers, and students in school management;

(i) Increased involvement of the community in order to achieve increased confidence in and satisfaction with its schools;

(j) Development of magnet or model programs designed to facilitate desegregation;

(k) Programs that address family and social issues impairing the learning productivity of students;

(l) Programs enhancing critical and higher-order thinking capabilities;

(m) Programs which produce the quality of education necessary to guarantee a competitive work force;

(n) Programs designed to increase productivity of staff and students through innovative use of time;

(o) Training programs designed to benefit teachers at all levels of education by increasing their ability to work with educational technology in the classroom;

(p) Approved accelerated or differentiated curriculum programs under sections 79-1106 to 79-1108.03; and

(q) Programs for children from birth to age twenty-one years with disabilities receiving special education under the Special Education Act and children from birth to age twenty-one years needing support services as defined in section 79-1125.01, which programs demonstrate improved outcomes for children from birth to age twenty-one years through emphasis on prevention and collaborative planning.

The Governor shall establish the Excellence in Education Council. The Governor shall appoint eleven members to the council including representatives of educational organizations, postsecondary educational institutions, the business community, and the general public, members of school boards and parent education associations, school administrators, and at least four teachers who are engaged in classroom teaching. The State Department of Education shall provide staff support for the council to administer the Education Innovation Fund, including the Quality Education Accountability Act. The council shall have the following powers and duties:

(i) In consultation with the department, develop and publish criteria for the awarding of incentive grants allocated by the Governor for programs pursuant to this subsection, including minigrants;

(ii) Provide recommendations to the Governor regarding the selection of projects to be funded and the distribution and duration of project funding;

(iii) Establish standards, formats, procedures, and timelines for the successful implementation of approved programs funded by incentive grants allocated by the Governor from the Education Innovation Fund;

(iv) Assist school districts in determining the effectiveness of the innovations in programs and practices and measure the subsequent degree of improvement in the quality of education;

(v) Consider the reasonable distribution of funds across the state and all classes of school districts;

(vi) Carry out its duties pursuant to the Quality Education Accountability Act; and

(vii) Provide annual reports to the Governor concerning programs funded by the fund. Each report shall include the number of applicants and approved applicants, an overview of the various programs, objectives, and anticipated outcomes, and detailed reports of the cost of each program.

To assist the council in carrying out its duties, the State Board of Education shall, in consultation with the council, adopt and promulgate rules and regulations establishing criteria, standards, and procedures regarding the selection and administration of programs funded from the Education Innovation Fund, including the Quality Education Accountability Act.

(3) Recipients of incentive grants allocated by the Governor from the Education Innovation Fund shall be required to provide, upon request, such data relating to the funded programs and initiatives as the Governor deems necessary.

(4) Any money in the State Lottery Operation Trust Fund, the State Lottery Operation Cash Fund, the State Lottery Prize Trust Fund, or the Education Innovation 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.

(5) Unclaimed prize money on a winning lottery ticket shall be retained for a period of time prescribed by rules and regulations. If no claim is made within such period, the prize money shall be used at the discretion of the Tax Commissioner for any of the purposes prescribed in this section.

Sec. 84. Section 20-164, Reissue Revised Statutes of Nebraska, is amended to read:

20-164. (1) For the purpose of protecting the human and legal rights of a mentally ill individual or with respect to matters which occur within ninety days after the date of the discharge of such individual from a facility for mentally ill individuals, the protection and advocacy system shall be granted access to the records, by any person or entity having possession or control of such records, of:

(a) Any mentally ill individual who is a client of the protection and advocacy system if such individual or the legal guardian, conservator, or other legal representative of such individual has authorized the protection and advocacy system to have such access; and

(b) Any mentally ill individual:

(i) Who by reason of the mental or physical condition of such individual is unable to authorize the protection and advocacy system to have such access;

(ii) Who does not have a legal guardian, conservator, or other legal representative or for whom the legal guardian is this state; and

(iii) With respect to whom a complaint has been received by the protection and advocacy system or with respect to whom there is probable cause to believe that such individual has been subject to injury or deprivation with regard to his or her health, safety, welfare, rights, or level of care.

(2) The protection and advocacy system may not disclose information from such records to the mentally ill individual who is the subject of the information if disclosure of such information to such individual would be detrimental to such individual's health or if a court pursuant to section ~~83-1068~~ 81 of this act orders that the records not be disclosed.

Sec. 85. Section 23-3402, Reissue Revised Statutes of Nebraska, is amended to read:

23-3402. (1) It shall be the duty of the public defender to represent all indigent felony defendants within the county he or she serves. The public defender shall represent indigent felony defendants at all critical stages of felony proceedings against them through the stage of sentencing. Sentencing shall include hearings on charges of violation of felony probation. Following the sentencing of any indigent defendant represented by him or her, the public defender may take any direct, collateral, or postconviction appeals to state or federal courts which he or she considers to be meritorious and in the interest of justice and shall file a notice of appeal and proceed with one direct appeal to either the Court of Appeals or the Supreme Court of Nebraska

upon a timely request after sentencing from any such convicted felony defendant, subject to the public defender's right to apply to the court to withdraw from representation in any appeal which he or she deems to be wholly frivolous.

(2) It shall be the duty of the public defender to represent all indigent persons against whom a petition has been filed with a mental health board as provided in sections ~~83-1049 to 83-1051~~ 65 to 67 of this act.

(3) It shall be the duty of the public defender to represent all indigent persons charged with misdemeanor offenses punishable by imprisonment when appointed by the court.

(4) Appointment of a public defender shall be by the court in accordance with sections 29-3902 and 29-3903. A public defender shall not represent an indigent person prior to appointment by the court, except that a public defender may represent a person under arrest for investigation or on suspicion. A public defender shall not inquire into a defendant's financial condition for purposes of indigency determination except to make an initial determination of indigency of a person under arrest for investigation or on suspicion. A public defender shall not make a determination of a defendant's indigency, except an initial determination of indigency of a person under arrest for investigation or on suspicion, nor recommend to a court that a defendant be determined or not determined as indigent.

(5) For purposes of this section, the definitions found in section 29-3901 shall be used.

Sec. 86. Section 28-416, Revised Statutes Supplement, 2003, is amended to read:

28-416. (1) Except as authorized by the Uniform Controlled Substances Act, it shall be unlawful for any person knowingly or intentionally: (a) To manufacture, distribute, deliver, dispense, or possess with intent to manufacture, distribute, deliver, or dispense a controlled substance; or (b) to create, distribute, or possess with intent to distribute a counterfeit controlled substance.

(2) Except as provided in subsections (4), (5), (7), (8), (9), and (10) of this section, any person who violates subsection (1) of this section with respect to: (a) A controlled substance classified in Schedule I, II, or III of section 28-405 which is an exceptionally hazardous drug shall be guilty of a Class II felony; (b) any other controlled substance classified in Schedule I, II, or III of section 28-405 shall be guilty of a Class III felony; or (c) a controlled substance classified in Schedule IV or V of section 28-405 shall be guilty of a Class IIIA felony.

(3) A person knowingly or intentionally possessing a controlled substance, except marijuana, unless such substance was obtained directly or pursuant to a medical order issued by a practitioner authorized to prescribe while acting in the course of his or her professional practice, or except as otherwise authorized by the act, shall be guilty of a Class IV felony.

(4)(a) Except as authorized by the Uniform Controlled Substances Act, any person eighteen years of age or older who knowingly or intentionally manufactures, distributes, delivers, dispenses, or possesses with intent to manufacture, distribute, deliver, or dispense a controlled substance or a counterfeit controlled substance (i) to a person under the age of eighteen years, (ii) in, on, or within one thousand feet of the real property comprising a public or private elementary, vocational, or secondary school, a community college, a public or private college, junior college, or university, or a playground, or (iii) within one hundred feet of a public or private youth center, public swimming pool, or video arcade facility shall be punished by the next higher penalty classification than the penalty prescribed in subsection (2), (7), (8), (9), or (10) of this section, depending upon the controlled substance involved, for the first violation and for a second or subsequent violation shall be punished by the next higher penalty classification than that prescribed for a first violation of this subsection, but in no event shall such person be punished by a penalty greater than a Class IB felony.

(b) For purposes of this subsection:

(i) Playground shall mean any outdoor facility, including any parking lot appurtenant to the facility, intended for recreation, open to the public, and with any portion containing three or more apparatus intended for the recreation of children, including sliding boards, swingsets, and teeterboards;

(ii) Video arcade facility shall mean any facility legally accessible to persons under eighteen years of age, intended primarily for the use of pinball and video machines for amusement, and containing a minimum of ten pinball or video machines; and

(iii) Youth center shall mean any recreational facility or

gymnasium, including any parking lot appurtenant to the facility or gymnasium, intended primarily for use by persons under eighteen years of age which regularly provides athletic, civic, or cultural activities.

(5) (a) Except as authorized by the Uniform Controlled Substances Act, it shall be unlawful for any person eighteen years of age or older to knowingly and intentionally employ, hire, use, cause, persuade, coax, induce, entice, seduce, or coerce any person under the age of eighteen years to manufacture, transport, distribute, carry, deliver, dispense, prepare for delivery, offer for delivery, or possess with intent to do the same a controlled substance or a counterfeit controlled substance.

(b) Except as authorized by the Uniform Controlled Substances Act, it shall be unlawful for any person eighteen years of age or older to knowingly and intentionally employ, hire, use, cause, persuade, coax, induce, entice, seduce, or coerce any person under the age of eighteen years to aid and abet any person in the manufacture, transportation, distribution, carrying, delivery, dispensing, preparation for delivery, offering for delivery, or possession with intent to do the same of a controlled substance or a counterfeit controlled substance.

(c) Any person who violates subdivision (a) or (b) of this subsection shall be punished by the next higher penalty classification than the penalty prescribed in subsection (2), (7), (8), (9), or (10) of this section, depending upon the controlled substance involved, for the first violation and for a second or subsequent violation shall be punished by the next higher penalty classification than that prescribed for a first violation of this subsection, but in no event shall such person be punished by a penalty greater than a Class IB felony.

(6) It shall not be a defense to prosecution for violation of subsection (4) or (5) of this section that the defendant did not know the age of the person through whom the defendant violated such subsection.

(7) Any person who violates subsection (1) of this section with respect to cocaine or any mixture or substance containing a detectable amount of cocaine in a quantity of:

(a) One hundred forty grams or more shall be guilty of a Class IB felony;

(b) At least twenty-eight grams but less than one hundred forty grams shall be guilty of a Class IC felony; or

(c) At least ten grams but less than twenty-eight grams shall be guilty of a Class ID felony.

(8) Any person who violates subsection (1) of this section with respect to base cocaine (crack) or any mixture or substance containing a detectable amount of base cocaine in a quantity of:

(a) One hundred forty grams or more shall be guilty of a Class IB felony;

(b) At least twenty-eight grams but less than one hundred forty grams shall be guilty of a Class IC felony; or

(c) At least ten grams but less than twenty-eight grams shall be guilty of a Class ID felony.

(9) Any person who violates subsection (1) of this section with respect to heroin or any mixture or substance containing a detectable amount of heroin in a quantity of:

(a) Five hundred grams or more shall be guilty of a Class IB felony;

(b) One hundred grams or more but less than five hundred grams shall be guilty of a Class IC felony; or

(c) Twenty-eight grams or more but less than one hundred grams shall be guilty of a Class ID felony.

(10) Any person who violates subsection (1) of this section with respect to amphetamine, its salts, optical isomers, and salts of its isomers, or with respect to methamphetamine, its salts, optical isomers, and salts of its isomers, in a quantity of:

(a) Sixteen ounces or more shall be guilty of a Class IC felony;

(b) Seven ounces or more but less than sixteen ounces shall be guilty of a Class ID felony; or

(c) Three and one-half ounces or more but less than seven ounces shall be guilty of a Class II felony.

(11) Any person knowingly or intentionally possessing marijuana weighing more than one ounce but not more than one pound shall be guilty of a Class IIIA misdemeanor.

(12) Any person knowingly or intentionally possessing marijuana weighing more than one pound shall be guilty of a Class IV felony.

(13) Any person knowingly or intentionally possessing marijuana weighing one ounce or less shall:

(a) For the first offense, be guilty of an infraction, receive a

citation, be fined one hundred dollars, and be assigned to attend a course as prescribed in section 29-433 if the judge determines that attending such course is in the best interest of the individual defendant;

(b) For the second offense, be guilty of a Class IV misdemeanor, receive a citation, and be fined two hundred dollars and may be imprisoned not to exceed five days; and

(c) For the third and all subsequent offenses, be guilty of a Class IIIA misdemeanor, receive a citation, be fined three hundred dollars, and be imprisoned not to exceed seven days.

(14) Any person convicted of violating this section, if placed on probation, shall, as a condition of probation, satisfactorily attend and complete appropriate treatment and counseling on drug abuse ~~conducted by one of the community mental health facilities as provided by Chapter 71, article 50,~~ provided by a program authorized under the Nebraska Behavioral Health Services Act or other licensed drug treatment facility.

(15) Any person convicted of violating this section, if sentenced to the Department of Correctional Services, shall attend appropriate treatment and counseling on drug abuse.

(16) A person knowingly or intentionally possessing a firearm while in violation of subsection (1) of this section or while in possession of money used or intended to be used to facilitate a violation of subsection (1) of this section shall be guilty of a Class IV felony.

Sec. 87. Section 29-434, Reissue Revised Statutes of Nebraska, is amended to read:

29-434. All drug treatment centers ~~established pursuant to Chapter 71, article 50,~~ shall provide the necessary facilities and programs to carry out the provisions of section 29-433.

Sec. 88. Section 29-3705, Reissue Revised Statutes of Nebraska, is amended to read:

29-3705. The court which tried and acquitted any person who, as of May 29, 1981, stands committed by an order of a mental health board pursuant to ~~sections 83-1001 to 83-1078~~ the Nebraska Mental Health Commitment Act in consequence of the insanity or derangement which was the ground of the acquittal, shall have jurisdiction over such person for disposition consistent with the provisions of sections 29-2203 and 29-3701 to 29-3704. Within sixty days of May 29, 1981, the county attorney in the jurisdiction of the court which tried and acquitted the person shall file with the court which tried and acquitted the person and shall serve on the person a petition asserting the court's jurisdiction over the person for disposition consistent with sections 29-3701 to 29-3704. The court shall then conduct an evidentiary hearing on the status of the person pursuant to section 29-3703.

Sec. 89. Section 29-3915, Reissue Revised Statutes of Nebraska, is amended to read:

29-3915. The following persons who are financially unable to obtain counsel shall be entitled to be represented by a judicial district public defender:

(1) A person charged with a felony, including appeals from convictions for a felony;

(2) A person pursuing a postconviction proceeding under sections 29-3001 to 29-3004 after conviction of a felony, when the public defender after investigation concludes that there may be merit to such a proceeding or when the court in which such proceeding is pending directs the public defender to represent the person;

(3) A minor brought before the juvenile court when neither the minor nor his or her parent or guardian is able to afford counsel; and

(4) A person against whom a petition has been filed with a mental health board as provided in sections ~~83-1049 to 83-1051~~ 65 to 67 of this act.

Sec. 90. Section 42-917, Reissue Revised Statutes of Nebraska, is amended to read:

42-917. The delivery of all services provided for under the Protection from Domestic Abuse Act shall be done in cooperation with existing public, private, state, and local programs whenever possible to avoid duplication of services. Special effort shall be taken to coordinate programs with the Department of Labor, the Nebraska Commission on the Status of Women, the State Department of Education, the Division of ~~Alcoholism, Drug Abuse, and Addiction~~ Behavioral Health Services of the Department of Health and Human Services, the Department of Health and Human Services Regulation and Licensure, the Department of Health and Human Services Finance and Support, other appropriate agencies, community service agencies, and private sources.

Sec. 91. Section 43-245, Revised Statutes Supplement, 2002, is amended to read:

43-245. For purposes of the Nebraska Juvenile Code, unless the

context otherwise requires:

- (1) Age of majority means nineteen years of age;
- (2) Approved center means a center that has applied for and received approval from the Director of the Office of Dispute Resolution under section 25-2909;
- (3) Cost or costs means (a) the sum or equivalent expended, paid, or charged for goods or services, or expenses incurred, or (b) the contracted or negotiated price;
- (4) Juvenile means any person under the age of eighteen;
- (5) Juvenile court means the separate juvenile court where it has been established pursuant to sections 43-2,111 to 43-2,127 and the county court sitting as a juvenile court in all other counties. Nothing in the Nebraska Juvenile Code shall be construed to deprive the district courts of their habeas corpus, common-law, or chancery jurisdiction or the county courts and district courts of jurisdiction of domestic relations matters as defined in section 25-2740;
- (6) Juvenile detention facility has the same meaning as in section 83-4,125;
- (7) Mediator for juvenile offender and victim mediation means a person who (a) has completed at least thirty hours of training in conflict resolution techniques, neutrality, agreement writing, and ethics set forth in section 25-2913, (b) has an additional eight hours of juvenile offender and victim mediation training, and (c) meets the apprenticeship requirements set forth in section 25-2913;
- (8) Mental health facility means a mental health center treatment facility as defined in section ~~§3-1006~~ 34 of this act or a government, private, or state hospital which treats mental illness;
- (9) Nonoffender means a juvenile who is subject to the jurisdiction of the juvenile court for reasons other than legally prohibited conduct, including, but not limited to, juveniles described in subdivision (3)(a) of section 43-247;
- (10) Nonsecure detention means detention characterized by the absence of restrictive hardware, construction, and procedure. Nonsecure detention services may include a range of placement and supervision options, such as home detention, electronic monitoring, day reporting, drug court, tracking and monitoring supervision, staff secure and temporary holdover facilities, and group homes;
- (11) Parent means one or both parents or a stepparent when such stepparent is married to the custodial parent as of the filing of the petition;
- (12) Parties means the juvenile as described in section 43-247 and his or her parent, guardian, or custodian;
- (13) Except in proceedings under the Nebraska Indian Child Welfare Act, relative means father, mother, grandfather, grandmother, brother, sister, stepfather, stepmother, stepbrother, stepsister, uncle, aunt, first cousin, nephew, or niece;
- (14) Secure detention means detention in a highly structured, residential, hardware-secured facility designed to restrict a juvenile's movement;
- (15) Status offender means a juvenile who has been charged with or adjudicated for conduct which would not be a crime if committed by an adult, including, but not limited to, juveniles charged under subdivision (3)(b) of section 43-247 and sections 53-180.01 and 53-180.02; and
- (16) Traffic offense means any nonfelonious act in violation of a law or ordinance regulating vehicular or pedestrian travel, whether designated a misdemeanor or a traffic infraction.

Sec. 92. Section 43-247, Revised Statutes Supplement, 2002, is amended to read:

43-247. The juvenile court shall have exclusive original jurisdiction as to any juvenile defined in subdivision (1) of this section who is under the age of sixteen, as to any juvenile defined in subdivision (3) of this section, and as to the parties and proceedings provided in subdivisions (5), (6), and (8) of this section. As used in this section, all references to the juvenile's age shall be the age at the time the act which occasioned the juvenile court action occurred. The juvenile court shall have concurrent original jurisdiction with the district court as to any juvenile defined in subdivision (2) of this section. The juvenile court shall have concurrent original jurisdiction with the district court and county court as to any juvenile defined in subdivision (1) of this section who is age sixteen or seventeen, any juvenile defined in subdivision (4) of this section, and any proceeding under subdivision (7) or (11) of this section. The juvenile court shall have concurrent original jurisdiction with the county court as to any

proceeding under subdivision (9) or (10) of this section. Notwithstanding any disposition entered by the juvenile court under the Nebraska Juvenile Code, the juvenile court's jurisdiction over any individual adjudged to be within the provisions of this section shall continue until the individual reaches the age of majority or the court otherwise discharges the individual from its jurisdiction.

The juvenile court in each county as herein provided shall have jurisdiction of:

(1) Any juvenile who has committed an act other than a traffic offense which would constitute a misdemeanor or an infraction under the laws of this state, or violation of a city or village ordinance;

(2) Any juvenile who has committed an act which would constitute a felony under the laws of this state;

(3) Any juvenile (a) who is homeless or destitute, or without proper support through no fault of his or her parent, guardian, or custodian; who is abandoned by his or her parent, guardian, or custodian; who lacks proper parental care by reason of the fault or habits of his or her parent, guardian, or custodian; whose parent, guardian, or custodian neglects or refuses to provide proper or necessary subsistence, education, or other care necessary for the health, morals, or well-being of such juvenile; whose parent, guardian, or custodian is unable to provide or neglects or refuses to provide special care made necessary by the mental condition of the juvenile; or who is in a situation or engages in an occupation dangerous to life or limb or injurious to the health or morals of such juvenile, (b) who, by reason of being wayward or habitually disobedient, is uncontrolled by his or her parent, guardian, or custodian; who deports himself or herself so as to injure or endanger seriously the morals or health of himself, herself, or others; or who is habitually truant from home or school, or (c) who is mentally ill and dangerous as defined in section ~~23-1009~~ 28 of this act;

(4) Any juvenile who has committed an act which would constitute a traffic offense as defined in section 43-245;

(5) The parent, guardian, or custodian who has custody of any juvenile described in this section;

(6) The proceedings for termination of parental rights as provided in the Nebraska Juvenile Code;

(7) The proceedings for termination of parental rights as provided in section 42-364;

(8) Any juvenile who has been voluntarily relinquished, pursuant to section 43-106.01, to the Department of Health and Human Services or any child placement agency licensed by the Department of Health and Human Services;

(9) Any juvenile who was a ward of the juvenile court at the inception of his or her guardianship and whose guardianship has been disrupted or terminated;

(10) The adoption or guardianship proceedings for a child over which the juvenile court already has jurisdiction under another provision of the Nebraska Juvenile Code; and

(11) The paternity determination for a child over which the juvenile court already has jurisdiction.

Notwithstanding the provisions of the Nebraska Juvenile Code, the determination of jurisdiction over any Indian child as defined in section 43-1503 shall be subject to the Nebraska Indian Child Welfare Act.

Sec. 93. Section 43-248, Reissue Revised Statutes of Nebraska, is amended to read:

43-248. A juvenile may be taken into temporary custody by any peace officer without a warrant or order of the court when:

(1) A juvenile has violated a state law or municipal ordinance in the presence of the officer;

(2) A felony has been committed and the officer has reasonable grounds to believe such juvenile committed it;

(3) A juvenile is seriously endangered in his or her surroundings and immediate removal appears to be necessary for the juvenile's protection;

(4) The officer believes the juvenile to be mentally ill and dangerous as defined in section ~~23-1009~~ 28 of this act and that the harm described in that section is likely to occur before proceedings may be instituted before the juvenile court; or

(5) There are reasonable grounds to believe that the juvenile has run away from his or her parent, guardian, or custodian.

Sec. 94. Section 43-250, Revised Statutes Supplement, 2003, is amended to read:

43-250. A peace officer who takes a juvenile into temporary custody under section 43-248 shall immediately take reasonable measures to notify the juvenile's parent, guardian, custodian, or relative and shall proceed as

follows:

- (1) The peace officer shall release such juvenile;
- (2) The peace officer shall prepare in triplicate a written notice requiring the juvenile to appear before the juvenile court of the county in which such juvenile was taken into custody at a time and place specified in the notice or at the call of the court. The notice shall also contain a concise statement of the reasons such juvenile was taken into custody. The peace officer shall deliver one copy of the notice to such juvenile and require such juvenile or his or her parent, guardian, other custodian, or relative, or both, to sign a written promise that such signer will appear at the time and place designated in the notice. Upon the execution of the promise to appear, the peace officer shall immediately release such juvenile. The peace officer shall, as soon as practicable, file one copy of the notice with the county attorney and, when required by the juvenile court, also file a copy of the notice with the juvenile court or the officer appointed by the court for such purpose;
- (3) While retaining temporary custody, the peace officer shall communicate all relevant available information regarding such juvenile to the probation officer and shall deliver the juvenile, if necessary, to the probation officer. The probation officer shall determine the need for detention of the juvenile as provided in section 43-260.01. Upon determining that the juvenile should be placed in a secure or nonsecure placement and securing placement in such secure or nonsecure setting by the probation officer, the peace officer shall implement the probation officer's decision to release or to detain and place the juvenile. When secure detention of a juvenile is necessary, such detention shall occur within a juvenile detention facility except:
 - (a) When a juvenile described in subdivision (1) or (2) of section 43-247, except for a status offender, is taken into temporary custody within a metropolitan statistical area and where no juvenile detention facility is reasonably available, the juvenile may be delivered, for temporary custody not to exceed six hours, to a secure area of a jail or other facility intended or used for the detention of adults solely for the purposes of identifying the juvenile and ascertaining his or her health and well-being and for safekeeping while awaiting transport to an appropriate juvenile placement or release to a responsible party;
 - (b) When a juvenile described in subdivision (1) or (2) of section 43-247, except for a status offender, is taken into temporary custody outside of a metropolitan statistical area and where no juvenile detention facility is reasonably available, the juvenile may be delivered, for temporary custody not to exceed twenty-four hours excluding nonjudicial days and while awaiting an initial court appearance, to a secure area of a jail or other facility intended or used for the detention of adults solely for the purposes of identifying the juvenile and ascertaining his or her health and well-being and for safekeeping while awaiting transport to an appropriate juvenile placement or release to a responsible party;
 - (c) Whenever a juvenile is held in a secure area of any jail or other facility intended or used for the detention of adults, there shall be no verbal, visual, or physical contact between the juvenile and any incarcerated adult and there shall be adequate staff to supervise and monitor the juvenile's activities at all times. This subdivision shall not apply to a juvenile charged with a felony as an adult in county or district court if he or she is sixteen years of age or older;
 - (d) If a juvenile is under sixteen years of age or is a juvenile as described in subdivision (3) of section 43-247, he or she shall not be placed within a secure area of a jail or other facility intended or used for the detention of adults;
 - (e) If, within the time limits specified in subdivision (3)(a) or (3)(b) of this section, a felony charge is filed against the juvenile as an adult in county or district court, he or she may be securely held in a jail or other facility intended or used for the detention of adults beyond the specified time limits;
 - (f) A status offender or nonoffender taken into temporary custody shall not be held in a secure area of a jail or other facility intended or used for the detention of adults. A status offender accused of violating a valid court order may be securely detained in a juvenile detention facility longer than twenty-four hours if he or she is afforded a detention hearing before a court within twenty-four hours, excluding nonjudicial days, and if, prior to a dispositional commitment to secure placement, a public agency, other than a court or law enforcement agency, is afforded an opportunity to review the juvenile's behavior and possible alternatives to secure placement and has submitted a written report to the court; and

(g) A juvenile described in subdivision (1) or (2) of section 43-247, except for a status offender, may be held in a secure area of a jail or other facility intended or used for the detention of adults for up to six hours before and six hours after any court appearance;

(4) When a juvenile is taken into temporary custody pursuant to subdivision (3) of section 43-248, the peace officer shall deliver the custody of such juvenile to the Department of Health and Human Services which shall make a temporary placement of the juvenile in the least restrictive environment consistent with the best interests of the juvenile as determined by the department. The department shall supervise such placement and, if necessary, consent to any necessary emergency medical, psychological, or psychiatric treatment for such juvenile. The department shall have no other authority with regard to such temporary custody until or unless there is an order by the court placing the juvenile in the custody of the department. If the peace officer delivers temporary custody of the juvenile pursuant to this subdivision, the peace officer shall make a full written report to the county attorney within twenty-four hours of taking such juvenile into temporary custody. If a court order of temporary custody is not issued within forty-eight hours of taking the juvenile into custody, the temporary custody by the department shall terminate and the juvenile shall be returned to the custody of his or her parent, guardian, custodian, or relative; or

(5) If the peace officer takes the juvenile into temporary custody pursuant to subdivision (4) of section 43-248, the peace officer may place the juvenile at a mental health facility for evaluation and emergency treatment or may deliver the juvenile to the Department of Health and Human Services as provided in subdivision (4) of this section. At the time of the admission or turning the juvenile over to the department, the peace officer responsible for taking the juvenile into custody shall execute a written certificate as prescribed by the Department of Health and Human Services which will indicate that the peace officer believes the juvenile to be mentally ill and dangerous, a summary of the subject's behavior supporting such allegations, and that the harm described in section ~~§3-1009~~ 28 of this act is likely to occur before proceedings before a juvenile court may be invoked to obtain custody of the juvenile. A copy of the certificate shall be forwarded to the county attorney. The peace officer shall notify the juvenile's parents, guardian, custodian, or relative of the juvenile's placement.

In determining the appropriate temporary placement of a juvenile under this section, the peace officer shall select the placement which is least restrictive of the juvenile's freedom so long as such placement is compatible with the best interests of the juvenile and the safety of the community.

Sec. 95. Section 43-254.01, Reissue Revised Statutes of Nebraska, is amended to read:

43-254.01. (1) Any time a juvenile is temporarily placed at a mental health facility pursuant to subdivision (5) of section 43-250 or by a court as a juvenile who is mentally ill and dangerous, a mental health professional as defined in section ~~§3-1010~~ 26 of this act shall evaluate the mental condition of the juvenile as soon as reasonably possible but not later than thirty-six hours after the juvenile's admission, unless the juvenile was evaluated by a mental health professional immediately prior to the juvenile being placed in temporary custody and the temporary custody is based upon the conclusions of that evaluation. The mental health professional who performed the evaluation prior to the temporary custody or immediately after the temporary custody shall, without delay, convey the results of his or her evaluation to the county attorney.

(2) If it is the judgment of the mental health professional that the juvenile is not mentally ill and dangerous or that the harm described in section ~~§3-1009~~ 28 of this act is not likely to occur before the matter may be heard by a juvenile court, the mental health professional shall immediately notify the county attorney of that conclusion and the county attorney shall either proceed to hearing before the court within twenty-four hours or order the immediate release of the juvenile from temporary custody. Such release shall not prevent the county attorney from proceeding on the petition if he or she so chooses.

(3) A juvenile taken into temporary protective custody under subdivision (5) of section 43-250 shall have the opportunity to proceed to adjudication hearing within seven days unless the matter is continued. Continuances shall be liberally granted at the request of the juvenile, his or her guardian ad litem, attorney, parents, or guardian. Continuances may be granted to permit the juvenile an opportunity to obtain voluntary treatment.

Sec. 96. Section 44-773, Reissue Revised Statutes of Nebraska, is amended to read:

44-773. Outpatient program shall refer to a program which is ~~not required to be licensed or certified~~ by the Department of Health and Human Services Regulation and Licensure as a ~~substance abuse treatment center but which is certified pursuant to section 83-163~~ or the Division of Behavioral Health Services of the Department of Health and Human Services to provide specified services to persons suffering from the disease of alcoholism.

Sec. 97. Section 44-774, Reissue Revised Statutes of Nebraska, is amended to read:

44-774. Certified shall mean approved ~~to render specific types or levels of care to the person suffering from the disease of alcoholism~~ by the Division of ~~Alcoholism, Drug Abuse, and Addiction~~ Behavioral Health Services of the Department of Health and Human Services to render specific types or levels of care to the person suffering from the disease of alcoholism.

Sec. 98. Section 48-1102, Reissue Revised Statutes of Nebraska, is amended to read:

48-1102. For purposes of the Nebraska Fair Employment Practice Act, unless the context otherwise requires:

(1) Person shall include one or more individuals, labor unions, partnerships, limited liability companies, associations, corporations, legal representatives, mutual companies, joint-stock companies, trusts, unincorporated organizations, trustees, trustees in bankruptcy, or receivers;

(2) Employer shall mean a person engaged in an industry who has fifteen or more employees for each working day in each of twenty or more calendar weeks in the current or preceding calendar year, any agent of such a person, and any party whose business is financed in whole or in part under the Nebraska Investment Finance Authority Act regardless of the number of employees and shall include the State of Nebraska, governmental agencies, and political subdivisions, but such term shall not include (a) the United States, a corporation wholly owned by the government of the United States, or an Indian tribe or (b) a bona fide private membership club, other than a labor organization, which is exempt from taxation under section 501(c) of the Internal Revenue Code;

(3) Labor organization shall mean any organization which exists wholly or in part for one or more of the following purposes: Collective bargaining; dealing with employers concerning grievances, terms, or conditions of employment; or mutual aid or protection in relation to employment;

(4) Employment agency shall mean any person regularly undertaking with or without compensation to procure employees for an employer or to procure for employees opportunities to work for an employer and shall include an agent of such a person but shall not include an agency of the United States, except that such term shall include the United States Employment Service and the system of state and local employment services receiving federal assistance;

(5) Covered entity shall mean an employer, an employment agency, a labor organization, or a joint labor-management committee;

(6) Privileges of employment shall mean terms and conditions of any employer-employee relationship, opportunities for advancement of employees, and plant conveniences;

(7) Employee shall mean an individual employed by an employer;

(8) Commission shall mean the Equal Opportunity Commission;

(9) Disability shall mean (a) a physical or mental impairment that substantially limits one or more of the major life activities of such individual, (b) a record of such an impairment, or (c) being regarded as having such an impairment. Disability shall not include homosexuality, bisexuality, transvestism, transsexualism, pedophilia, exhibitionism, voyeurism, gender-identity disorders not resulting in physical impairments, other sexual behavior disorders, ~~compulsive problem~~ gambling, kleptomania, pyromania, or psychoactive substance use disorders resulting from current illegal use of drugs;

(10)(a) Qualified individual with a disability shall mean an individual with a disability who, with or without reasonable accommodation, can perform the essential functions of the employment position that such individual holds or desires. Consideration shall be given to the employer's judgment as to what functions of a job are essential, and if an employer has prepared a written description before advertising or interviewing applicants for the job, this description shall be considered evidence of the essential functions of the job;

(b) Qualified individual with a disability shall not include any employee or applicant who is currently engaged in the illegal use of drugs when the covered entity acts on the basis of such use; and

(c) Nothing in this subdivision shall be construed to exclude as a qualified individual with a disability an individual who:

(i) Has successfully completed a supervised drug rehabilitation program or otherwise been rehabilitated successfully and is no longer engaging in the illegal use of drugs;

(ii) Is participating in a supervised rehabilitation program and is no longer engaging in such use; or

(iii) Is erroneously regarded as engaging in such use but is not engaging in such use;

(11) Reasonable accommodation shall include making existing facilities used by employees readily accessible to and usable by individuals with disabilities, job-restructuring, part-time or modified work schedules, reassignment to a vacant position, acquisition or modification of equipment or devices, appropriate adjustment or modification of examinations, training manuals, or policies, the provision of qualified readers or interpreters, and other similar accommodations for individuals with disabilities. Reasonable accommodation shall not include accommodations which the covered entity can demonstrate require significant difficulty or expense thereby posing an undue hardship upon the covered entity. Factors to be considered in determining whether an accommodation would pose an undue hardship shall include:

(a) The nature and the cost of the accommodation needed under the Nebraska Fair Employment Practice Act;

(b) The overall financial resources of the facility or facilities involved in the provision of the reasonable accommodation, the number of persons employed at such facility, the effect on expenses and resources, or the impact otherwise of such accommodation upon the operation of the facility;

(c) The overall financial resources of the covered entity, the overall size of the business of a covered entity with respect to the number of its employees, and the number, type, and location of its facilities; and

(d) The type of operation or operations of the covered entity, including the composition, structure, and functions of the work force of such entity, and the geographic separateness and administrative or fiscal relationship of the facility or facilities in question to the covered entity;

(12) Marital status shall mean the status of a person whether married or single;

(13) Because of sex or on the basis of sex shall include, but not be limited to, because of or on the basis of pregnancy, childbirth, or related medical conditions;

(14) Harass because of sex shall include making unwelcome sexual advances, requesting sexual favors, and engaging in other verbal or physical conduct of a sexual nature if (a) submission to such conduct is made either explicitly or implicitly a term or condition of an individual's employment, (b) submission to or rejection of such conduct by an individual is used as the basis for employment decisions affecting such individual, or (c) such conduct has the purpose or effect of unreasonably interfering with an individual's work performance or creating an intimidating, hostile, or offensive working environment;

(15) Unlawful under federal law or the laws of this state shall mean acting contrary to or in defiance of the law or disobeying or disregarding the law;

(16) Drug shall mean a controlled substance as defined in section 28-401; and

(17) Illegal use of drugs shall mean the use of drugs, the possession or distribution of which is unlawful under the Uniform Controlled Substances Act, but shall not include the use of a drug taken under supervision by a licensed health care professional or any other use authorized by the Uniform Controlled Substances Act or other provisions of state law.

Sec. 99. Section 53-1,120, Reissue Revised Statutes of Nebraska, is amended to read:

53-1,120. (1) Nothing in sections 53-1,119, 53-1,120, and 60-679 shall affect any law, ordinance, resolution, or rule against drunken driving, driving under the influence of alcohol, or other similar offense involving the operation of a vehicle, aircraft, boat, machinery, or other equipment or regarding the sale, purchase, dispensing, possessing, or use of alcoholic beverages at stated times and places or by a particular class of persons.

(2) The fact that a person is intoxicated or incapacitated by alcohol shall not prevent such person from being arrested or prosecuted for the commission of any criminal act or conduct not enumerated in subsection (1) of this section.

(3) No provision of such sections shall prevent such person from being taken into custody under the provisions of the Nebraska Mental Health Commitment Act as an alcoholic person who presents the risks enumerated in section ~~23-1009~~ 28 of this act.

(4) Nothing in sections 53-1,119, 53-1,120, and 60-679 shall be

construed as a limitation upon the right of a police officer to make an otherwise legal arrest, even though the arrested person may be intoxicated or incapacitated by alcohol.

Sec. 100. Section 58-703, Reissue Revised Statutes of Nebraska, is amended to read:

58-703. The Affordable Housing Trust Fund is created. The fund shall receive money pursuant to sections 8-1120 and 76-903 and may include revenue from sources recommended by the housing advisory committee established in section 58-704, appropriations from the Legislature, grants, private contributions, repayment of loans, and all other sources, except that before appropriations from the General Fund may be used as a revenue source for the Affordable Housing Trust Fund or for administrative costs of the Department of Economic Development in administering the fund, such use must be specifically authorized by a separate legislative bill passed in a legislative session subsequent to the Ninety-fourth Legislature, Second Session, 1996. Any initial appropriation from the General Fund which is used as a revenue source for the Affordable Housing Trust Fund or for administrative costs shall be in an appropriations bill which does not contain appropriations for other programs. The department as part of its comprehensive housing affordability strategy shall administer the Affordable Housing Trust Fund. Transfers may be made from the Affordable Housing Trust Fund to the General Fund at the direction of the Legislature. The State Treasurer shall make transfers from the Affordable Housing Trust Fund to the General Fund according to the following schedule: (1) \$1,500,000 on or after July 1, 2004, but no later than July 10, 2004; (2) \$1,500,000 on or after July 1, 2005, but no later than July 10, 2005; and (3) \$1,500,000 on or after July 1, 2006, but no later than July 10, 2006.

Sec. 101. Section 58-706, Reissue Revised Statutes of Nebraska, is amended to read:

58-706. The following activities are eligible for assistance from the Affordable Housing Trust Fund:

- (1) New construction, rehabilitation, or acquisition of housing to assist low-income and very low-income families;
- (2) Matching funds for new construction, rehabilitation, or acquisition of housing units to assist low-income and very low-income families;
- (3) Technical assistance, design and finance services, and consultation for eligible nonprofit community or neighborhood-based organizations involved in the creation of affordable housing;
- (4) Matching funds for operating costs for housing assistance groups or organizations when such grant or loan will substantially increase the recipient's ability to produce affordable housing;
- (5) Mortgage insurance guarantees for eligible projects;
- (6) Acquisition of housing units for the purpose of preservation of housing to assist low-income or very low-income families;
- (7) Projects making affordable housing more accessible to families with elderly members or members who have disabilities;
- (8) Projects providing housing in areas determined by the Department of Economic Development to be of critical importance for the continued economic development and economic well-being of the community and where, as determined by the department, a shortage of affordable housing exists;
- (9) Infrastructure projects necessary for the development of affordable housing;
- (10) Downpayment and closing cost assistance; ~~and~~
- (11) Housing education programs developed in conjunction with affordable housing projects. The education programs must be directed toward:
 - (a) Preparing potential home buyers to purchase affordable housing and postpurchase education;
 - (b) Target audiences eligible to utilize the services of housing assistance groups or organizations; and
 - (c) Developers interested in the rehabilitation, acquisition, or construction of affordable housing; and
- (12) Rental assistance for adults with serious mental illness.

Sec. 102. Section 60-6,209, Revised Statutes Supplement, 2003, is amended to read:

60-6,209. (1) Any person whose operator's license has been revoked pursuant to sections 60-6,196, 60-6,197, and 60-6,199 to 60-6,204 for a third or subsequent time for a period of fifteen years may apply to the Department of Motor Vehicles, on forms prescribed by the department, requesting the department to make a recommendation to the Board of Pardons for reinstatement of his or her eligibility for an operator's license. Upon receipt of the application, the Director of Motor Vehicles shall review the application if

such person has served at least seven years of such revocation and make a recommendation for reinstatement or for denial of reinstatement. The department may recommend reinstatement if such person shows the following:

(a) Such person has completed a state-certified substance abuse program and is recovering or such person has substantially recovered from the dependency on or tendency to abuse alcohol or drugs;

(b) Such person has not been convicted, since the date of the revocation order, of any subsequent violations of section 60-6,196 or 60-6,197 or any comparable city or village ordinance and the applicant has not, since the date of the revocation order, submitted to a chemical test under section 60-6,197 that indicated an alcohol concentration in violation of section 60-6,196 or refused to submit to a chemical test under section 60-6,197;

(c) Such person has not been convicted, since the date of the revocation order, of driving while under suspension, revocation, or impoundment under section 60-4,109;

(d) Such person has abstained from the consumption of alcoholic beverages and the consumption of drugs except at the direction of a licensed physician or pursuant to a valid prescription; and

(e) Such person's operator's license is not currently subject to suspension or revocation for any other reason.

(2) In addition, the department may require other evidence from such person to show that restoring such person's privilege to drive will not present a danger to the health and safety of other persons using the highways.

(3) Upon review of the application, the director shall make the recommendation to the Board of Pardons in writing and shall briefly state the reasons for the recommendations. The recommendation shall include the original application and other evidence submitted by such person. The recommendation shall also include any record of any other applications such person has previously filed under this section.

(4) The department shall adopt and promulgate rules and regulations to govern the procedures for making a recommendation to the Board of Pardons. Such rules and regulations shall include the requirement that the treatment programs and counselors who provide information about such person to the department must be certified or licensed by the state.

(5) If the Board of Pardons reinstates such person's eligibility for an operator's license, such reinstatement may be conditioned for the duration of the original revocation period on such person's continued recovery. If such person is convicted of any subsequent violation of section 60-6,196 or 60-6,197, the reinstatement of the person's eligibility for an operator's license shall be withdrawn and such person's operator's license will be revoked by the Department of Motor Vehicles for the time remaining under the original revocation, independent of any sentence imposed by the court, after thirty days' written notice to the person by first-class mail at his or her last-known mailing address as shown by the records of the department.

(6) If the Board of Pardons reinstates a person's eligibility for an operator's license, the board shall notify the Department of Motor Vehicles of the reinstatement. Such person may apply for an operator's license upon payment of a fee of one hundred twenty-five dollars and the filing of proof of financial responsibility. The fees paid pursuant to this section shall be collected by the department and remitted to the State Treasurer. The State Treasurer shall credit seventy-five dollars of each fee to the General Fund and fifty dollars of each fee to the Department of Motor Vehicles Cash Fund.

Sec. 103. Section 71-101, Reissue Revised Statutes of Nebraska, is amended to read:

71-101. Sections 71-101 to 71-1,107.30, 71-1,133 to 71-1,338, 71-1,343 to 71-1,349, 71-1301 to 71-1354, and 71-2801 to 71-2823 and sections 115 to 125 of this act shall be known and may be cited as the Uniform Licensing Law.

For purposes of the Uniform Licensing Law, unless the context otherwise requires:

(1) Board or professional board means one of the boards appointed by the State Board of Health pursuant to sections 71-111 and 71-112;

(2) Licensed, when applied to any licensee in any of the professions named in section 71-102, means a person licensed under the Uniform Licensing Law;

(3) Profession or health profession means any of the several groups named in section 71-102;

(4) Department means the Department of Health and Human Services Regulation and Licensure;

(5) Whenever a particular gender is used, it is construed to include both the masculine and the feminine, and the singular number includes the plural when consistent with the intent of the Uniform Licensing Law;

(6) License, licensing, or licensure means permission to engage in a health profession which would otherwise be unlawful in this state in the absence of such permission and which is granted to individuals who meet prerequisite qualifications and allows them to perform prescribed health professional tasks and use a particular title;

(7) Certificate, certify, or certification, with respect to professions, means a voluntary process by which a statutory, regulatory entity grants recognition to an individual who has met certain prerequisite qualifications specified by such regulatory entity and who may assume or use the word certified in the title or designation to perform prescribed health professional tasks. When appropriate, certificate means a document issued by the department which designates particular credentials for an individual;

(8) Lapse means the termination of the right or privilege to represent oneself as a licensed, certified, or registered person and to practice the profession when a license, certificate, or registration is required to do so;

(9) Credentialing means the totality of the process associated with obtaining state approval to provide health care services or human services or changing aspects of a current approval. Credentialing grants permission to use a protected title that signifies that a person is qualified to provide the services of a certain profession. Credential includes a license, certificate, or registration; and

(10) Dependence means a compulsive or chronic need for or an active addiction to alcohol or any controlled substance or narcotic drug.

Sec. 104. Section 71-102, Reissue Revised Statutes of Nebraska, is amended to read:

71-102. (1) No person shall engage in the practice of medicine and surgery, athletic training, respiratory care, osteopathic medicine, chiropractic, dentistry, dental hygiene, pharmacy, podiatry, optometry, massage therapy, physical therapy, audiology, speech-language pathology, embalming, funeral directing, psychology, veterinary medicine and surgery, medical nutrition therapy, acupuncture, ~~or~~ mental health practice, or alcohol and drug counseling unless such person has obtained a license from the Department of Health and Human Services Regulation and Licensure for that purpose.

(2) No person shall hold himself or herself out as a certified social worker or certified master social worker unless such person has obtained a certificate from the department for that purpose.

(3) No person shall hold himself or herself out as a certified professional counselor unless such person has obtained a certificate from the department for such purpose.

(4) No person shall hold himself or herself out as a certified marriage and family therapist unless such person has obtained a certificate from the department for such purpose.

Sec. 105. Section 71-107, Reissue Revised Statutes of Nebraska, is amended to read:

71-107. Every person credentialed under the Uniform Licensing Law to practice a profession shall keep the credential available in an office or place in which he or she practices and shall show such proof of credentialing upon request.

On all signs, announcements, stationery, and advertisements of persons credentialed to practice osteopathic medicine, chiropractic, podiatry, optometry, audiology, speech-language pathology, medical nutrition therapy, professional counseling, social work, marriage and family therapy, mental health practice, massage therapy, ~~or~~ physical therapy, or alcohol and drug counseling shall be placed the word Osteopathic Physician, Chiropractor, Podiatrist, Optometrist, Audiologist, Speech-Language Pathologist, Medical Nutrition Therapist, Professional Counselor, Social Worker, Master Social Worker, Marriage and Family Therapist, Mental Health Practitioner, Massage Therapist, ~~or~~ Physical Therapist, or Alcohol and Drug Counselor, as the case may be.

Sec. 106. Section 71-110, Reissue Revised Statutes of Nebraska, is amended to read:

71-110. (1) The credential to practice a profession shall be renewed biennially without examination upon request of the credentialed person and upon documentation of continuing competency pursuant to sections 71-161.09 and 71-161.10. The biennial credential renewals provided for in this section shall be accomplished in such manner as the department, with the approval of the designated professional board, shall establish by rule and regulation. The biennial expiration date in the different professions shall be as follows:

- (a) January, pharmacy and psychology;
- (b) February, funeral directing and embalming;

- (c) March, dentistry and dental hygiene;
- (d) April, podiatry and veterinary medicine and surgery;
- (e) May, athletic training and acupuncture;
- (f) June, respiratory care;
- (g) August, chiropractic and optometry;
- (h) September, alcohol and drug counseling, medical nutrition therapy, mental health practice including any associated certification, and osteopathic medicine;
- (i) October, medicine and surgery;
- (j) November, massage therapy and physical therapy; and
- (k) December, audiology and speech-language pathology.

The request for renewal need not be in any particular form and shall be accompanied by the renewal fee. Such fee shall be paid not later than the date of the expiration of such credential, except that while actively engaged in the military service of the United States, as defined in the Soldiers' and Sailors' Civil Relief Act of 1940, as the act existed on January 1, 2002, persons credentialed to practice the professions listed in this subsection shall not be required to pay the renewal fee.

(2) When a person credentialed pursuant to the Uniform Licensing Law desires to have his or her credential lapse upon expiration, he or she shall notify the department of such desire in writing. The department shall notify the credentialed person in writing of the acceptance or denial of the request to allow the credential to lapse. When the lapsed status becomes effective, the right to represent himself or herself as a credentialed person and to practice the profession in which a license is required shall terminate. To restore the credential from lapsed to active status, such person shall be required to meet the requirements for initial credentialing which are in effect at the time that he or she wishes to restore the credential.

(3) When a person credentialed pursuant to the Uniform Licensing Law desires to have his or her credential placed on inactive status upon its expiration, he or she shall notify the department of such desire in writing and pay the inactive status fee. The department shall notify the credentialed person in writing of the acceptance or denial of the request to allow the credential to be placed on inactive status. When the credential is placed on inactive status, the credentialed person shall not engage in the practice of such profession. A credential may remain on inactive status for an indefinite period of time. In order to move a credential from inactive to active status, a person shall be required to meet the requirements for renewal which are in effect at the time he or she wishes to regain active status.

(4) At least thirty days before the expiration of a credential, the department shall notify each credentialed person by a letter addressed to him or her at his or her last place of residence as noted upon its records. Any credentialed person who fails to notify the department of his or her desire to let his or her credential lapse or be placed on inactive status upon its expiration or who fails to meet the requirements for renewal on or before the date of expiration of his or her credential shall be given a second notice in the same manner as the first notice advising him or her (a) of the failure to meet the requirements for renewal, (b) that the credential has expired, (c) that the person is subject to an administrative penalty under section 71-164.01 if he or she practices after the expiration date and prior to renewal of the credential, (d) that upon the receipt of the renewal fee and the required late fee within thirty days after the expiration date, no order of revocation will be entered, and (e) that upon the failure to comply with subdivision (d) of this subsection within such time, the credential will be revoked in the manner prescribed in section 71-149.

(5) Any credentialed person who desires to reinstate the credential not more than one year after the date of revocation for failure to meet the renewal requirements shall apply to the department for reinstatement. The credential may be reinstated upon the recommendation of the board for his or her profession and the receipt of evidence of meeting the renewal requirements and paying the required late fee.

(6) Any credentialed person who desires to reinstate the credential more than one year after the date of revocation for failure to meet the renewal requirements shall petition the board to recommend reinstatement as prescribed in section 71-161.05. The credential may be reinstated upon the recommendation of the board for his or her profession and the receipt of evidence of meeting the renewal requirements and paying the required late fee.

Sec. 107. Section 71-112, Reissue Revised Statutes of Nebraska, is amended to read:

71-112. (1) Professional boards under the Uniform Licensing Law shall be designated as follows:

- (a) For medicine and surgery, acupuncture, and osteopathic medicine

and surgery, Board of Medicine and Surgery;

- (b) For athletic training, Board of Athletic Training;
- (c) For respiratory care, Board of Respiratory Care Practice;
- (d) For chiropractic, Board of Chiropractic;
- (e) For dentistry and dental hygiene, Board of Dentistry;
- (f) For optometry, Board of Optometry;
- (g) For massage therapy, Board of Massage Therapy;
- (h) For physical therapy, Board of Physical Therapy;
- (i) For pharmacy, Board of Pharmacy;
- (j) For audiology and speech-language pathology, Board of Audiology

and Speech-Language Pathology;

(k) For medical nutrition therapy, Board of Medical Nutrition Therapy;

(l) For funeral directing and embalming, Board of Funeral Directing and Embalming;

(m) For podiatry, Board of Podiatry;

(n) For psychology, Board of Psychologists;

(o) For veterinary medicine and surgery, Board of Veterinary Medicine and Surgery; ~~and~~

(p) For mental health practice, Board of Mental Health Practice; and

(q) For alcohol and drug counseling, Board of Alcohol and Drug Counseling.

(2) Any change made by the Legislature of the names of boards listed in this section shall not change the membership of such boards or affect the validity of any action taken by or the status of any action pending before any of such boards. Any such board newly named by the Legislature shall be the direct and only successor to the board as previously named.

Sec. 108. Section 71-113, Reissue Revised Statutes of Nebraska, is amended to read:

71-113. (1) Each professional board shall consist of four members, including one public member, except as otherwise provided in this section. A public member of a professional board ~~appointed after August 28, 1999,~~ (a) shall be a resident of this state who has attained the age of majority, (b) shall represent the interests and viewpoints of consumers, and (c) shall not be a present or former member of a credentialed profession, an employee of a member of a credentialed profession, or an immediate family or household member of any person presently regulated by such board.

(2) (a) In audiology and speech-language pathology the board shall consist of five members, including at least one public member, (b) in dentistry the board shall consist of ten members, including at least two public members, (c) in medicine and surgery the board shall consist of eight members, including at least two public members, (d) in pharmacy the board shall consist of five members, including at least one public member, (e) in psychology the board shall consist of seven members, including at least two public members, (f) in medical nutrition therapy the board shall consist of five members, including at least one public member, (g) in mental health practice the board shall consist of not more than ten members, including at least two public members, ~~and~~ (h) in alcohol and drug counseling the board shall consist of nine members, including two public members, and (i) boards with eleven or more members shall have at least three public members.

(3) Membership on the Board of Audiology and Speech-Language Pathology shall consist of two members who are audiologists, two members who are speech-language pathologists, and at least one public member.

(4) Membership on the Board of Athletic Training shall consist of three athletic trainers and at least one public member.

(5) Membership on the Board of Respiratory Care Practice shall consist of two respiratory care practitioners, one physician, and at least one public member.

(6) Two of the six professional members of the Board of Medicine and Surgery shall be officials or members of the instructional staff of an accredited medical school in this state.

(7) Two of the eight professional members of the Board of Dentistry shall be dentists who are officials or members of the instructional staff of an accredited school or college of dentistry in this state, and two of the members of the board shall be dental hygienists licensed under the Uniform Licensing Law.

(8) Membership on the Board of Medical Nutrition Therapy shall consist of two medical nutrition therapists, one physician, and at least one public member.

(9) Membership on the Board of Mental Health Practice shall consist of not more than two certified master social workers, not more than two certified professional counselors, not more than two certified marriage and

family therapists, and at least two public members. At least one professional member of the board shall be a member of a racial or ethnic minority. When ten or more persons hold licenses as mental health practitioners without holding an associated certificate, not more than two such licensed mental health practitioners shall be added to the board.

(10) Membership on the Board of Alcohol and Drug Counseling shall consist of six alcohol and drug counselors three of whom may be licensed as psychologists or mental health practitioners and three of whom are not licensed as psychologists or mental health practitioners, one person who is a psychiatrist, psychologist, or mental health practitioner, and two public members.

Sec. 109. Section 71-114, Reissue Revised Statutes of Nebraska, is amended to read:

71-114. (1) Except as provided in subsections (3) and (5) of this section, every professional member of a professional board shall be and have been actively engaged in the practice of his or her profession in the State of Nebraska, under a credential issued in this state, for a period of five years just preceding his or her appointment, except for the members of professional boards for professions coming within the scope of the Uniform Licensing Law for the first time and for a period of five years thereafter. Members appointed during such period shall be required to meet the minimum qualifications for credentialing in the profession in this state and shall, insofar as possible, meet the requirements as to years of practice in this state otherwise provided by this section.

(2) Each professional member of the Board of Audiology and Speech-Language Pathology shall have been a resident of the State of Nebraska for at least one year immediately prior to appointment and shall also have been engaged in rendering services to the public in audiology or speech-language pathology for at least three years immediately prior to appointment.

(3) The requirement of five years of experience shall apply to professional members of the Board of Psychologists, except that up to two of the five years may have been served in teaching or research.

(4) All professional members of professional boards appointed to an initial board shall be credentialed within six months after being appointed to the board or within six months after the date by which members of the profession are required to be credentialed, whichever is later. If for any reason a professional member is not credentialed within such time period, a new professional member shall be appointed.

(5) Each professional member of a professional board alcohol and drug counselor first appointed to the Boards of Athletic Training, Mental Health Practice, Respiratory Care Practice, and Medical Nutrition Therapy, respectively, Board of Alcohol and Drug Counseling shall be a person who is a certified alcohol and drug abuse counselor on the operative date of this section and who is and has been actively engaged in the practice of athletic training, mental health practice, respiratory care, or medical nutrition therapy, respectively, alcohol and drug counseling for at least two years immediately preceding his or her appointment to the board. and shall be credentialed within six months after being appointed or within six months after members of the profession are required to be credentialed, whichever is later. If for any reason a professional member cannot be credentialed within such time period, a new professional member shall be appointed.

Sec. 110. Section 71-116, Reissue Revised Statutes of Nebraska, is amended to read:

71-116. (1) The members of each professional board shall be residents of the State of Nebraska and shall be appointed for terms of five years. No member shall be appointed for or serve for more than two consecutive full five-year terms.

(2) The members of the Board of Dentistry shall be appointed as follows: As of December 1, 1971, one member shall be appointed for a term of five years and one member shall be appointed for a term of three years; as of December 1, 1972, one member shall be appointed for a term of three years; as of December 1, 1973, one member shall be appointed for a term of three years; as of December 1 of each year thereafter, two members shall be appointed for terms of five years; as of December 1, 1979, one member who is a dental hygienist licensed under the Uniform Licensing Law and who complies with section 71-114 shall be appointed for a term of five years; as of December 1, 1984, one public member shall be appointed for a term of five years; and as of December 1, 1994, a second member who is a dental hygienist licensed under the Uniform Licensing Law and who complies with section 71-114 and a second public member shall be appointed for terms of five years. Thereafter successors with like qualifications shall be appointed for five-year terms.

(3) The members of the Board of Medicine and Surgery shall be appointed as follows: Within thirty days after May 25, 1943, five members shall be appointed, one of whom shall hold office until December 1, 1944, one until December 1, 1945, one until December 1, 1946, one until December 1, 1947, and one until December 1, 1948; upon the expiration of such terms, successors shall be appointed for terms of five years each. Within thirty days after October 19, 1963, a sixth member, who shall be a person eligible for appointment to the Board of Examiners in Osteopathy who also has a license to practice medicine and surgery in the State of Nebraska, shall be appointed for a term expiring on December 1, 1968. As of December 1, 1984, one public member shall be appointed for a term of five years, and as of December 1, 1994, a second public member shall be appointed for a term of five years. Thereafter successors with like qualifications shall be appointed for five-year terms. Upon the expiration of the five-year term of such sixth member of the board after April 19, 1986, his or her eligible successor shall be a person who has a license to practice osteopathic medicine or osteopathic medicine and surgery in the State of Nebraska.

(4) The members of the Board of Audiology and Speech-Language Pathology shall be appointed as follows: Within sixty days after July 22, 1978, four members shall be appointed, two of whom shall hold office until December 1, 1979, and two until December 1, 1980. As of December 1, 1984, one public member shall be appointed for a term of five years. Upon the expiration of such terms, the successors shall be appointed for terms of five years each.

(5) The Board of Pharmacy shall be composed of five members, including four actively practicing pharmacists, one of whom practices within the confines of a hospital, and a public member who is interested in the health of the people of Nebraska. The members of the Board of Pharmacy shall be appointed as follows: As of December 1, 1983, the hospital pharmacist member shall be appointed for a term of five years and the public member shall be appointed for a term of three years. Upon the expiration of such terms and the terms of existing members, the successors shall be appointed for terms of five years each.

(6) The members of the Board of Psychologists appointed as successors to the members serving on February 25, 1984, shall be appointed for terms of five years. The terms of members serving on February 25, 1984, are hereby extended to December 1 of the year in which they would otherwise expire.

(7) The three members serving on the Board of Examiners in Massage on August 1, 1988, shall be appointed as members of the Board of Massage Therapy. Successors shall be massage therapists and shall be appointed for terms of five years each. One public member shall be appointed on December 1, 1988, for a term of five years. Upon the expiration of the public member's term, each subsequent public member shall be appointed for a five-year term.

(8) The initial members of the Board of Mental Health Practice appointed from the Board of Examiners in Social Work and the Board of Examiners in Professional Counseling, as such boards existed immediately prior to September 1, 1994, shall serve until the expiration of the terms they would have served on their respective boards. One initial public member and one initial marriage and family therapist shall hold office until December 1 of the fourth year following September 1, 1994, and one initial public member and one initial marriage and family therapist shall hold office until December 1 of the fifth year following September 1, 1994.

(9) The initial members of the Board of Alcohol and Drug Counseling shall be appointed within ninety days after the operative date of this section to hold office as follows: Of the six alcohol and drug counselors, one shall hold office until April 1, 2006, two until April 1, 2007, one until April 1, 2008, one until April 1, 2009, and one until April 1, 2010, as designated at the time of appointment; the person who is a psychiatrist, psychologist, or mental health practitioner shall hold office until April 1, 2008; and of the two public members, one shall hold office until April 1, 2009, and one until April 1, 2010, as designated at the time of appointment.

(10) Except as otherwise specifically provided, the ~~The~~ term of each member provided for in this section shall commence on the first day of December following the expiration of the term of the member whom such person succeeds and shall be rotated in such a manner that no more than one professional member shall retire during any year in which a term expires unless the number of members on a board makes it impractical to do so.

~~(10)~~ (11) Except as otherwise specifically provided, the members of boards for professions coming under the scope of the Uniform Licensing Law for the first time shall be appointed within thirty days after the effective or operative date, whichever is later, of the act providing for credentialing of

the profession, the terms of the initial board members to be as follows: One member shall hold office until December 1 of the third year, one until December 1 of the fourth year, and two, including the public member, until December 1 of the fifth year following the year in which the act providing for credentialing of the profession became effective.

Sec. 111. Section 71-131, Reissue Revised Statutes of Nebraska, is amended to read:

71-131. (1) In the absence of any specific requirement or provision relating to any particular profession:

(a) The department may, upon the recommendation of the designated professional board, adopt and promulgate rules and regulations to specify the passing grade on licensure or certification examinations. In the absence of such rules and regulations, an examinee shall be required to obtain an average grade of seventy-five and shall be required to obtain a grade of sixty in each subject examined;

(b) A person who desires to take a licensure or certification examination but does not wish to receive a license or certification may take such examination by meeting the examination eligibility requirements and paying the cost of the examination; and

(c) An examinee who fails a licensure or certification examination may retake the entire examination or the part failed upon payment of the licensure or certification fee each time he or she is examined. The department shall withhold from the licensure or certification fee the cost of any national examination used when an examinee fails a licensure or certification examination and shall return to the examinee the remainder of the licensure or certification fee collected subject to section 71-162.05, except that:

(i) If the state-developed jurisprudence portion of the licensure or certification examination was failed, the examinee may retake that portion without charge; and

(ii) If any component of a national examination was failed, the examinee shall be charged the cost for purchasing such examination.

(2) In pharmacy, all applicants shall be required to attain a grade to be determined by the Board of Pharmacy in an examination in pharmacy and a grade of seventy-five in an examination in jurisprudence of pharmacy.

(3) In social work, the passing criterion for such examination shall be established and may be changed by the Board of Mental Health Practice by rule and regulation. The board may exempt an applicant from the written examination if he or she meets all the requirements for certification without examination pursuant to section 71-1,319 or rules and regulations adopted and promulgated by the department pursuant to section 71-139.

(4) In professional counseling, the passing criterion for such examination shall be established and may be changed by the Board of Mental Health Practice by rule and regulation. The board may exempt an applicant from the written examination if he or she meets all of the requirements for certification without examination pursuant to rules and regulations adopted and promulgated by the department pursuant to section 71-139.

(5) In marriage and family therapy, the passing criterion for such examination shall be established and may be changed by the Board of Mental Health Practice by rule and regulation. The board may exempt an applicant from the written examination if he or she meets all of the requirements for certification without examination pursuant to section 71-1,329 or rules and regulations adopted and promulgated by the department pursuant to section 71-139.

(6) Applicants for licensure in medicine and surgery and osteopathic medicine and surgery shall pass the licensing examination. An applicant who fails to pass any part of the licensing examination within four attempts shall complete one additional year of postgraduate medical education at an accredited school or college of medicine or osteopathic medicine. All parts of the licensing examination shall be successfully completed within seven years, except that if the applicant has been enrolled in a combined doctorate of medicine and doctorate of philosophy degree program in an accredited school or college of medicine, all parts of the licensing examination shall be successfully completed within ten years. An applicant who fails to successfully complete the licensing examination within the time allowed shall retake that part of the examination which was not completed within the time allowed.

(7) In medical nutrition therapy, the passing criterion for such examination shall be established and may be changed by the Board of Medical Nutrition Therapy by rule and regulation. Such examination shall test for the essential clinical elements of the field of medical nutrition therapy. The board shall base all of its actions on broad categorical parameters derived

from the essential elements of the field of medical nutrition therapy and shall not endorse nor restrict its assessment to any particular nutritional school of thought. The board may exempt an applicant from the written examination if he or she meets all of the requirements for licensure without examination pursuant to section 71-1,291 or rules and regulations adopted and promulgated by the department pursuant to section 71-139.

(8) In alcohol and drug counseling, the Board of Alcohol and Drug Counseling shall approve a licensing examination and establish the passing criterion for such examination, which meets or exceeds the minimum international standards for alcohol and drug counselors established by the International Certification and Reciprocity Consortium, Alcohol and Other Drug Abuse, Inc. or its successor.

Sec. 112. Section 71-139.02, Reissue Revised Statutes of Nebraska, is amended to read:

71-139.02. When issuing, without examination, a license as a psychologist, ~~or mental health practitioner,~~ or alcohol and drug counselor or a certification in social work, professional counseling, or marriage and family therapy pursuant to section 71-139, the department may issue such license or certification regardless of the title used by the other state, the territory, or the District of Columbia if the applicant provides satisfactory evidence that the requirements for licensure or certification meet or exceed those required by this state.

Sec. 113. Section 71-162, Reissue Revised Statutes of Nebraska, is amended to read:

71-162. (1) It is the intent of the Legislature that the revenue to cover the cost of the credentialing system administered by the department is to be derived from General Funds, cash funds, federal funds, gifts, grants, or fees from individuals or entities seeking credentials. The credentialing system includes the totality of the credentialing infrastructure and the process of issuance and renewal of credentials, examinations, inspections, investigations, continuing competency, compliance assurance, and the credentialing review process for the following individuals and entities that provide health services and health-related services:

(a) Individuals in the practice of acupuncture; advanced practice nursing; alcohol and drug counseling; asbestos abatement, inspection, project design, and training; athletic training; audiology; speech-language pathology; chiropractic; dentistry; dental hygiene; environmental health; hearing aid instrument dispensing and fitting; lead-based paint abatement, inspection, project design, and training; medical nutrition therapy; medical radiography; medication aide services; medicine and surgery; mental health practice; nursing; nurse aide services; nursing home administration; occupational therapy; optometry; osteopathic medicine; pharmacy; physical therapy; podiatry; psychology; radon detection, measurement, and mitigation; respiratory care; social work; swimming pool operation; veterinary medicine and surgery; water system operation; constructing or decommissioning water wells and installing water well pumps and pumping equipment; and wholesale drug distribution; and

(b) Individuals in the practice of and entities in the business of cosmetology; electrology; emergency medical services; esthetics; funeral directing and embalming; massage therapy; and nail technology.

(2) The department shall determine the cost of the credentialing system for such individuals and entities by calculating the total of the base costs, the variable costs, and any adjustments as provided in sections 71-162.01 to 71-162.03.

(3) When fees are to be established pursuant to section 71-162.04 for individuals or entities other than individuals in the practice of constructing or decommissioning water wells and installing water well pumps and pumping equipment, the department, upon recommendation of the appropriate board if applicable, shall base the fees on the cost of the credentialing system and shall include usual and customary cost increases, a reasonable reserve, and the cost of any new or additional credentialing activities. For individuals in the practice of constructing or decommissioning water wells and installing water well pumps and pumping equipment, the Water Well Standards and Contractors' Licensing Board shall establish the fees as otherwise provided in this subsection. All such fees shall be collected as provided in section 71-163.

Sec. 114. Section 71-1,312, Reissue Revised Statutes of Nebraska, is amended to read:

71-1,312. ~~After September 17, 1995, no~~ No person shall engage in mental health practice or hold himself or herself out as a mental health practitioner unless he or she is licensed for such purpose pursuant to the Uniform Licensing Law, except that this section shall not be construed to

prevent:

(1) Qualified members of other professions who are licensed, certified, or registered by this state from practice of any mental health activity consistent with the scope of practice of their respective professions;

(2) ~~Alcohol, and drug abuse, and compulsive gambling~~ counselors who are ~~certified~~ licensed by the Department of Health and Human Services Regulation and Licensure and problem gambling counselors who are certified by the Department of Health and Human Services from practicing their profession. Such exclusion shall include students training and working under the supervision of a ~~certified alcohol and drug abuse counselor to become certified~~ an individual qualified under section 120 of this act;

(3) Any person employed by an agency, bureau, or division of the federal government from discharging his or her official duties, except that if such person engages in mental health practice in this state outside the scope of such official duty or represents himself or herself as a licensed mental health practitioner, he or she shall be licensed;

(4) Teaching or the conduct of research related to mental health services or consultation with organizations or institutions if such teaching, research, or consultation does not involve the delivery or supervision of mental health services to individuals or groups of individuals who are themselves, rather than a third party, the intended beneficiaries of such services;

(5) The delivery of mental health services by:

(a) Students, interns, or residents whose activities constitute a part of the course of study for medicine, psychology, nursing, school psychology, social work, clinical social work, counseling, marriage and family therapy, or other health care or mental health service professions; or

(b) Individuals seeking to fulfill postgraduate requirements for licensure when those individuals are supervised by a licensed professional consistent with the applicable regulations of the appropriate professional board;

(6) Duly recognized members of the clergy from providing mental health services in the course of their ministerial duties and consistent with the codes of ethics of their profession if they do not represent themselves to be mental health practitioners;

(7) The incidental exchange of advice or support by persons who do not represent themselves as engaging in mental health practice, including participation in self-help groups when the leaders of such groups receive no compensation for their participation and do not represent themselves as mental health practitioners or their services as mental health practice;

~~(8) Any person employed by an agency or department of the State of Nebraska from discharging official duties within such agency or department during the six years immediately following September 1, 1994, except that no person shall represent himself or herself as a licensed mental health practitioner unless he or she holds such a license;~~

~~(9)~~ (8) Any person providing emergency crisis intervention or referral services or limited services supporting a service plan developed by and delivered under the supervision of a licensed mental health practitioner, licensed physician, or a psychologist licensed to engage in the practice of psychology if such persons are not represented as being licensed mental health practitioners or their services are not represented as mental health practice; or

~~(10)~~ (9) Staff employed in a program designated by an agency of state government to provide rehabilitation and support services to individuals with mental illness from completing a rehabilitation assessment or preparing, implementing, and evaluating an individual rehabilitation plan.

Sec. 115. For purposes of sections 115 to 125 of this act and elsewhere in the Uniform Licensing Law, unless the context otherwise requires:

(1) Alcohol and drug counseling means providing or performing the core functions of an alcohol and drug counselor for remuneration;

(2) Alcohol and drug counselor means a person engaged in alcohol and drug counseling;

(3) Alcohol or drug abuse means the abuse of alcohol or other drugs which have significant mood or perception changing capacities, which are likely to be physiologically or psychologically addictive, and the use of which have negative physical, social, or psychological consequences;

(4) Alcohol or drug dependence means cognitive, behavioral, and psychological symptoms indicating the continued use of alcohol or other drugs despite significant alcohol or drug-related problems;

(5) Alcohol or drug disorder means a substance-related disorder as defined by the department in rules and regulations substantially similar with

the definitions of the American Psychiatric Association in the Diagnostic and Statistical Manual of Mental Disorders;

(6) Board means the Board of Alcohol and Drug Counseling; and

(7) Core functions means the following twelve activities an alcohol and drug counselor performs in the role of counselor: Screening, intake, orientation, assessment, treatment planning, counseling (individual, group, and significant others), case management, crisis intervention, client education, referral, reports and record keeping, and consultation with other professionals in regard to client treatment and services.

Sec. 116. (1) The scope of practice for alcohol and drug counseling is the application of general counseling theories and treatment methods adapted to specific addiction theory and research for the express purpose of treating any alcohol or drug abuse, dependence, or disorder. The practice of alcohol and drug counseling consists of the following performance areas which encompass the twelve core functions: Clinical evaluation; treatment planning; counseling; education; documentation; and professional and ethical standards.

(2) The performance area of clinical evaluation consists of screening and assessment of alcohol and drug problems, screening of other presenting problems for which referral may be necessary, and diagnosis of alcohol and drug disorders. Clinical evaluation does not include mental health assessment or treatment. An alcohol and drug counselor shall refer a person with co-occurring mental disorders unless such person is under the care of, or previously assessed or diagnosed by, an appropriate practitioner within a reasonable amount of time.

(3) The performance area of treatment planning consists of case management, including implementing the treatment plan, consulting, and continuing assessment and treatment planning; referral; and client advocacy.

(4) The performance area of counseling consists of individual counseling, group counseling, and family or significant other counseling.

(5) The performance area of education consists of education for clients, family of clients, and the community.

Sec. 117. No person shall engage in alcohol and drug counseling or hold himself or herself out as an alcohol and drug counselor unless he or she is licensed for such purpose pursuant to the Uniform Licensing Law, except that this section shall not be construed to prevent:

(1) Qualified members of other professions who are licensed, certified, or registered by this state from practice of any alcohol and drug counseling consistent with the scope of practice of their respective professions;

(2) Teaching or the conduct of research related to alcohol and drug counseling with organizations or institutions if such teaching, research, or consultation does not involve the delivery or supervision of alcohol and drug counseling to individuals or groups of individuals who are themselves, rather than a third party, the intended beneficiaries of such services;

(3) The delivery of alcohol and drug counseling by:

(a) Students, interns, or residents whose activities constitute a part of the course of study for medicine, psychology, nursing, school psychology, social work, clinical social work, counseling, marriage and family therapy, alcohol and drug counseling, compulsive gambling counseling, or other health care or mental health service professions; or

(b) Individuals seeking to fulfill postgraduate requirements for licensure when those individuals are supervised by a licensed professional consistent with the applicable regulations of the appropriate professional board;

(4) Duly recognized members of the clergy from providing alcohol and drug counseling in the course of their ministerial duties and consistent with the codes of ethics of their profession if they do not represent themselves to be alcohol and drug counselors;

(5) The incidental exchange of advice or support by persons who do not represent themselves as engaging in alcohol and drug counseling, including participation in self-help groups when the leaders of such groups receive no compensation for their participation and do not represent themselves as alcohol and drug counselors or their services as alcohol and drug counseling;

(6) Any person providing emergency crisis intervention or referral services; or

(7) Staff employed in a program designated by an agency of state government to provide rehabilitation and support services to individuals with alcohol or drug disorders from completing a rehabilitation assessment or preparing, implementing, and evaluating an individual rehabilitation plan.

Sec. 118. (1) A person may apply for a license as an alcohol and drug counselor if he or she meets the requirements provided in section 121 of this act.

(2) A person may apply for a license as a provisional alcohol and drug counselor which permits such person to practice and acquire the supervised clinical work experience required for licensure as an alcohol and drug counselor. A license for provisional status shall be eligible for renewal every two calendar years for a maximum of two renewals upon meeting the renewal requirements in section 124 of this act. Provisional status may be granted once and held for a time period not to exceed six years. An individual who is so licensed shall not render services without clinical supervision. An individual who holds provisional licensure shall inform all clients that he or she holds a provisional certification and is practicing under supervision and shall identify the supervisor. An applicant shall meet the requirements provided in section 119 of this act.

(3) Any person certified as an alcohol and drug abuse counselor on the operative date of this section shall be deemed to be licensed as an alcohol and drug counselor under the Uniform Licensing Law on such date. Any person certified as a provisional alcohol and drug abuse counselor on the operative date of this section shall be deemed to be licensed as a provisional alcohol and drug counselor under the Uniform Licensing Law on such date. The certificate holder may continue to practice under such certificate as a license until September 1 after the next renewal date for his or her certificate under the rules and regulations governing counselors as provided in section 125 of this act. Renewals issued for such certificates extended to September 1, 2004, or September 1, 2005, shall be valid until September 1, 2006, and shall be issued with fees and continuing competency requirements prorated accordingly. Subsequent renewals shall be for two-year periods expiring September 1 of even-numbered years as provided in section 71-110.

Sec. 119. To be licensed to practice as a provisional alcohol and drug counselor, an applicant shall:

- (1) Have a high school diploma or its equivalent;
- (2) Have two hundred seventy hours of education related to the knowledge and skills of alcohol and drug counseling which shall include:
 - (a) A minimum of forty-five hours in counseling theories and techniques coursework;
 - (b) A minimum of forty-five hours in group counseling coursework;
 - (c) A minimum of thirty hours in human growth and development coursework;
 - (d) A minimum of fifteen hours in professional ethics and issues coursework;
 - (e) A minimum of thirty hours in alcohol and drug assessment, case planning, and management coursework;
 - (f) A minimum of thirty hours in multicultural counseling coursework;
 - (g) A minimum of forty-five hours in medical and psychosocial aspects of alcohol and drug use, abuse, and addiction coursework; and
 - (h) A minimum of thirty hours in clinical treatment issues in chemical dependency coursework;
- (3) Have supervised practical training which shall:
 - (a) Include performing a minimum of three hundred hours in the counselor core functions in a work setting where alcohol and drug counseling is provided;
 - (b) Be a formal, systematic process that focuses on skill development and integration of knowledge;
 - (c) Include training hours documented by performance date and core function performance areas; and
 - (d) Include the performance of all counselor core functions with no single function performed less than ten hours; and
 - (4) Have read and agreed to be bound by the standards of professional conduct and code of ethics established in the rules and regulations under section 125 of this act.

Sec. 120. (1)(a) The practical training supervisor for supervised practical training required under section 119 of this act shall hold one of the following credentials:

- (i) Licensure as an alcohol and drug counselor;
- (ii) A reciprocity level alcohol and drug counselor credential issued by a member jurisdiction of the International Certification and Reciprocity Consortium, Alcohol and Other Drug Abuse, Inc. or its successor; or
- (iii) Licensure as a physician or psychologist under the Uniform Licensing Law, or an equivalent credential from another jurisdiction, and specialized training in alcohol and drug counseling and the twelve core functions sufficient to protect the public.
- (b) The practical training supervisor shall not be a family member.

(c) The credential requirement of this subsection applies to the work setting supervisor and not to a practicum coordinator or instructor of a postsecondary educational institution.

(2) The practical training supervisor shall assume responsibility for the performance of the individual in training and shall be onsite at the work setting when core function activities are performed by the individual in training. A minimum of one hour of evaluative face-to-face supervision for each ten hours of core function performance shall be documented. Supervisory methods shall include, as a minimum, individual supervisory sessions, formal case staffings, and conjoint, cotherapy sessions. Supervision shall be directed towards teaching the knowledge and skills of professional alcohol and drug counseling.

Sec. 121. (1) To be licensed to practice as an alcohol and drug counselor, an applicant shall meet the requirements for licensure as a provisional alcohol and drug counselor under section 119 of this act, shall receive a passing score on an examination approved by the board, and shall have six thousand hours of supervised clinical work experience providing alcohol and drug counseling services to alcohol and other drug clients for remuneration. The experience shall be polydrug counseling experience.

(2) The experience shall include carrying a client caseload as the primary alcohol and drug counselor performing the core functions of assessment, treatment planning, counseling, case management, referral, reports and record keeping, and consultation with other professionals for those clients. The experience shall also include responsibility for performance of the five remaining core functions although these core functions need not be performed by the applicant with each client in their caseload.

(3) Experience that shall not count towards licensure shall include, but not be limited to:

(a) Providing services to individuals who do not have a diagnosis of alcohol and drug abuse or dependence such as prevention, intervention, and codependency services or other mental health disorder counseling services, except that this shall not exclude counseling services provided to a client's significant others when provided in the context of treatment for the diagnosed alcohol or drug client; and

(b) Providing services when the experience does not include primary case responsibility for alcohol or drug treatment or does not include responsibility for the performance of all of the core functions.

(4) The maximum number of hours of experience that may be accrued are forty hours per week or two thousand hours per year.

(5)(a) A postsecondary educational degree may be substituted for part of the supervised clinical work experience. The degree shall be from a regionally accredited postsecondary educational institution or the educational program shall be accredited by a nationally recognized accreditation agency.

(b) An associate's degree in addictions or chemical dependency may be substituted for one thousand hours of supervised clinical work experience.

(c) A bachelor's degree with a major in counseling, addictions, social work, sociology, or psychology may be substituted for two thousand hours of supervised clinical work experience.

(d) A master's degree or higher in counseling, addictions, social work, sociology, or psychology may be substituted for four thousand hours of supervised clinical work experience.

(e) A substitution shall not be made for more than one degree.

Sec. 122. (1)(a) The clinical supervisor for supervised clinical work experience under section 121 of this act shall hold one of the following credentials:

(i) Licensure as an alcohol and drug counselor;

(ii) A reciprocity level alcohol and drug counselor credential issued by a member jurisdiction of the International Certification and Reciprocity Consortium, Alcohol and Other Drug Abuse, Inc. or its successor;

(iii) The highest level alcohol and drug counselor credential issued by a jurisdiction that is not a member of the International Certification and Reciprocity Consortium, Alcohol and Other Drug Abuse, Inc. or its successor if the credential is based on education, experience, and examination that is substantially similar to the license issued in this state as determined by the board; or

(iv) Licensure as a physician or psychologist under the Uniform Licensing Law, or an equivalent credential from another jurisdiction, and specialized training in alcohol and drug counseling and the twelve core functions sufficient to protect the public.

(b) The clinical supervisor shall be formally affiliated with the program or agency in which the work experience is gained.

(c) The clinical supervisor shall not be a family member.

(2) There shall be one hour of evaluative face-to-face clinical supervision for each forty hours of paid alcohol and drug counseling work experience. The format for supervision shall be either one-on-one or small group. Methods of supervision may include case review and discussion or direct observation of a counselor's clinical work.

Sec. 123. (1) An individual who is licensed as a provisional alcohol and drug counselor at the time of application for licensure as an alcohol and drug counselor is deemed to have met the requirements of a high school diploma or its equivalent, the two hundred seventy hours of education related to alcohol and drug counseling, and the supervised practical training requirement.

(2) An applicant who is licensed as a provisional mental health practitioner or a mental health practitioner at the time of application for licensure is deemed to have met the requirements of subdivisions (2) (a), (b), (c), (d), and (f) of section 119 of this act.

Sec. 124. Each alcohol and drug counselor and each provisional alcohol and drug counselor shall, in the period since his or her license was issued or last renewed, complete continuing competency activities as required by the board pursuant to section 71-161.09 as a prerequisite for renewal.

Sec. 125. (1) The department, upon the advice of the board, shall adopt and promulgate rules and regulations to administer sections 115 to 125 of this act, including rules and regulations governing:

(a) Ways of clearly identifying students, interns, and other persons providing alcohol and drug counseling under supervision;

(b) The rights of persons receiving alcohol and drug counseling;

(c) The rights of clients to gain access to their records, except that records relating to substance abuse may be withheld from a client if an alcohol and drug counselor determines, in his or her professional opinion, that release of the records to the client would not be in the best interest of the client or would pose a threat to another person, unless the release of the records is required by court order;

(d) The contents and methods of distribution of disclosure statements to clients of alcohol and drug counselors; and

(e) Standards of professional conduct and a code of ethics.

(2) The rules and regulations governing certified alcohol and drug counselors shall remain in effect to govern licensure until modified under this section, except that if there is any conflict with sections 115 to 125 of this act, the provisions of such sections shall prevail.

Sec. 126. Section 80-601, Reissue Revised Statutes of Nebraska, is amended to read:

80-601. Whenever in any proceeding under the Nebraska Mental Health Commitment Act it is determined that a person is a mentally ill and dangerous ~~person~~ and it appears that such person is eligible for care or treatment by the United States Department of Veterans Affairs or another agency of the United States Government, the mental health board, upon determination by the department or such other agency that facilities are available and that such person is eligible for care or treatment therein, may commit such person to the department or other agency. Upon commitment, such person shall be subject to the applicable rules and regulations of the department or other agency of the United States operating the institution in which such care or treatment is provided. The chief officer of any facility of the department or institution operated by any other agency of the United States to which a mentally ill and dangerous person is committed by a proper agency in this state shall have the same powers as ~~superintendents~~ chief executive officers of state hospitals for the care of the mentally ill in this state with respect to the custody, transfer, conditional discharge, or discharge of such person.

Sec. 127. Section 81-1850, Reissue Revised Statutes of Nebraska, is amended to read:

81-1850. (1) Upon request of the victim and at the time of conviction of the offender, the county attorney of the jurisdiction in which a person is convicted of a felony shall forward to the Board of Parole the name and address of any victim as defined in section 29-119 of the convicted person. The board shall include the name in the file of the convicted person, but the name shall not be part of the public record of any parole hearings of the convicted person. Any victim, including a victim who has waived his or her right to notification at the time of conviction, may request the notification prescribed in this section by sending a written request to the board any time after the convicted person is incarcerated and until the convicted person is no longer under the jurisdiction of the board or the Department of Correctional Services or, if the person is under the jurisdiction of the Department of Health and Human Services, within the three-year period after the convicted person is no longer under the

jurisdiction of the board or the Department of Correctional Services.

(2) A victim whose name appears in the file of the convicted person shall be notified by the Board of Parole:

(a) When a convicted person who is on parole is returned to custody because of parole violations; and

(b) If the convicted person has been adjudged a mentally disordered sex offender or is a convicted sex offender, when such person is released from custody or treatment.

Such notification shall be given in person, by telecommunication, or by certified or registered mail.

(3) A victim whose name appears in the file of the convicted person shall be notified by the Department of Correctional Services:

(a) When a convicted person is granted a furlough or release from incarceration for twenty-four hours or longer;

(b) When a convicted person is released into community-based programs, including educational release, work release, and extended-leave programs. Such notification shall occur at the beginning and termination of any such program;

(c) When a convicted person escapes or does not return from a granted furlough or release and again when the convicted person is returned into custody; and

(d) When a convicted person is discharged from custody upon completion of his or her sentence.

(4) A victim whose name appears in the file of a convicted person shall be notified by the Department of Health and Human Services:

(a) When a person convicted of an offense listed in subsection (5) of this section becomes the subject of a mental health petition pursuant to the Nebraska Mental Health Commitment Act prior to his or her discharge from custody upon the completion of his or her sentence or within thirty days after such discharge. The county attorney who filed the mental health petition shall notify the Department of Correctional Services of such petition. The Department of Correctional Services shall forward the names and addresses of victims appearing in the file of the convicted person to the Department of Health and Human Services;

(b) When a person under a mental health board commitment pursuant to subdivision (a) of this subsection escapes from an inpatient facility providing board-ordered treatment and again when the person is returned to an inpatient facility;

(c) When a person under a mental health board commitment pursuant to subdivision (a) of this subsection is discharged or has a change in disposition from inpatient board-ordered treatment;

(d) When a person under a mental health board commitment pursuant to subdivision (a) of this subsection is granted a furlough or release for twenty-four hours or longer; and

(e) When a person under a mental health board commitment pursuant to subdivision (a) of this subsection is released into educational release programs, work release programs, or extended-leave programs. Such notification shall occur at the beginning and termination of any such program.

(5) Subsection (4) of this section applies to persons convicted of at least one of the following offenses which is also alleged to be the recent act or threat underlying the commitment of such persons as mentally ill and dangerous: ~~persons~~

(a) Murder in the first degree pursuant to section 28-303;

(b) Murder in the second degree pursuant to section 28-304;

(c) Kidnapping pursuant to section 28-313;

(d) Assault in the first degree pursuant to section 28-308;

(e) Assault in the second degree pursuant to section 28-309;

(f) Sexual assault in the first degree pursuant to section 28-319;

(g) Sexual assault in the second degree pursuant to section 28-320;

(h) Sexual assault of a child pursuant to section 28-320.01;

(i) Stalking pursuant to section 28-311.03; or

(j) An attempt, solicitation, or conspiracy to commit an offense listed in subdivisions (a) through (i) of this subsection.

(6) The Board of Parole, the Department of Correctional Services, and the Department of Health and Human Services shall adopt and promulgate rules and regulations to carry out this section.

Sec. 128. Section 81-2213, Reissue Revised Statutes of Nebraska, is amended to read:

81-2213. The Department of Health and Human Services shall have the following powers and duties:

(1) To develop, approve, and submit to the Governor a two-year, three-year, or four-year state plan on aging, as determined by the department,

for purposes of administering grant funds allocated to the state under the federal Older Americans Act, as now or hereafter amended, or administering state funds allocated to the Nebraska Community Aging Services Act;

(2) To cooperate with similar departments, commissions, or councils in the federal government and in other states;

(3) To adopt and promulgate rules, regulations, and bylaws governing its procedure and activities and as necessary to carry out the policies of the department and the policies prescribed by the Administration on Aging pursuant to the federal Older Americans Act, as now or hereafter amended;

(4) To create committees to aid in the discharge of its powers and duties;

(5) To cooperate with and assist other state and local governmental agencies and officials on matters relating to services for older individuals;

(6) To divide the state into planning-and-service areas as provided in section ~~71-5002 for mental~~ 7 of this act for behavioral health regions, except that Regions ~~III~~ and ~~V~~ 3 and 5 may each be divided into two planning-and-service areas with boundaries as established by the department for planning-and-service areas in existence in those regions on July 1, 1982;

(7) To establish minimum standards for program operations and to adopt and promulgate rules and regulations for the performance of area agencies on aging and for any services provided by such area agencies on aging which are funded in whole or in part under the Nebraska Community Aging Services Act or the federal Older Americans Act, as now or hereafter amended;

(8) To require the submission of a one-year and a five-year area plan and budget by each area agency on aging or agency seeking designation as an area agency on aging. Such plans and budgets shall be submitted sixty days prior to the start of each fiscal year in accordance with the uniform area plan format and other instructions issued by the department;

(9) To review and approve a one-year and a five-year area plan and budget for the support of each area agency on aging and the provision of eligible activities and services as defined in section 81-2222;

(10) To adopt and submit to the Legislature a community aging services budget;

(11) To review the performance of each area agency on aging and, based on the department-approved area plan and budget, to determine the continued designation or the withdrawal of the designation of an area agency on aging receiving or requesting resources through the state or under the Nebraska Community Aging Services Act or the federal Older Americans Act, as now or hereafter amended. After consultation with the director of the area agency on aging and the governing unit of the area agency on aging, the department may withdraw a designation when it can be shown that federal or state laws, rules, or regulations have not been complied with, state or federal funds are not being expended for the purposes for which they were intended, or older individuals are not receiving appropriate services within available resources. Withdrawal of a designation may be appealed to the director. Upon withdrawal of a designation, the department may temporarily perform all or part of the functions and responsibilities of the area agency on aging, may designate another agency to perform such functions and responsibilities identified by the department until the designation of a new area agency on aging, and, when deemed necessary, may temporarily deliver services to assure continuity;

(12) To conduct continuing studies and analyses of the problems faced by older individuals within the state and develop such recommendations for administrative or legislative action as appear necessary;

(13) To develop grants and plans, enter into contracts, accept gifts, grants, and federal funds, and do all things necessary and proper to discharge these powers and duties;

(14) To accept and administer any other programs or resources delegated, designated, assigned, or awarded to the department from public or private sources;

(15) To report and make recommendations to the Governor and the Legislature on the activities of the department and the committee and improvements or additional resources needed to promote the general welfare of older individuals in Nebraska. Each member of the Legislature shall receive a copy of the report; and

(16) Such other powers and duties necessary to effectively implement the Nebraska Community Aging Services Act.

Sec. 129. Section 83-305, Reissue Revised Statutes of Nebraska, is amended to read:

83-305. The state hospital established in Lancaster County for the treatment of mental illnesses shall be ~~located on the campus~~ known as the Lincoln Regional Center. The state hospital established in Madison County

shall be ~~located on the campus~~ known as the Norfolk Regional Center. The state hospital established in Adams County shall be ~~located on the campus~~ known as the Hastings Regional Center.

Sec. 130. Section 83-305.01, Reissue Revised Statutes of Nebraska, is amended to read:

83-305.01. Psychiatric services under the control of the Board of Regents of the University of Nebraska shall be under the jurisdiction of the Chancellor of the University of Nebraska Medical Center, who shall report to the Board of Regents through the President of the University of Nebraska. The chancellor or his or her designee shall be responsible for the administration and preparation of the psychiatric services budget and shall have the same powers, authority, and duties as prescribed for the ~~superintendents~~ chief executive officers of the state hospitals described in section 83-305.

Sec. 131. Section 83-314, Reissue Revised Statutes of Nebraska, is amended to read:

83-314. Every patient in any state hospital for the mentally ill shall be allowed to write whenever ~~he~~ the patient desires and to whomever ~~he~~ the patient may choose, and the ~~superintendent~~ chief executive officer of the hospital, upon request, shall supply each patient, not otherwise supplied, with suitable writing materials and postage, at the expense of the state, sufficient for writing at least one letter a per week. Such letters shall be regularly and promptly collected and shall be placed in the United States mail for delivery, ~~unless the superintendent chief executive officer of the hospital has on file a written request from a recipient or potential recipient that letters shall not be mailed to such recipient, or unless there is reasonable cause to believe that the contents of any letter are threatening.~~

Sec. 132. Section 83-324, Reissue Revised Statutes of Nebraska, is amended to read:

83-324. The Director of Health and Human Services may accept patients for care and treatment upon the written application of a patient. Such written application may be made by persons desiring to receive care and treatment in one of the state hospitals for the mentally ill to the ~~superintendent~~ chief executive officer of the state hospital in which the patient wishes to receive treatment.

Sec. 133. Section 83-336, Reissue Revised Statutes of Nebraska, is amended to read:

83-336. The Director of Health and Human Services shall provide the ~~county board~~ of mental health boards with blanks for warrants, certificates, and other forms, such as will enable them to comply with sections ~~83-306, 83-307, 83-311 to 83-351, and 83-354~~ 83-313 to 83-357, and also with printed copies of the applicable rules and regulations of the Department of Health and Human Services.

Sec. 134. Section 83-338, Reissue Revised Statutes of Nebraska, is amended to read:

83-338. If at any time it ~~shall become~~ becomes necessary, for want of ~~room~~ lack of capacity or other cause, to ~~discriminate in the general reception~~ establish priorities for the admission of patients into the state hospitals for the mentally ill, the ~~selection shall be made as follows~~ following priorities for admission shall be recognized: (1) Patients whose care in the state hospital is necessary in order to protect the public health and safety; (2) patients committed by a mental health board under the Nebraska Mental Health Commitment Act or by a district court; (3) patients who are most likely to be benefited by treatment in the state hospitals, regardless of whether such patients are committed by a ~~county board of mental health board~~ or whether such patients seek voluntary admission to one of the state hospitals; ~~(3) patients shall next be admitted to the state hospitals in the order in which they are committed by the county boards of mental health or by the several district courts,~~ and (4) when cases are equally meritorious, in all other respects, the patients who are indigent shall have preference.

Sec. 135. Section 83-340, Reissue Revised Statutes of Nebraska, is amended to read:

83-340. Any voluntary patient in a state hospital for the mentally ill who ~~is cured~~ no longer meets the clinical and legal requirements for treatment at such hospital shall be ~~immediately~~ discharged by the ~~superintendent~~. Upon ~~discharging such patient or any other patient,~~ the ~~superintendent shall furnish the patient,~~ unless he or she is otherwise supplied, with suitable clothing, and a sum of money not exceeding twenty dollars, which shall be charged to the care of that patient in the hospital. The relatives of any patient not susceptible to cure by medical treatment in the hospital, and not dangerous to be at large, shall have the right to take charge of and remove the patient on the consent of the Director of Health and Human Services the chief executive officer of such hospital.

Sec. 136. Section 83-349, Reissue Revised Statutes of Nebraska, is amended to read:

83-349. If the ~~county board of~~ mental health board finds that a person committed to a state hospital for the mentally ill by ~~it~~ the board has, or probably has, a legal settlement in some other county in the state, ~~it~~ the board shall immediately notify the ~~county board of~~ mental health board of that county of its finding and commitment. The board members so notified shall thereupon inquire and ascertain, if possible, whether the patient has a legal settlement in their county, and shall immediately notify the ~~superintendent~~ chief executive officer of the hospital and the board members of the county from which the patient was committed of the result of their inquiry. If the legal settlement of a patient cannot for a time be ascertained, and is afterwards found, the notices provided for in this section shall then be given.

Sec. 137. Section 83-350, Reissue Revised Statutes of Nebraska, is amended to read:

83-350. When the ~~superintendent~~ chief executive officer of a state hospital for the mentally ill has been notified, as provided for in sections ~~83-306, 83-307, 83-311 to 83-351, and 83-354~~ 83-313 to 83-357, that a patient sent to the hospital from one county has a legal settlement in another county of the state, ~~he~~ the chief executive officer shall thereafter hold and treat such patient as from the latter county.

Sec. 138. Section 83-351, Reissue Revised Statutes of Nebraska, is amended to read:

83-351. Expenses incurred by one county, on account of a mentally ill and dangerous person whose legal settlement is in another county of the state, shall be refunded, with lawful interest thereon, by the county in which the patient has his or her legal settlement. Such expenses shall be presented to the county board of the county sought to be charged, which shall allow and pay them the same as other claims. Whenever ~~an inmate of any institution a patient of any facility~~ over which the Department of Health and Human Services has control has been adjudicated a mentally ill and dangerous person and committed to a state hospital for the mentally ill, and the expenses of the adjudication and commitment ~~shall~~ have been paid by the county in which the institution is located, the county clerk of that county shall certify the total amount of the expenses thus incurred to the Department of Health and Human Services. The department shall audit the expenses so certified and shall file a statement of the amount found due with the Director of Administrative Services, and a warrant shall be drawn on the General Fund in favor of the county from which the patient was committed.

Sec. 139. Section 83-354, Reissue Revised Statutes of Nebraska, is amended to read:

83-354. All patients in the state hospitals for the mentally ill shall be regarded as standing on an equal footing. ~~The + and the~~ patients, according to their different conditions of mind and body, and their respective needs, shall be provided for and treated with equal care. If the relatives or immediate friends of any patient ~~shall desire it, and shall pay~~ desire special care and pay the expenses thereof, such patient shall have special care, and shall be provided with a special attendant as may be agreed upon with the ~~superintendent~~ chief executive officer. In such cases the charges for the special care and attendance shall be paid quarterly in advance.

Sec. 140. Section 83-364, Reissue Revised Statutes of Nebraska, is amended to read:

83-364. When any person is admitted to a state institution, or other inpatient treatment facility pursuant to an order of a mental health board under the Nebraska Mental Health Commitment Act or receives treatment prescribed by ~~an~~ such institution or facility following release or without being admitted as a resident patient, the patient and his or her relatives shall be liable for the cost of the care, support, maintenance, and treatment of such person to the extent and in the manner provided by sections 83-227.01, 83-227.02, 83-350, and 83-363 to 83-380. The provisions of such sections also shall apply to persons admitted to a state institution as transferees from any state penal institution or the Youth Rehabilitation and Treatment Center-Kearney or Youth Rehabilitation and Treatment Center-Geneva, but only after the expiration of the time for which the transferees were originally sentenced or committed.

Sec. 141. Section 83-376, Reissue Revised Statutes of Nebraska, is amended to read:

83-376. When the full cost determined to be necessary for the care, support, maintenance, and treatment of any patient is not paid by the patient or his or her relatives within thirty days of receipt of such care, (1) the county in which the patient resides shall pay (a) the first fifteen dollars

per day of the unpaid cost for each of the first thirty days at the Hastings Regional Center, the Lincoln Regional Center, the Norfolk Regional Center, or ~~the University of Nebraska Medical Center~~ other inpatient treatment facility where the patient is receiving inpatient treatment pursuant to an order of a mental health board under the Nebraska Mental Health Commitment Act, (b) the first ten dollars per day of the unpaid cost for each of the first thirty days at the Beatrice State Developmental Center, and (c) the first three dollars per day of the unpaid costs for each day after the first thirty days at any such institution, (2) the balance of the unpaid cost shall be borne by the state, and (3) the county in which the patient resides shall be credited by the Director of Health and Human Services for amounts collected from such patient or his or her relatives in excess of the portion of such costs borne by the state.

Sec. 142. Section 83-4,157, Revised Statutes Supplement, 2002, is amended to read:

83-4,157. The medical director shall:

- (1) Coordinate all clinical services;
- (2) Participate in the selection and supervision of all clinical staff employed by or under contract with the department, including medical doctors, physician assistants, pharmacists, pharmacy technicians, registered nurses, licensed practical nurses, advanced practice registered nurses, mental health practitioners, ~~certified~~ alcohol and drug ~~abuse~~ counselors, laboratory technicians, physical therapists, optometrists, audiologists, dentists, dental assistants, and dental hygienists;
- (3) Maintain and preserve the medical records of health care services;
- (4) Approve the purchasing of all necessary medical supplies and medical equipment for the department;
- (5) Recommend all necessary programs for the preservice, inservice, and continuing medical training and education of the health care staff and other relevant staff of the department, including training specifically designed to promote prompt and effective responses by all staff of the department to medical emergencies;
- (6) Develop and implement condition-specific medical treatment protocols that ensure compatibility with a community standard of health care, including protocols addressing the: (a) Treatment of gastrointestinal bleeds; (b) detection and treatment of all communicable diseases; (c) treatment of gender-specific problems; (d) treatment of diabetes; (e) treatment of hypertension; (f) treatment of headaches; (g) utilization of surgical procedures; (h) control of infection; (i) provision of dental care; (j) provision of age-specific and gender-specific routine health maintenance; (k) means by which inmates obtain access to health care services; (l) use of prescribed drugs, devices, or biologicals for the purpose of pain management; (m) referral of patients to medical specialists not in the employ of the department; and (n) initiation, observance, and termination of do not resuscitate orders initiated pursuant to the Rights of the Terminally Ill Act;
- (7) Develop and implement a system of general discharge planning for the health care services to be received by inmates who are soon to be released from the custody of the department and who have chronic health care problems;
- (8) Develop and implement a comprehensive health care services plan;
- (9) Develop and implement an internal credentialing program for the employment and retention of the health care staff of the department based on a community standard of health care; and
- (10) Develop and implement an internal peer review and quality assurance program based upon a community standard of health care.

Sec. 143. Section 84-1211, Reissue Revised Statutes of Nebraska, is amended to read:

84-1211. (1) When an essential record is required by law to be treated in a confidential manner, the administrator, in effectuating the purposes of ~~sections 84-1201 to 84-1226~~ the Records Management Act, shall protect its confidential nature, as well as that of any preservation duplicate or other copy thereof. Any hospital or medical record submitted to the administrator for microfilming or similar processing shall be made accessible in a manner consistent with the access permitted similar records under ~~sections~~ section 83-109 and ~~83-1068~~ section 81 of this act.

(2) Nothing in the Records Management Act shall be construed to affect the laws and regulations dealing with the dissemination, security, and privacy of criminal history information under ~~Chapter 29, article 35~~ the Security, Privacy, and Dissemination of Criminal History Information Act.

Sec. 144. Section 84-1326.01, Reissue Revised Statutes of Nebraska, is amended to read:

84-1326.01. (1) Any state employee who is a member of the State

Employees Retirement System of the State of Nebraska and whose status is changed by the Legislature to that of an employee of a ~~mental~~ behavioral health region or an employee of a community mental health center shall, upon application to the Public Employees Retirement Board, obtain full and immediate vesting in any prior service retirement benefits and any future service retirement benefits which have accrued to the date of transfer. Such employee may not withdraw the amount in his employee account prior to his retirement and still receive such vested benefits.

(2) Any employee shall be eligible for immediate participation in the retirement program available to the employee in the political subdivision of the State of Nebraska to which such employee is transferred with no minimum period of service required, if the minimum age requirement and length of service, with either the State of Nebraska or the political subdivision, total the requirements of the retirement system to which the employee is transferred.

Sec. 145. Sections 1 to 17, 21 to 99, 102 to 144, 147, and 149 of this act become operative on July 1, 2004. The other sections of this act become operative on their effective date.

Sec. 146. If any section in this act or any part of any section is declared invalid or unconstitutional, the declaration shall not affect the validity or constitutionality of the remaining portions.

Sec. 147. Original sections 20-164, 23-3402, 29-434, 29-3705, 29-3915, 42-917, 43-248, 43-254.01, 44-773, 44-774, 48-1102, 53-1,120, 71-101, 71-102, 71-107, 71-110, 71-112, 71-113, 71-114, 71-116, 71-131, 71-139.02, 71-162, 71-1,312, 80-601, 81-1850, 81-2213, 83-305, 83-305.01, 83-314, 83-324, 83-336, 83-338, 83-340, 83-340.01, 83-349, 83-350, 83-351, 83-354, 83-364, 83-376, 83-1001, 83-1002, 83-1004, 83-1005, 83-1006, 83-1007, 83-1007.01, 83-1009, 83-1009.01, 83-1009.02, 83-1010, 83-1011, 83-1014, 83-1017, 83-1020, 83-1027, 83-1035, 83-1037, 83-1039, 83-1041, 83-1042, 83-1043, 83-1044, 83-1045, 83-1045.01, 83-1045.02, 83-1046, 83-1052, 83-1053, 83-1054, 83-1056, 83-1057, 83-1060, 83-1068, 83-1071, 83-1072, 83-1073, 83-1074, 83-1078, 83-1080, 84-1211, and 84-1326.01, Reissue Revised Statutes of Nebraska, sections 43-245, 43-247, 83-162.04, 83-4,157, 83-1016, 83-1019, 83-1024, 83-1026, 83-1047, 83-1048, 83-1049, 83-1050, 83-1051, 83-1055, 83-1058, 83-1059, 83-1061, 83-1062, 83-1064, 83-1066, and 83-1069, Revised Statutes Supplement, 2002, and sections 9-812, 28-416, 43-250, 60-6,209, and 83-1079, Revised Statutes Supplement, 2003, are repealed.

Sec. 148. Original sections 58-703 and 58-706, Reissue Revised Statutes of Nebraska, are repealed.

Sec. 149. The following sections are outright repealed: Sections 71-5001 to 71-5010, 71-5012 to 71-5053, 71-5055 to 71-5066, 83-158.01, 83-159, 83-160, 83-161.02, 83-162.01 to 83-162.03, 83-163 to 83-169, 83-305.05, 83-306, 83-307, 83-307.01, 83-308, 83-311, 83-312, 83-318, 83-321, 83-337, 83-339, 83-352.02, 83-1012, 83-1018, 83-1021, 83-1022, 83-1028, 83-1029, 83-1036, 83-1038, 83-1040, 83-1044.01, 83-1065, 83-1067, 83-1070, and 83-1077.01, Reissue Revised Statutes of Nebraska, and sections 83-1003, 83-1008, 83-1013, 83-1015, 83-1023, and 83-1025, Revised Statutes Supplement, 2002.

Sec. 150. Since an emergency exists, this act takes effect when passed and approved according to law.