

AMENDMENTS TO LB 369

Introduced by Health and Human Services

1           1. Strike the original sections and insert the following  
2 new sections:

3           Section 1. Section 71-101, Revised Statutes Cumulative  
4 Supplement, 2006, is amended to read:

5           71-101 Sections 71-101 to 71-1,107.30, 71-1,133 to  
6 71-1,338, 71-1,343 to 71-1,361, and 71-1301 to 71-1354, sections 3  
7 and 6 of this act, and the Physical Therapy Practice Act shall be  
8 known and may be cited as the Uniform Licensing Law.

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

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

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

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

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

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

1 Uniform Licensing Law;

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

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

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

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

27 (10) Dependence means a compulsive or chronic need for

1 or an active addiction to alcohol or any controlled substance or  
2 narcotic drug.

3 Sec. 2. Section 71-1,296, Reissue Revised Statutes of  
4 Nebraska, is amended to read:

5 71-1,296 For purposes of sections 71-1,295 to 71-1,338  
6 and sections 3 and 6 of this act, the definitions found in sections  
7 71-1,297 to 71-1,311 and section 3 of this act shall be used.

8 Sec. 3. (1) Independent mental health practice means the  
9 provision of treatment, assessment, psychotherapy, counseling, or  
10 equivalent activities to individuals, couples, families, or groups  
11 for behavioral, cognitive, social, mental, or emotional disorders,  
12 including interpersonal or personal situations.

13 (2) Independent mental health practice includes  
14 diagnosing major mental illness or disorder, using psychotherapy  
15 with individuals suspected of having major mental or emotional  
16 disorders, or using psychotherapy to treat the concomitants of  
17 organic illness, with or without consultation with a qualified  
18 physician or licensed psychologist.

19 (3) Independent mental health practice does not include  
20 the practice of psychology or medicine, prescribing drugs or  
21 electroconvulsive therapy, treating physical disease, injury, or  
22 deformity, or measuring personality or intelligence for the purpose  
23 of diagnosis or treatment planning.

24 Sec. 4. Section 71-1,307, Reissue Revised Statutes of  
25 Nebraska, is amended to read:

26 71-1,307 (1) Mental health practice shall mean means the  
27 provision of treatment, assessment, psychotherapy, counseling, or

1 equivalent activities to individuals, couples, families, or groups  
2 for behavioral, cognitive, social, mental, or emotional disorders,  
3 including interpersonal or personal situations.

4 (2) Mental health practice shall does not include:

5 (a) The the practice of psychology or medicine;

6 (b) Prescribing ~~prescribing~~ drugs or electroconvulsive  
7 therapy;

8 (c) Treating ~~treating~~ physical disease, injury, or  
9 deformity;

10 (d) Diagnosing ~~diagnosing~~ major mental illness or  
11 disorder except in consultation with a qualified physician or a  
12 psychologist licensed to engage in the practice of psychology as  
13 provided in section 71-1,206.14;

14 (e) Measuring ~~measuring~~ personality or intelligence for  
15 the purpose of diagnosis or treatment planning;

16 (f) Using ~~using~~ psychotherapy with individuals  
17 suspected of having major mental or emotional disorders except in  
18 consultation with a qualified physician or licensed psychologist;  
19 or

20 (g) Using ~~or using~~ psychotherapy to treat the  
21 concomitants of organic illness except in consultation with a  
22 qualified physician or licensed psychologist.

23 (3) Mental health practice shall include includes the  
24 initial assessment of organic mental or emotional disorders for the  
25 purpose of referral or consultation.

26 (4) Nothing in sections 71-1,306, 71-1,310, and 71-1,311  
27 shall be deemed to constitute authorization to engage in activities

1 beyond those described in this section. Persons certified under  
2 sections 71-1,295 to 71-1,338 and sections 3 and 6 of this act  
3 but not licensed under section 71-1,314 shall not engage in mental  
4 health practice.

5 Sec. 5. Section 71-1,308, Reissue Revised Statutes of  
6 Nebraska, is amended to read:

7 71-1,308 (1) Mental health practitioner shall mean means  
8 a person who holds himself or herself out as a person qualified  
9 to engage in mental health practice or a person who offers or  
10 renders mental health practice services. Independent mental health  
11 practitioner means a person who holds himself or herself out as a  
12 person qualified to engage in independent mental health practice or  
13 a person who offers or renders independent mental health practice  
14 services.

15 (2) A person who is licensed as a mental health  
16 practitioner or an independent mental health practitioner and  
17 certified as a master social worker may use the title licensed  
18 clinical social worker. A person who is licensed as a mental health  
19 practitioner or an independent mental health practitioner and  
20 certified as a professional counselor may use the title licensed  
21 professional counselor. A person who is licensed as a mental  
22 health practitioner or an independent mental health practitioner  
23 and certified as a marriage and family therapist may use the  
24 title licensed marriage and family therapist. No person shall use  
25 the title licensed clinical social worker, licensed professional  
26 counselor, or licensed marriage and family therapist unless he  
27 or she is licensed and certified as provided in this ~~section.~~

1 subsection.

2           (3) A mental health practitioner shall not represent  
3 himself or herself as a physician or psychologist and shall not  
4 represent his or her services as being medical or psychological  
5 in nature. An independent mental health practitioner shall not  
6 represent himself or herself as a physician or psychologist.

7           Sec. 6. (1) No person shall hold himself or herself out  
8 as an independent mental health practitioner unless he or she is  
9 licensed as such by the department. A person shall be qualified to  
10 be a licensed independent mental health practitioner if he or she:

11           (a) (i) (A) Graduated with a masters' or doctoral degree  
12 from an educational program which is accredited, at the time of  
13 graduation or within four years after graduation, by the Council  
14 for Accreditation of Counseling and Related Educational Programs,  
15 the Commission on Accreditation for Marriage and Family Therapy  
16 Education, or the Council on Social Work Education or (B) graduated  
17 with a masters' or doctoral degree from an educational program  
18 deemed by the board to be equivalent in didactic content and  
19 supervised clinical experience to an accredited program;

20           (ii) Is licensed as a provisional mental health  
21 practitioner or a licensed mental health practitioner; and

22           (iii) Has three thousand hours of experience obtained  
23 in a period of not less than two nor more than five years and  
24 supervised by a licensed physician, a licensed psychologist, or a  
25 licensed independent mental health practitioner, one-half of which  
26 is comprised of experience with clients diagnosed under the major  
27 mental illness or disorder category; or

1           (b) (i) Graduated from an educational program which does  
2 not meet the requirements of subdivision (a) (i) of this subsection;

3           (ii) Is licensed as a provisional mental health  
4 practitioner or a mental health practitioner; and

5           (iii) Has seven thousand hours of experience obtained in  
6 a period of not less than ten years and supervised by a licensed  
7 physician, a licensed psychologist, or a licensed independent  
8 mental health practitioner, one-half of which is comprised of  
9 experience with clients diagnosed under the major mental illness or  
10 disorder category.

11           (2) The experience required under this section shall be  
12 documented in a reasonable form and manner as prescribed by the  
13 board, which may consist of sworn statements from the applicant and  
14 his or her employers and supervisors. The board shall not in any  
15 case require the applicant to produce individual case records.

16           (3) The application for an independent mental health  
17 practitioner license shall include the applicant's social security  
18 number.

19           Sec. 7. Section 71-1,315, Reissue Revised Statutes of  
20 Nebraska, is amended to read:

21           71-1,315 Each licensed mental health practitioner and  
22 each licensed independent mental health practitioner shall, in  
23 the period since his or her license was issued or last renewed,  
24 complete continuing competency activities as required by the board  
25 pursuant to section 71-161.09 as a prerequisite for the licensee's  
26 next subsequent license renewal.

27           Sec. 8. Section 71-1,316, Reissue Revised Statutes of

1 Nebraska, is amended to read:

2           71-1,316 The department, upon the advice of the board,  
3 shall adopt and promulgate rules and regulations to administer  
4 sections 71-1,312 to 71-1,315 and section 6 of this act, including  
5 rules and regulations governing:

6           (1) Ways of clearly identifying students, interns, and  
7 other persons providing mental health practice services under  
8 supervision;

9           (2) The rights of persons receiving mental health  
10 practice services;

11           (3) The rights of clients to gain access to their  
12 records, including the right of any client to receive one complete  
13 copy of his or her record free of charge;

14           (4) The contents and methods of distribution of  
15 disclosure statements to clients of licensed mental health  
16 practitioners; and

17           (5) Approval of examinations and educational programs.

18           Sec. 9. Section 71-1,333, Reissue Revised Statutes of  
19 Nebraska, is amended to read:

20           71-1,333 (1) The department shall issue a certificate,  
21 signed by the director, to each person who is qualified to be a  
22 certified master social worker, certified social worker, certified  
23 professional counselor, or certified marriage and family therapist.

24           (2) The department shall issue a license, signed by  
25 the director, to each person who is qualified to be a licensed  
26 mental health practitioner or licensed independent mental health  
27 practitioner.



1           Sec. 10. Section 71-1,335, Reissue Revised Statutes of  
2 Nebraska, is amended to read:

3           71-1,335 No person licensed or certified pursuant to  
4 sections 71-1,295 to 71-1,338 and sections 3 and 6 of this act  
5 shall disclose any information he or she may have acquired from any  
6 person consulting him or her in his or her professional capacity  
7 except:

8           (1) With the written consent of the person or, in  
9 the case of death or disability, of the person's personal  
10 representative, any other person authorized to sue on behalf  
11 of the person, or the beneficiary of an insurance policy on the  
12 person's life, health, or physical condition. When more than one  
13 person in a family receives therapy conjointly, each such family  
14 member who is legally competent to execute a waiver shall agree to  
15 the waiver referred to in this subdivision. Without such a waiver  
16 from each family member legally competent to execute a waiver,  
17 a practitioner shall not disclose information received from any  
18 family member who received therapy conjointly;

19           (2) As such privilege is limited by the laws of the State  
20 of Nebraska or as the ~~Board of Mental Health Practice~~ board may  
21 determine by rule and regulation;

22           (3) When the person waives the privilege by bringing  
23 charges against the licensee; or

24           (4) When there is a duty to warn under the limited  
25 circumstances set forth in section 71-1,336.

26           Sec. 11. Section 71-1,336, Reissue Revised Statutes of  
27 Nebraska, is amended to read:

1           71-1,336 (1) There shall be no monetary liability on the  
2 part of, and no cause of action shall arise against, any person who  
3 is licensed or certified pursuant to sections 71-1,295 to 71-1,338  
4 and sections 3 and 6 of this act for failing to warn of and protect  
5 from a patient's threatened violent behavior or failing to predict  
6 and warn of and protect from a patient's violent behavior except  
7 when the patient has communicated to the mental health practitioner  
8 a serious threat of physical violence against himself, herself, or  
9 a reasonably identifiable victim or victims.

10           (2) The duty to warn of or to take reasonable precautions  
11 to provide protection from violent behavior shall arise only  
12 under the limited circumstances specified in subsection (1) of  
13 this section. The duty shall be discharged by the mental health  
14 practitioner if reasonable efforts are made to communicate the  
15 threat to the victim or victims and to a law enforcement agency.

16           (3) No monetary liability and no cause of action shall  
17 arise under section 71-1,335 against a licensee or certificate  
18 holder for information disclosed to third parties in an effort  
19 to discharge a duty arising under subsection (1) of this section  
20 according to the provisions of subsection (2) of this section.

21           Sec. 12. Section 71-1,337, Reissue Revised Statutes of  
22 Nebraska, is amended to read:

23           71-1,337 The Board of Mental Health Practice shall adopt  
24 a code of ethics which is essentially in agreement with the current  
25 code of ethics of the national and state associations of the  
26 specialty professions included in mental health practice and which  
27 the board deems necessary to assure adequate protection of the

1 public in the provision of mental health services to the public.  
2 A violation of the code of ethics shall be considered an act of  
3 unprofessional conduct.

4           The board shall ensure through the code of ethics and  
5 the rules and regulations adopted and promulgated under sections  
6 71-1,295 to 71-1,338 and sections 3 and 6 of this act that  
7 persons licensed or certified pursuant to sections 71-1,295 to  
8 71-1,338 and sections 3 and 6 of this act limit their practice  
9 to demonstrated areas of competence as documented by relevant  
10 professional education, training, and experience.

11           Intentional failure by a mental health practitioner to  
12 report known acts of unprofessional conduct by a mental health  
13 practitioner to the department or the board shall be considered  
14 an act of unprofessional conduct and shall be grounds for  
15 disciplinary action under appropriate sections of the Uniform  
16 Licensing Law unless the mental health practitioner has acquired  
17 such knowledge in a professional relationship otherwise protected  
18 by confidentiality.

19           Sec. 13. Section 71-1,338, Reissue Revised Statutes of  
20 Nebraska, is amended to read:

21           71-1,338 Any person who violates any provision of the  
22 Uniform Licensing Law related to mental health practice shall be  
23 guilty of a Class III misdemeanor, and any such violation by  
24 a person licensed or certified pursuant to sections 71-1,295 to  
25 71-1,338 and sections 3 and 6 of this act shall be cause for  
26 disciplinary action as provided in sections 71-147 to 71-161.18.

27           Sec. 14. Section 71-8402, Reissue Revised Statutes of

1 Nebraska, is amended to read:

2 71-8402 For purposes of sections 71-8401 to 71-8407:

3 (1) Medical records means a provider's record of a  
4 patient's health history and treatment rendered;

5 (2) Mental health medical records means medical records  
6 or parts thereof created by or under the direction or supervision  
7 of a licensed psychiatrist, a licensed psychologist, or a mental  
8 health practitioner licensed or certified pursuant to sections  
9 71-1,295 to 71-1,338 and sections 3 and 6 of this act;

10 (3) Patient includes a patient or former patient;

11 (4) Patient request or request of a patient includes the  
12 request of a patient's guardian or other authorized representative;  
13 and

14 (5) Provider means a physician, psychologist,  
15 chiropractor, dentist, hospital, clinic, and any other licensed or  
16 certified health care practitioner or entity.

17 Sec. 15. Original sections 71-1,296, 71-1,307, 71-1,308,  
18 71-1,315, 71-1,316, 71-1,333, 71-1,335, 71-1,336, 71-1,337,  
19 71-1,338, and 71-8402, Reissue Revised Statutes of Nebraska, and  
20 section 71-101, Revised Statutes Cumulative Supplement, 2006, are  
21 repealed.