

LEGISLATURE OF NEBRASKA

ONE HUNDREDTH LEGISLATURE

FIRST SESSION

LEGISLATIVE BILL 185

Introduced By: Health and Human Services Committee; Johnson, 37,
Chairperson; Erdman, 47; Gay, 14; Hansen, 42; Howard,
9; Pankonin, 2; Stuthman, 22

Read first time: January 9, 2007

Committee: Health and Human Services

A BILL

1 FOR AN ACT relating to health and human services; to amend
2 sections 71-629, 71-6726, and 71-6733, Reissue Revised
3 Statutes of Nebraska, and sections 68-906, 68-919, 68-921,
4 71-6039, 81-647, and 81-671, Revised Statutes Cumulative
5 Supplement, 2006; to change provisions relating to the
6 Medical Assistance Act, birth certificates, nursing
7 assistants, medication aides, and the cancer registry; to
8 change provisions relating to recovery of medical
9 assistance; to harmonize provisions; to provide operative
10 dates; to repeal the original sections; and to declare an
11 emergency.

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

1 Section 1. Section 68-906, Revised Statutes Cumulative
2 Supplement, 2006, is amended to read:

3 68-906. For purposes of paying medical assistance under the
4 Medical Assistance Act and sections 68-1002 and 68-1006, the State of
5 Nebraska accepts and assents to all applicable provisions of Title XIX
6 and Title XXI of the federal Social Security Act. Any reference in the
7 Medical Assistance Act to the federal Social Security Act or other
8 acts or sections of federal law shall be to such federal acts or
9 sections as they existed on April 1, ~~2006~~. 2007.

10 Sec. 2. Section 68-919, Revised Statutes Cumulative
11 Supplement, 2006, is amended to read:

12 68-919. (1) The recipient of medical assistance under the
13 medical assistance program shall be indebted to the department for the
14 total amount paid for medical assistance on behalf of the recipient
15 if:

16 (a) The recipient was fifty-five years of age or older at
17 the time the medical assistance was provided; or

18 (b) The recipient resided in a medical institution and, at
19 the time of institutionalization or application for medical
20 assistance, whichever is later, the department determines that the
21 recipient could not have reasonably been expected to be discharged and
22 resume living at home. For purposes of this section, medical
23 institution means a nursing facility, an intermediate care facility
24 for the mentally retarded, or an inpatient hospital.

25 (2) The debt accruing under subsection (1) of this section
26 arises during the life of the recipient but shall be held in abeyance
27 until the death of the recipient. Any such debt to the department that

1 exists when the recipient dies shall be recovered only after the death
2 of the recipient's spouse, if any, and only when the recipient is not
3 survived by a child who either is under twenty-one years of age or is
4 blind or totally and permanently disabled as defined by the
5 Supplemental Security Income criteria.

6 (3) The debt shall include the total amount of medical
7 assistance provided when the recipient was fifty-five years of age or
8 older or during a period of institutionalization as described in
9 subsection (1) of this section and shall not include interest.

10 (4) In any probate proceedings in which the department has
11 filed a claim under this section, no additional evidence of foundation
12 shall be required for the admission of the department's payment record
13 supporting its claim if the payment record bears the seal of the
14 department, is certified as a true copy, and bears the signature of an
15 authorized representative of the department.

16 (5) The department may waive or compromise its claim, in
17 whole or in part, if the department determines that enforcement of the
18 claim would not be in the best interests of the state or would result
19 in undue hardship as provided in rules and regulations of the
20 department.

21 Sec. 3. Section 68-921, Revised Statutes Cumulative
22 Supplement, 2006, is amended to read:

23 68-921. For purposes of sections 68-921 to 68-925:

24 (1) Assets means property which is not exempt from
25 consideration in determining eligibility for medical assistance under
26 rules and regulations adopted and promulgated under section 68-922;

27 (2) Community spouse monthly income allowance means the

1 amount of income determined by the Department of Health and Human
2 Services in accordance with section 1924 of the federal Social
3 Security Act, as amended, Public Law 100-360, 42 U.S.C. 1396r-5;

4 (3) Community spouse resource allowance means the amount of
5 assets determined in accordance with section 1924 of the federal
6 Social Security Act, as amended, Public Law 100-360, 42 U.S.C.
7 1396r-5. For purposes of 42 U.S.C. 1396r-5(f)(2)(A)(i), the amount
8 specified by the state shall be twelve thousand dollars;

9 (4) Home and community-based services means services
10 furnished under home and community-based waivers as defined in Title
11 XIX of the federal Social Security Act, as amended, 42 U.S.C. 1396;

12 (5) Qualified applicant means a person (a) who applies for
13 medical assistance on or after July 9, 1988, (b) who is under care in
14 a state-licensed hospital, ~~skilled~~ a nursing facility,
15 ~~intermediate care facility,~~ an intermediate care facility for the
16 mentally retarded, ~~nursing facility,~~ an assisted-living facility,
17 or a center for the developmentally disabled, as such terms are
18 defined in the Health Care Facility Licensure Act, or an adult family
19 home certified by the Department of Health and Human Services or is
20 receiving home and community-based services, and (c) whose spouse is
21 not under such care or receiving such services and is not applying for
22 or receiving medical assistance;

23 (6) Qualified recipient means a person (a) who has applied
24 for medical assistance before July 9, 1988, and is eligible for such
25 assistance, (b) who is under care in a facility certified to receive
26 medical assistance funds or is receiving home and community-based
27 services, and (c) whose spouse is not under such care or receiving

1 such services and is not applying for or receiving medical assistance;
2 and

3 (7) Spouse means the spouse of a qualified applicant or
4 qualified recipient.

5 Sec. 4. Section 71-629, Reissue Revised Statutes of
6 Nebraska, is amended to read:

7 71-629. A certified copy or copies of the certificate of
8 birth of any such legitimized child may be furnished upon request by
9 the Director of Finance and Support. The , ~~but~~ the evidence upon
10 which the new certificate is made may be furnished upon request to a
11 parent of such legitimized child or to the legitimized child if such
12 child is nineteen years of age or older. The evidence upon which the
13 new certificate is made shall be available for inspection by any
14 other person only upon the order of a court of competent
15 jurisdiction, and the original certificate of birth shall be
16 available for inspection only upon the order of a court of competent
17 jurisdiction.

18 Sec. 5. Section 71-6039, Revised Statutes Cumulative
19 Supplement, 2006, is amended to read:

20 71-6039. (1) No person shall act as a nursing assistant in a
21 nursing home unless such person:

22 (a) Is at least sixteen years of age and has not been
23 convicted of a crime involving moral turpitude;

24 (b) Is able to speak and understand the English language or
25 a language understood by a substantial portion of the nursing home
26 residents; and

27 (c) Has successfully completed a basic course of training

1 approved by the department for nursing assistants within one hundred
2 twenty days of initial employment in the capacity of a nursing
3 assistant at any nursing home if employment begins after January 1,
4 1984.

5 (2)(a) A registered nurse or licensed practical nurse whose
6 license has been revoked, suspended, or voluntarily surrendered in
7 lieu of discipline may not act as a nursing assistant in a nursing
8 home.

9 (b) If a person registered as a nursing assistant becomes
10 licensed as a registered nurse or licensed practical nurse, his or her
11 registration as a nursing assistant becomes null and void as of the
12 date of licensure.

13 (c) A person listed on the Nurse Aide Registry with respect
14 to whom a finding of conviction has been placed on the registry may
15 petition the department to have such finding removed at any time
16 after one year has elapsed since the date such finding was placed on
17 the registry.

18 ~~(2)~~ (3) The department may prescribe a curriculum for
19 training nursing assistants and may adopt and promulgate rules and
20 regulations for such courses of training. The content of the courses
21 of training and competency evaluation programs shall be consistent
22 with federal requirements unless exempted. The department may approve
23 courses of training if such courses of training meet the requirements
24 of this section. Such courses of training shall include instruction on
25 the responsibility of each nursing assistant to report suspected abuse
26 or neglect pursuant to sections 28-372 and 28-711. Nursing homes may
27 carry out approved courses of training within the nursing home, except

1 that nursing homes may not conduct the competency evaluation part of
2 the program. The prescribed training shall be administered by a
3 licensed registered nurse.

4 ~~(3)~~ (4) For nursing assistants at intermediate care
5 facilities for the mentally retarded, such courses of training shall
6 be no less than twenty hours in duration and shall include at least
7 fifteen hours of basic personal care training and five hours of basic
8 therapeutic and emergency procedure training, and for nursing
9 assistants at all nursing homes other than intermediate care
10 facilities for the mentally retarded, such courses shall be no less
11 than seventy-five hours in duration.

12 ~~(4)~~ (5) This section shall not prohibit any facility
13 from exceeding the minimum hourly or training requirements.

14 Sec. 6. Section 71-6726, Reissue Revised Statutes of
15 Nebraska, is amended to read:

16 71-6726. (1) To register as a medication aide, an individual
17 shall (a) have successfully completed the requirements in section
18 71-6725, (b) be at least eighteen years of age, (c) be of good moral
19 character, (d) file an application with the department, and (e) pay
20 the applicable fee.

21 (2) A registered nurse or licensed practical nurse whose
22 license has been revoked, suspended, or voluntarily surrendered in
23 lieu of discipline may not register as a medication aide.

24 ~~(2)~~ (3) An applicant or medication aide shall report to
25 the department, in writing, any conviction for a felony or
26 misdemeanor. A conviction is not a disqualification for placement on
27 the registry unless it relates to the standards identified in such

1 section.

2 ~~(3)~~ (4) An applicant or medication aide may report any
3 pardon or setting aside of a conviction to the department. If a pardon
4 or setting aside has been obtained, the conviction for which it was
5 obtained shall not be maintained on the Medication Aide Registry.

6 (5) If a person registered as a medication aide on the
7 Medication Aide Registry becomes licensed as a registered nurse or
8 licensed practical nurse, his or her registration as a medication
9 aide becomes null and void as of the date of licensure.

10 Sec. 7. Section 71-6733, Reissue Revised Statutes of
11 Nebraska, is amended to read:

12 71-6733. A person whose registration has been denied,
13 refused renewal, or removed from the Medication Aide Registry may
14 reapply for registration or for lifting of the disciplinary sanction
15 at any time after one year has elapsed since the date such
16 registration was denied, refused renewal, or removed from the
17 registry, in accordance with the rules and regulations.

18 Sec. 8. Section 81-647, Revised Statutes Cumulative
19 Supplement, 2006, is amended to read:

20 81-647. (1) All data obtained from medical records of
21 individual patients is for the confidential use of the department and
22 the private or public persons or entities that the department
23 determines may view such records as provided in sections 81-663 to
24 81-675.

25 (2) The department may approve individuals or entities to
26 obtain access to case-specific data or case-specific and
27 patient-identifying data to assist in their research for prevention,

1 cure, or control of cancer. Any information released from the cancer
2 registry shall be disclosed as provided in sections 81-663 to 81-675.

3 (3) For purposes of protecting the public health, local
4 health departments in Nebraska, health departments or cancer
5 registries located ~~in other states,~~ outside Nebraska, and the
6 Centers for Disease Control and Prevention and the National Cancer
7 Institute of the United States Department of Health and Human Services
8 or their successors may have access to the data contained in the
9 cancer registry upon the department's approval based on the entity's
10 written application.

11 Sec. 9. Section 81-671, Revised Statutes Cumulative
12 Supplement, 2006, is amended to read:

13 81-671. (1) Except as otherwise provided by the law
14 governing a specific medical record and health information registry,
15 the department may release information contained in a registry to
16 official public health departments and agencies as follows:

17 (a) Upon request by an official local health department
18 within the State of Nebraska, the department may release such data to
19 the requesting local health department. The official local health
20 department shall not contact patients using data received under
21 sections 81-663 to 81-675 without approval by the department of an
22 application made pursuant to section 81-666; and

23 (b) Upon approval of an application by federal, state, or
24 local official public health agencies made pursuant to section 81-666,
25 the department may release such data.

26 (2) The receiving agency shall not further disclose such
27 data to any third party but may publish aggregate statistical reports,

1 except that no patient-identifying data shall be divulged, made
2 public, or released to any public or private person or entity. The
3 receiving agency shall comply with the patient contact provisions of
4 sections 81-663 to 81-675. The receiving agency shall acknowledge the
5 department and its medical record and health information registries in
6 any publication in which information obtained from the medical record
7 and health information registries is used.

8 (3) The release and acknowledgment provisions of this
9 section do not apply to cancer registries located ~~in another state~~
10 outside Nebraska which receive data through approved data exchange
11 agreements.

12 Sec. 10. Sections 1, 11, and 13 of this act become operative
13 on their effective date. The other sections of this act become
14 operative three calendar months after adjournment of this legislative
15 session.

16 Sec. 11. Original section 68-906, Revised Statutes
17 Cumulative Supplement, 2006, is repealed.

18 Sec. 12. Original sections 71-629, 71-6726, and 71-6733,
19 Reissue Revised Statutes of Nebraska, and sections 68-919, 68-921,
20 71-6039, 81-647, and 81-671, Revised Statutes Cumulative Supplement,
21 2006, are repealed.

22 Sec. 13. Since an emergency exists, this act takes effect
23 when passed and approved according to law.