

LEGISLATURE OF NEBRASKA

ONE HUNDRED FIRST LEGISLATURE

SECOND SESSION

LEGISLATIVE BILL 849

FINAL READING

Introduced by Gay, 14.

Read first time January 11, 2010

Committee: Health and Human Services

A BILL

1 FOR AN ACT relating to public health and welfare; to amend sections
2 38-1901, 38-1902, 38-1908, 38-1918, 38-2605, 38-2617,
3 38-2841, 68-906, 68-1017, 68-1017.01, 68-1070, 70-1603,
4 70-1605, 71-401, 71-403, 71-415, 71-516.04, 71-1559,
5 71-1796, 71-4604.01, 71-7447, 71-8403, 77-27,165,
6 83-1220, 83-1221, 83-1222, 83-1223, and 83-1224, Reissue
7 Revised Statutes of Nebraska, and sections 38-2826,
8 38-2850, 38-2867, 38-2869, and 83-1217, Revised Statutes
9 Supplement, 2009; to change provisions relating to the
10 Medical Radiography Practice Act, and the practices of
11 optometry and pharmacy; to adopt federal law for purposes
12 of the Medical Assistance Act and the Supplemental
13 Nutrition Assistance Program; to remove and change

1 references to Supplemental Nutrition Assistance Program
2 coupons and benefits; to change provisions relating
3 to notice of discontinuation of utility service; to
4 require licensure of children's day health services; to
5 provide requirements for staff training for purposes
6 of the Alzheimer's Special Care Disclosure Act; to
7 change provisions relating to fees and funds of
8 the Public Service Commission; to change provisions
9 relating to requests for access to medical records;
10 to change notification requirements for child support
11 claims against income tax refunds; to change provisions
12 relating to developmental disability services; to
13 change provisions relating to hearing officers of the
14 Division of Developmental Disabilities; to create and
15 eliminate funds; to repeal a termination date relating
16 to the Nebraska Center for Nursing Act; to harmonize
17 provisions; to provide operative dates; to repeal the
18 original sections; to outright repeal section 71-17,100,
19 Reissue Revised Statutes of Nebraska; and to declare an
20 emergency.

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

1 Section 1. Section 38-1901, Reissue Revised Statutes of
2 Nebraska, is amended to read:

3 38-1901 Sections 38-1901 to 38-1920 and section 4 of this
4 act shall be known and may be cited as the Medical Radiography
5 Practice Act.

6 Sec. 2. Section 38-1902, Reissue Revised Statutes of
7 Nebraska, is amended to read:

8 38-1902 For purposes of the Medical Radiography Practice
9 Act and elsewhere in the Uniform Credentialing Act, unless the
10 context otherwise requires, the definitions found in sections
11 38-1903 to 38-1913 and section 4 of this act apply.

12 Sec. 3. Section 38-1908, Reissue Revised Statutes of
13 Nebraska, is amended to read:

14 38-1908 Medical radiography means the application of
15 radiation to humans for diagnostic purposes, including, but not
16 limited to, ~~adjustment or manipulation of X-ray systems and~~
17 ~~accessories including image receptors, positioning of patients,~~
18 ~~processing of films, and any other action that materially affects~~
19 ~~the radiation dose to patients.~~ utilizing proper:

20 (1) Radiation protection for the patient, the
21 radiographer, and others;

22 (2) Radiation generating equipment operation and quality
23 control;

24 (3) Image production and evaluation;

25 (4) Radiographic procedures;

- 1 (5) Processing of films;
2 (6) Positioning of patients;
3 (7) Performance methods to achieve optimum radiographic
4 technique with a minimum of radiation exposure; and
5 (8) Patient care and management as it relates to the
6 practice of medical radiography.

7 Sec. 4. Patient care and management, as it relates to the
8 practice of medical radiography, includes, but is not limited to:

- 9 (1) Infection control;
10 (2) Patient transfer and movement;
11 (3) Assisting patients with medical equipment;
12 (4) Routine monitoring;
13 (5) Medical emergencies;
14 (6) Proper use of contrast media; and
15 (7) Patient safety and protection, including minimizing
16 and monitoring patient radiation exposure through utilizing proper
17 professional standards and protocols, including the principle of as
18 low as reasonably achievable.

19 Sec. 5. Section 38-1918, Reissue Revised Statutes of
20 Nebraska, is amended to read:

21 38-1918 ~~(1)~~ (1)(a) The educational program for medical
22 radiographers shall consist of twenty-four months of instruction
23 in radiography approved by the board which includes, but is not
24 limited to: ~~radiographic procedures, imaging equipment, image~~
25 ~~production and evaluation, film processing, radiation physics,~~

1 ~~radiation protection, radiation biology, radiographic pathology,~~
2 ~~and quality assurance activities.~~

3 (i) Radiation protection for the patient, the
4 radiographer, and others;

5 (ii) Radiation generating equipment operation and quality
6 control;

7 (iii) Image production and evaluation;

8 (iv) Radiographic procedures;

9 (v) Processing of films;

10 (vi) Positioning of patients;

11 (vii) Performance methods to achieve optimum radiographic
12 technique with a minimum of radiation exposure; and

13 (viii) Patient care and management as it relates to the
14 practice of medical radiography.

15 (b) The board shall recognize equivalent courses of
16 instruction successfully completed by individuals who are applying
17 for licensure as medical radiographers when determining if the
18 requirements of section 38-1915 have been met.

19 (2) The examination for limited radiographers shall
20 include, but not be limited to:

21 (a) Radiation protection, radiation generating equipment
22 maintenance and operation and quality control, image production
23 and evaluation, radiographic procedures, and patient care and
24 management; and

25 (b) The anatomy of, and positioning for, specific regions

1 of the human anatomy. The anatomical regions shall include at least
2 one of the following:

- 3 (i) Chest;
- 4 (ii) Extremities;
- 5 (iii) Skull and sinus;
- 6 (iv) Spine; or
- 7 (v) Ankle and foot.

8 (3) The examination for limited radiographers in bone
9 density shall include, but not be limited to, basic concepts
10 of bone densitometry, equipment operation and quality control,
11 radiation safety, and dual X-ray absorptiometry (DXA) scanning of
12 the finger, heel, forearm, lumbar spine, and proximal femur.

13 (4) The department, with the recommendation of the
14 board, shall adopt and promulgate rules and regulations regarding
15 the examinations required in sections 38-1915 and 38-1916. Such
16 rules and regulations shall provide for (a) the administration
17 of examinations based upon national standards, such as the
18 Examination in Radiography from the American Registry of Radiologic
19 Technologists for medical radiographers, the Examination for the
20 Limited Scope of Practice in Radiography or the Bone Densitometry
21 Equipment Operator Examination from the American Registry of
22 Radiologic Technologists for limited radiographers, or equivalent
23 examinations that, as determined by the board, meet the standards
24 for educational and psychological testing as recommended by
25 the American Psychological Association, the American Educational

1 Research Association, and the National Council on Measurement in
2 Education, (b) procedures to be followed for examinations, (c) the
3 method of grading and the passing grades for such examinations, (d)
4 security protection for questions and answers, and (e) for medical
5 radiographers, the contents of such examination based on the course
6 requirements for medical radiographers prescribed in subsection (1)
7 of this section. Any costs incurred in determining the extent to
8 which examinations meet the examining standards of this subsection
9 shall be paid by the individual or organization proposing the use
10 of such examination.

11 (5) No applicant for a license as a limited radiographer
12 may take the examination for licensure, or for licensure for any
13 specific anatomical region, more than three times without first
14 waiting a period of one year after the last unsuccessful attempt
15 of the examination and submitting proof to the department of
16 completion of continuing competency activities as required by the
17 board for each subsequent attempt.

18 Sec. 6. Section 38-2605, Reissue Revised Statutes of
19 Nebraska, is amended to read:

20 38-2605 (1) The practice of optometry means one or a
21 combination of the following:

22 (a) The examination of the human eye to diagnose, treat,
23 or refer for consultation or treatment any abnormal condition of
24 the human eye, ocular adnexa, or visual system;

25 (b) The employment of instruments, devices,

1 pharmaceutical agents, and procedures intended for the purpose
2 of investigating, examining, diagnosing, treating, managing, or
3 correcting visual defects or abnormal conditions of the human eye,
4 ocular adnexa, or visual system;

5 (c) The prescribing and application of lenses, devices
6 containing lenses, prisms, contact lenses, ophthalmic devices,
7 orthoptics, vision training, pharmaceutical agents, and prosthetic
8 devices to correct, relieve, or treat defects or abnormal
9 conditions of the human eye, ocular adnexa, or visual system;

10 (d) The dispensing and sale of a contact lens, including
11 a cosmetic or plano contact lens or a contact lens containing an
12 ocular pharmaceutical agent which an optometrist is authorized by
13 law to prescribe and which is classified by the federal Food and
14 Drug Administration as a drug;

15 ~~(d)~~ (e) The ordering of procedures and laboratory tests
16 rational to the diagnosis or treatment of conditions or diseases of
17 the human eye, ocular adnexa, or visual system; and

18 ~~(e)~~ (f) The removal of superficial eyelid, conjunctival,
19 and corneal foreign bodies.

20 (2) The practice of optometry does not include the use
21 of surgery, laser surgery, oral therapeutic agents used in the
22 treatment of glaucoma, oral steroids, or oral immunosuppressive
23 agents or the treatment of infantile/congenital glaucoma, which
24 means the condition is present at birth.

25 Sec. 7. Section 38-2617, Reissue Revised Statutes of

1 Nebraska, is amended to read:

2 38-2617 (1) A licensed optometrist who administers or
3 prescribes pharmaceutical agents for examination or for treatment
4 shall provide the same standard of care to patients as that
5 provided by a physician licensed in this state to practice
6 medicine and surgery utilizing the same pharmaceutical agents
7 for examination or treatment.

8 (2) An optometrist who dispenses a contact lens
9 containing an ocular pharmaceutical agent which is classified by
10 the federal Food and Drug Administration as a drug shall comply
11 with the rules and regulations of the board relating to packaging,
12 labeling, storage, drug utilization review, and record keeping. The
13 board shall adopt and promulgate rules and regulations relating to
14 packaging, labeling, storage, drug utilization review, and record
15 keeping for such contact lenses.

16 Sec. 8. Section 38-2826, Revised Statutes Supplement,
17 2009, is amended to read:

18 38-2826 Labeling means the process of preparing and
19 affixing a label to any drug container or device container,
20 exclusive of the labeling by a manufacturer, ~~paeker,~~ packager,
21 or distributor of a nonprescription drug or commercially packaged
22 legend drug or device. Any such label shall include all information
23 required by federal and state law or regulation. Compliance with
24 labeling requirements under federal law for devices described in
25 subsection (2) of section 38-2841, medical gases, and medical gas

1 devices constitutes compliance with state law and regulations for
2 purposes of this section.

3 Sec. 9. Section 38-2841, Reissue Revised Statutes of
4 Nebraska, is amended to read:

5 38-2841 (1) Prescription drug or device or legend drug or
6 device means:

7 ~~(1)~~ (a) A drug or device which is required under federal
8 law to be labeled with one of the following statements prior to
9 being dispensed or delivered:

10 ~~(a)~~ (i) Caution: Federal law prohibits dispensing without
11 prescription;

12 ~~(b)~~ (ii) Caution: Federal law restricts this drug to use
13 by or on the order of a licensed veterinarian; or

14 ~~(c)~~ (iii) "Rx Only"; or

15 ~~(2)~~ (b) A drug or device which is required by any
16 applicable federal or state law to be dispensed pursuant only to
17 a prescription or chart order or which is restricted to use by
18 practitioners only.

19 (2) Prescription drug or device or legend drug or device
20 does not include a type of device, including supplies and device
21 components, which carries the federal Food and Drug Administration
22 legend "Caution: federal law restricts this device to sale by or on
23 the order of a licensed health care practitioner" or an alternative
24 legend approved by the federal Food and Drug Administration which
25 it recognizes, in published guidance, as conveying essentially the

1 same message.

2 Sec. 10. Section 38-2850, Revised Statutes Supplement,
3 2009, is amended to read:

4 38-2850 As authorized by the Uniform Credentialing Act,
5 the practice of pharmacy may be engaged in by a pharmacist, a
6 pharmacist intern, or a practitioner with a pharmacy license. The
7 practice of pharmacy shall not be construed to include:

8 (1) Persons who sell, offer, or expose for sale
9 completely denatured alcohol or concentrated lye, insecticides, and
10 fungicides in original packages;

11 (2) Practitioners, other than veterinarians, certified
12 nurse midwives, certified registered nurse anesthetists, and nurse
13 practitioners, who dispense drugs or devices as an incident to
14 the practice of their profession, except that if such practitioner
15 regularly engages in dispensing such drugs or devices to his or
16 her patients for which such patients are charged, such practitioner
17 shall obtain a pharmacy license;

18 (3) Persons who sell, offer, or expose for sale
19 nonprescription drugs or proprietary medicines, the sale of which
20 is not in itself a violation of the Nebraska Liquor Control Act;

21 (4) Medical representatives, detail persons, or persons
22 known by some name of like import, but only to the extent of
23 permitting the relating of pharmaceutical information to health
24 care professionals;

25 (5) Licensed veterinarians practicing within the scope of

1 their profession;

2 (6) Certified nurse midwives, certified registered
3 nurse anesthetists, and nurse practitioners who dispense sample
4 medications which are provided by the manufacturer and are
5 dispensed at no charge to the patient;

6 (7) Hospitals engaged in the compounding and dispensing
7 of drugs and devices pursuant to chart orders for persons
8 registered as patients and within the confines of the hospital,
9 except that if a hospital engages in such compounding and
10 dispensing for persons not registered as patients and within
11 the confines of the hospital, such hospital shall obtain a pharmacy
12 license or delegated dispensing permit;

13 (8) Optometrists who prescribe or dispense eyeglasses
14 or contact lenses to their own patients, including contact
15 lenses that contain and deliver ocular pharmaceutical agents as
16 authorized under the Optometry Practice Act, and ophthalmologists
17 who prescribe or dispense eyeglasses or contact lenses to their own
18 patients, including contact lenses that contain and deliver ocular
19 pharmaceutical agents;

20 (9) Registered nurses employed by a hospital who
21 administer pursuant to a chart order, or procure for such
22 purpose, single doses of drugs or devices from original drug or
23 device containers or properly labeled prepackaged drug or device
24 containers to persons registered as patients and within the
25 confines of the hospital;

1 (10) Persons employed by a facility where dispensed drugs
2 and devices are delivered from a pharmacy for pickup by a patient
3 or caregiver and no dispensing or storage of drugs or devices
4 occurs;

5 (11) Persons who sell or purchase medical products,
6 compounds, vaccines, or serums used in the prevention or cure of
7 animal diseases and maintenance of animal health if such medical
8 products, compounds, vaccines, or serums are not sold or purchased
9 under a direct, specific, written medical order of a licensed
10 veterinarian; ~~and~~

11 (12) A pharmacy or a person accredited by an accrediting
12 body which or who, pursuant to a medical order, (a) administers,
13 dispenses, or distributes medical gas or medical gas devices to
14 patients or ultimate users or (b) purchases or receives medical
15 gas or medical gas devices for administration, dispensing, or
16 distribution to patients or ultimate users; ~~and-~~

17 (13) A business or a person accredited by an accrediting
18 body which or who, pursuant to a medical order, (a) sells,
19 delivers, or distributes devices described in subsection (2) of
20 section 38-2841 to patients or ultimate users or (b) purchases or
21 receives such devices with intent to sell, deliver, or distribute
22 to patients or ultimate users.

23 Sec. 11. Section 38-2867, Revised Statutes Supplement,
24 2009, is amended to read:

25 38-2867 (1) Except as provided for pharmacy technicians

1 in sections 38-2890 to 38-2897, for persons described in
2 subdivision (12) or (13) of section 38-2850, and for individuals
3 authorized to dispense under a delegated dispensing permit, no
4 person other than a licensed pharmacist, a pharmacist intern, or a
5 practitioner with a pharmacy license shall provide pharmaceutical
6 care, compound and dispense drugs or devices, or dispense pursuant
7 to a medical order. Notwithstanding any other provision of law
8 to the contrary, a pharmacist or pharmacist intern may dispense
9 drugs or devices pursuant to a medical order of a practitioner
10 authorized to prescribe in another state if such practitioner could
11 be authorized to prescribe such drugs or devices in this state.

12 (2) Except as provided for pharmacy technicians in
13 sections 38-2890 to 38-2897, for persons described in subdivision
14 (12) or (13) of section 38-2850, and for individuals authorized to
15 dispense under a delegated dispensing permit, it shall be unlawful
16 for any person to permit or direct a person who is not a pharmacist
17 intern, a licensed pharmacist, or a practitioner with a pharmacy
18 license to provide pharmaceutical care, compound and dispense drugs
19 or devices, or dispense pursuant to a medical order.

20 (3) It shall be unlawful for any person to coerce
21 or attempt to coerce a pharmacist to enter into a delegated
22 dispensing agreement or to supervise any pharmacy technician for
23 any purpose or in any manner contrary to the professional judgment
24 of the pharmacist. Violation of this subsection by a health care
25 professional regulated pursuant to the Uniform Credentialing Act

1 shall be considered an act of unprofessional conduct. A violation
2 of this subsection by a facility shall be prima facie evidence
3 in an action against the license of the facility pursuant to the
4 Health Care Facility Licensure Act. Any pharmacist subjected to
5 coercion or attempted coercion pursuant to this subsection has a
6 cause of action against the person and may recover his or her
7 damages and reasonable attorney's fees.

8 (4) Violation of this section by an unlicensed person
9 shall be a Class III misdemeanor.

10 Sec. 12. Section 38-2869, Revised Statutes Supplement,
11 2009, is amended to read:

12 38-2869 (1)(a) Prior to the dispensing or the delivery
13 of a drug or device pursuant to a medical order to a patient
14 or caregiver, a pharmacist shall in all care settings conduct
15 a prospective drug utilization review. Such prospective drug
16 utilization review shall involve monitoring the patient-specific
17 medical history described in subdivision (b) of this subsection and
18 available to the pharmacist at the practice site for:

- 19 (i) Therapeutic duplication;
20 (ii) Drug-disease contraindications;
21 (iii) Drug-drug interactions;
22 (iv) Incorrect drug dosage or duration of drug treatment;
23 (v) Drug-allergy interactions; and
24 (vi) Clinical abuse or misuse.
25 (b) A pharmacist conducting a prospective drug

1 utilization review shall ensure that a reasonable effort is made
2 to obtain from the patient, his or her caregiver, or his or her
3 practitioner and to record and maintain records of the following
4 information to facilitate such review:

5 (i) The name, address, telephone number, date of birth,
6 and gender of the patient;

7 (ii) The patient's history of significant disease, known
8 allergies, and drug reactions and a comprehensive list of relevant
9 drugs and devices used by the patient; and

10 (iii) Any comments of the pharmacist relevant to the
11 patient's drug therapy.

12 (c) The assessment of data on drug use in any prospective
13 drug utilization review shall be based on predetermined standards,
14 approved by the board.

15 (2) (a) Prior to the dispensing or delivery of a drug or
16 device pursuant to a prescription, the pharmacist shall ensure that
17 a verbal offer to counsel the patient or caregiver is made. The
18 counseling of the patient or caregiver by the pharmacist shall be
19 on elements which, in the exercise of the pharmacist's professional
20 judgment, the pharmacist deems significant for the patient. Such
21 elements may include, but need not be limited to, the following:

22 (i) The name and description of the prescribed drug or
23 device;

24 (ii) The route of administration, dosage form, dose, and
25 duration of therapy;

1 (iii) Special directions and precautions for preparation,
2 administration, and use by the patient or caregiver;

3 (iv) Common side effects, adverse effects or
4 interactions, and therapeutic contraindications that may be
5 encountered, including avoidance, and the action required if such
6 effects, interactions, or contraindications occur;

7 (v) Techniques for self-monitoring drug therapy;

8 (vi) Proper storage;

9 (vii) Prescription refill information; and

10 (viii) Action to be taken in the event of a missed dose.

11 (b) The patient counseling provided for in this
12 subsection shall be provided in person whenever practical or by the
13 utilization of telephone service which is available at no cost to
14 the patient or caregiver.

15 (c) Patient counseling shall be appropriate to the
16 individual patient and shall be provided to the patient or
17 caregiver.

18 (d) Written information may be provided to the patient or
19 caregiver to supplement the patient counseling provided for in this
20 subsection but shall not be used as a substitute for such patient
21 counseling.

22 (e) This subsection shall not be construed to require a
23 pharmacist to provide patient counseling when:

24 (i) The patient or caregiver refuses patient counseling;

25 (ii) The pharmacist, in his or her professional judgment,

1 determines that patient counseling may be detrimental to the
2 patient's care or to the relationship between the patient and his
3 or her practitioner;

4 (iii) The patient is a patient or resident of a health
5 care facility or health care service licensed under the Health Care
6 Facility Licensure Act to whom prescription drugs or devices are
7 administered by a licensed or certified staff member or consultant
8 or a certified physician's assistant;

9 (iv) The practitioner authorized to prescribe drugs or
10 devices specifies that there shall be no patient counseling unless
11 he or she is contacted prior to such patient counseling. The
12 prescribing practitioner shall specify such prohibition in an oral
13 prescription or in writing on the face of a written prescription,
14 including any prescription which is received by facsimile or
15 electronic transmission. The pharmacist shall note "Contact Before
16 Counseling" on the face of the prescription if such is communicated
17 orally by the prescribing practitioner; ~~or~~

18 (v) A medical gas or a medical gas device is
19 administered, dispensed, or distributed by a person described in
20 subdivision (12) of section 38-2850; ~~or-~~

21 (vi) A device described in subsection (2) of section
22 38-2841 is sold, distributed, or delivered by a business or person
23 described in subdivision (13) of section 38-2850.

24 Sec. 13. Section 68-906, Reissue Revised Statutes of
25 Nebraska, is amended to read:

1 68-906 For purposes of paying medical assistance under
2 the Medical Assistance Act and sections 68-1002 and 68-1006, the
3 State of Nebraska accepts and assents to all applicable provisions
4 of Title XIX and Title XXI of the federal Social Security Act.
5 Any reference in the Medical Assistance Act to the federal Social
6 Security Act or other acts or sections of federal law shall be to
7 such federal acts or sections as they existed on January 1, ~~2009~~
8 2010.

9 Sec. 14. Section 68-1017, Reissue Revised Statutes of
10 Nebraska, is amended to read:

11 68-1017 (1) Any person, including vendors and providers
12 of medical assistance and social services, who, by means of a
13 willfully false statement or representation, or by impersonation
14 or other device, obtains or attempts to obtain, or aids or abets
15 any person to obtain or to attempt to obtain ~~(1)~~ (a) an assistance
16 certificate of award to which he or she is not entitled, ~~(2)~~
17 (b) any commodity, any foodstuff, any food ~~coupon~~, instrument,
18 any Supplemental Nutrition Assistance Program ~~coupon~~, ~~electronic~~
19 benefit, or electronic benefit card, or any payment to which
20 such individual is not entitled or a larger payment than that
21 to which he or she is entitled, ~~(3)~~ (c) any payment made on
22 behalf of a recipient of medical assistance or social services,
23 or ~~(4)~~ (d) any other benefit administered by the Department of
24 Health and Human Services, or who violates any statutory provision
25 relating to assistance to the aged, blind, or disabled, aid to

1 dependent children, social services, or medical assistance, commits
 2 an offense. ~~and~~

3 (2) Any person who commits an offense under subsection
 4 (1) of this section shall upon conviction be punished as follows:

5 (a) If the aggregate value of all funds or other benefits obtained
 6 or attempted to be obtained is less than five hundred dollars, the
 7 person so convicted shall be guilty of a Class III misdemeanor; or
 8 (b) if the aggregate value of all funds and other benefits obtained
 9 or attempted to be obtained is five hundred dollars or more, the
 10 person so convicted shall be guilty of a Class IV felony.

11 Sec. 15. Section 68-1017.01, Reissue Revised Statutes of
 12 Nebraska, is amended to read:

13 68-1017.01 (1) A person commits an offense if he
 14 or she knowingly uses, alters, or transfers any Supplemental
 15 Nutrition Assistance Program ~~coupons,~~ ~~electronic benefits,~~ or
 16 electronic benefit cards or any authorizations to participate
 17 in the Supplemental Nutrition Assistance Program in any manner not
 18 authorized by law. An offense under this subsection shall be a
 19 Class III misdemeanor if the value of the Supplemental Nutrition
 20 Assistance Program ~~coupons,~~ ~~electronic benefits,~~ electronic benefit
 21 cards, or authorizations is less than five hundred dollars and
 22 shall be a Class IV felony if the value is five hundred dollars or
 23 more.

24 (2) A person commits an offense if he or she knowingly
 25 (a) possesses any Supplemental Nutrition Assistance Program

1 ~~coupons, electronic~~ benefits, or electronic benefit cards or
2 any authorizations to participate in the Supplemental Nutrition
3 Assistance Program when such individual is not authorized by law to
4 possess them, (b) redeems Supplemental Nutrition Assistance Program
5 ~~coupons, electronic~~ benefits, or electronic benefit cards when he
6 or she is not authorized by law to redeem them, or (c) redeems
7 Supplemental Nutrition Assistance Program ~~coupons, electronic~~
8 benefits, or electronic benefit cards for purposes not authorized
9 by law. An offense under this subsection shall be a Class III
10 misdemeanor if the value of the Supplemental Nutrition Assistance
11 Program ~~coupons, electronic~~ benefits, electronic benefit cards, or
12 authorizations is less than five hundred dollars and shall be a
13 Class IV felony if the value is five hundred dollars or more.

14 (3) A person commits an offense if he or she knowingly
15 possesses blank authorizations to participate in the Supplemental
16 Nutrition Assistance Program when such possession is not authorized
17 by law. An offense under this subsection shall be a Class IV
18 felony.

19 (4) When any Supplemental Nutrition Assistance Program
20 ~~coupons, electronic~~ benefits, or electronic benefit cards or
21 any authorizations to participate in the Supplemental Nutrition
22 Assistance Program of various values are obtained in violation of
23 this section pursuant to one scheme or a continuing course of
24 conduct, whether from the same or several sources, such conduct
25 may be considered as one offense, and the values aggregated in

1 determining the grade of the offense.

2 Sec. 16. Section 68-1070, Reissue Revised Statutes of
3 Nebraska, is amended to read:

4 68-1070 (1) If the following non-United-States citizens
5 meet the income and other requirements for participation in the
6 medical assistance program established pursuant to the Medical
7 Assistance Act, in the program for financial assistance pursuant
8 to section 43-512, in the Supplemental Nutrition Assistance Program
9 administered by the State of Nebraska pursuant to the federal Food
10 and Nutrition Act of 2008, 7 U.S.C. 2011 et seq., as such sections
11 ~~as the act~~ existed on January 1, ~~2009,~~ 2010, or in the program for
12 assistance to the aged, blind, and disabled, such persons shall be
13 eligible for such program or benefits:

14 (a) Non-United-States citizens lawfully admitted,
15 regardless of the date entry was granted, into the United States
16 for permanent residence;

17 (b) ~~Refugees admitted under section 207 of the federal~~
18 ~~Immigration and Naturalization Act, non-United-States citizens~~
19 ~~granted asylum under section 208 of such federal act, and~~
20 ~~non-United-States citizens whose deportation is withheld under~~
21 ~~section 243(h) of such federal act, Non-United-States citizens~~
22 described in 8 U.S.C. 1613(b)(1)(A) through (C), as such section
23 existed on January 1, 2010, regardless of the date of entry into
24 the United States; and

25 (c) Individuals for whom coverage is mandated under

1 federal law.

2 (2) Individuals eligible for the Supplemental Nutrition
3 Assistance Program under this section shall receive any
4 Supplemental Nutrition Assistance Program ~~coupons or electronic~~
5 benefits or a state voucher which can be used only for food
6 products authorized under the federal Food and Nutrition Act of
7 2008, 7 U.S.C. 2011 et seq., as such sections as the act existed on
8 January 1, 2009, 2010, in the amount of the Supplemental Nutrition
9 Assistance Program benefit for which this individual was otherwise
10 eligible but for the citizenship provisions of ~~Public Law 104-193,~~
11 ~~110 Stat. 2105 (1996).~~ 7 U.S.C. 2015, as such section existed on
12 January 1, 2010.

13 (3) The income and resources of any individual who
14 assists a non-United-States citizen to enter the United States
15 by signing an affidavit of support shall be deemed available
16 in determining the non-United-States citizen's eligibility for
17 assistance until the non-United-States citizen becomes a United
18 States citizen.

19 Sec. 17. Section 70-1603, Reissue Revised Statutes of
20 Nebraska, is amended to read:

21 70-1603 No municipal utility owned and operated by a
22 village furnishing water, natural gas, or electricity at retail in
23 this state shall discontinue service to any domestic subscriber for
24 nonpayment of any past-due account unless such utility first gives
25 written notice by mail to any subscriber whose service is proposed

1 to be terminated at least seven days prior to termination. ~~As to~~
2 ~~any subscriber who has previously been identified as a welfare~~
3 ~~recipient to the utility by the Department of Health and Human~~
4 ~~Services, such notice shall be by certified mail and notice of such~~
5 ~~proposed termination shall be given to the department.~~

6 Sec. 18. Section 70-1605, Reissue Revised Statutes of
7 Nebraska, is amended to read:

8 70-1605 No public or private utility company, other than
9 a municipal utility owned and operated by a village, furnishing
10 water, natural gas, or electricity at retail in this state shall
11 discontinue service to any domestic subscriber for nonpayment of
12 any past-due account unless the utility company first gives notice
13 by first-class mail or in person to any subscriber whose service
14 is proposed to be terminated. If notice is given by first-class
15 mail, such mail shall be conspicuously marked as to its importance.
16 Service shall not be discontinued for at least seven days after
17 notice is sent or given. Holidays and weekends shall be excluded
18 from the seven days. ~~As to any subscriber who has previously been~~
19 ~~identified as a welfare recipient to the company by the Department~~
20 ~~of Health and Human Services, such notice shall be by certified~~
21 ~~mail and notice of such proposed termination shall be given to the~~
22 ~~department.~~

23 Sec. 19. Section 71-401, Reissue Revised Statutes of
24 Nebraska, is amended to read:

25 71-401 Sections 71-401 to 71-464 and section 21 of this

1 act shall be known and may be cited as the Health Care Facility
2 Licensure Act.

3 Sec. 20. Section 71-403, Reissue Revised Statutes of
4 Nebraska, is amended to read:

5 71-403 For purposes of the Health Care Facility Licensure
6 Act, unless the context otherwise requires, the definitions found
7 in sections 71-404 to 71-431 and section 21 of this act shall
8 apply.

9 Sec. 21. (1) Children's day health service means a
10 person or any legal entity which provides specialized care and
11 treatment, including an array of social, medical, rehabilitation,
12 or other support services for a period of less than twenty-four
13 consecutive hours in a community-based group program to twenty
14 or more persons under twenty-one years of age who require such
15 services due to medical dependence, birth trauma, congenital
16 anomalies, developmental disorders, or functional impairment.

17 (2) Children's day health service does not include
18 services provided under the Developmental Disabilities Services
19 Act.

20 Sec. 22. Section 71-415, Reissue Revised Statutes of
21 Nebraska, is amended to read:

22 71-415 Health care service means an adult day service,
23 a home health agency, a hospice or hospice service, ~~or~~ a respite
24 care service, or beginning January 1, 2011, a children's day health
25 service. Health care service does not include an in-home personal

1 services agency as defined in section 71-6501.

2 Sec. 23. Section 71-516.04, Reissue Revised Statutes of
3 Nebraska, is amended to read:

4 71-516.04 Any facility which offers to provide or
5 provides care for persons with Alzheimer's disease, dementia, or a
6 related disorder by means of an Alzheimer's special care unit shall
7 disclose the form of care or treatment provided that distinguishes
8 such form as being especially applicable to or suitable for such
9 persons. The disclosure shall be made to the Department of Health
10 and Human Services and to any person seeking placement within an
11 Alzheimer's special care unit. The department shall examine all
12 such disclosures in the records of the department as part of the
13 facility's license renewal procedure at the time of licensure or
14 relicensure.

15 The information disclosed shall explain the additional
16 care provided in each of the following areas:

17 (1) The Alzheimer's special care unit's written statement
18 of its overall philosophy and mission which reflects the needs
19 of residents afflicted with Alzheimer's disease, dementia, or a
20 related disorder;

21 (2) The process and criteria for placement in, transfer
22 to, or discharge from the unit;

23 (3) The process used for assessment and establishment of
24 the plan of care and its implementation, including the method by
25 which the plan of care evolves and is responsive to changes in

1 condition;

2 (4) Staff training and continuing education practices
3 which shall include, but not be limited to, four hours annually for
4 direct care staff. Such training shall include topics pertaining to
5 the form of care or treatment set forth in the disclosure described
6 in this section. The requirement in this subdivision shall not be
7 construed to increase the aggregate hourly training requirements of
8 the Alzheimer's special care unit;

9 (5) The physical environment and design features
10 appropriate to support the functioning of cognitively impaired
11 adult residents;

12 (6) The frequency and types of resident activities;

13 (7) The involvement of families and the availability of
14 family support programs; and

15 (8) The costs of care and any additional fees.

16 Sec. 24. Section 71-1559, Reissue Revised Statutes of
17 Nebraska, is amended to read:

18 71-1559 (1) Every modular housing unit, except those
19 constructed or manufactured by any school district or community
20 college area as a part of a buildings trade or other instructional
21 program offered by such district or area, manufactured, sold,
22 offered for sale, or leased in this state more than six months
23 after July 10, 1976, and before May 1, 1998, shall comply with the
24 seal requirements of the state agency responsible for regulation of
25 modular housing units as such requirements existed on the date of

1 manufacture.

2 (2) Every modular housing unit, except those constructed
3 or manufactured by any school district or community college area as
4 part of a buildings trade or other instructional program offered
5 by such district or area, manufactured, sold, offered for sale,
6 or leased in this state on or after May 1, 1998, shall bear a
7 seal issued by the commission certifying that the construction
8 and the structural, plumbing, heating, and electrical systems
9 of such modular housing unit have been installed in compliance
10 with its standards applicable at the time of manufacture.
11 Each manufacturer of such modular housing units, except those
12 constructed or manufactured by such school district or community
13 college area, shall submit its plans to the commission for
14 the purposes of inspection. The commission shall establish a
15 compliance assurance program consisting of an application form and
16 a compliance assurance manual. Such manual shall identify and list
17 all procedures which the manufacturer and the inspection agency
18 propose to implement to assure that the finished modular housing
19 unit conforms to the approved building system and the applicable
20 codes adopted by the commission. The compliance assurance program
21 requirements shall apply to all inspection agencies, whether
22 commission or authorized third party, and shall define duties and
23 responsibilities in the process of inspecting, monitoring, and
24 issuing seals for modular housing units. The commission shall
25 issue the seal only after ascertaining that the manufacturer

1 is in full compliance with the compliance assurance program
2 through inspections at the plant by the commission or authorized
3 third-party inspection agency. Such inspections shall be of
4 an unannounced frequency such that the required level of code
5 compliance performance is implemented and maintained throughout all
6 areas of plant and site operations that affect regulatory aspects
7 of the construction. Each seal issued by the state shall remain the
8 property of the commission and may be revoked by the commission in
9 the event of violation of the conditions of issuance.

10 (3) Modular housing units constructed or manufactured by
11 any school district or community college area as a part of a
12 buildings trade or other instructional program offered by such
13 district or area shall be inspected by the local inspection
14 authority or, upon request of the district or area, by the
15 commission. If the commission inspects a unit and finds that it
16 is in compliance, the commission shall issue a seal certifying
17 that the construction and the structural, plumbing, heating, and
18 electrical systems of such unit have been installed in compliance
19 with the standards applicable at the time of manufacture.

20 (4) The commission shall charge a seal fee of not less
21 than one hundred and not more than one thousand dollars per modular
22 housing unit, as determined annually by the commission after
23 published notice and a hearing, for seals issued by the commission
24 under subsection (2) or (3) of this section.

25 (5) Inspection fees shall be paid for all inspections

1 by the commission of manufacturing plants located outside of the
2 State of Nebraska. Such fees shall consist of a reimbursement by
3 the manufacturer of actual travel and inspection expenses only and
4 shall be paid prior to any issuance of seals.

5 (6) All fees collected under the Nebraska Uniform
6 Standards for Modular Housing Units Act shall be remitted to the
7 State Treasurer for credit to the ~~Modular Housing Units~~ Public
8 Service Commission Housing and Recreational Vehicle Cash Fund.
9 ~~which is hereby created.~~ Money credited to the fund pursuant to
10 this section shall be used by the commission for the purpose of
11 administering the act. ~~Transfers from the fund to the General Fund~~
12 ~~may be made at the direction of the Legislature.~~ Any money in the
13 ~~Modular Housing Units Cash Fund~~ available for investment shall be
14 ~~invested by the state investment officer pursuant to the Nebraska~~
15 ~~Capital Expansion Act and the Nebraska State Funds Investment Act.~~

16 Sec. 25. Section 71-1796, Reissue Revised Statutes of
17 Nebraska, is amended to read:

18 71-1796 Sections 71-1796 to ~~71-17,100~~ 71-1799 shall be
19 known and may be cited as the Nebraska Center for Nursing Act.

20 Sec. 26. Section 71-4604.01, Reissue Revised Statutes of
21 Nebraska, is amended to read:

22 71-4604.01 (1) (a) Every manufactured home or recreational
23 vehicle manufactured, sold, offered for sale, or leased in this
24 state more than four months after May 27, 1975, and before May 1,
25 1998, shall comply with the seal requirements of the state agency

1 responsible for regulation of manufactured homes or recreational
2 vehicles as such requirements existed on the date of manufacture.

3 (b) Every manufactured home or recreational vehicle
4 manufactured, sold, offered for sale, or leased in this state
5 on or after May 1, 1998, shall bear a seal issued by the commission
6 certifying that the body and frame design and construction and
7 the plumbing, heating, and electrical systems of such manufactured
8 home or recreational vehicle have been installed in compliance
9 with the standards adopted by the commission, applicable at the
10 time of manufacture. Manufactured homes destined for sale outside
11 the United States shall be exempt from displaying the seal issued
12 by the state if sufficient proof of such delivery is submitted
13 to the commission for review. Recreational vehicles destined for
14 sale or lease outside this state or the United States shall be
15 exempt from displaying the seal issued by the state if sufficient
16 proof of such delivery is submitted to the commission for review.
17 The commission shall issue the recreational-vehicle seal upon an
18 inspection of the plans and specifications for the recreational
19 vehicle or upon an actual inspection of the recreational vehicle
20 during or after construction if the recreational vehicle is in
21 compliance with state standards. The commission shall issue the
22 manufactured-home seal in accordance with the National Manufactured
23 Housing Construction and Safety Standards Act of 1974, 42 U.S.C.
24 5401 et seq., as such act existed on January 1, 2005. Each seal
25 issued by the state shall remain the property of the commission and

1 may be revoked by the commission in the event of a violation of the
2 conditions of issuance.

3 (2) The commission shall charge a fee of ~~not less than~~
4 ~~ten dollars and not more than seventy-five dollars,~~ as in an amount
5 determined annually by the commission after published notice and a
6 hearing, for seals issued by the commission. A seal shall be placed
7 on each manufactured home. The commission shall assess any costs
8 of inspections conducted outside of Nebraska to the manufacturer in
9 control of the inspected facility or to a manufacturer requesting
10 such inspection. Such costs shall include, but not be limited to,
11 actual travel, personnel, and inspection expenses and shall be paid
12 prior to any issuance of seals.

13 (3) The commission shall adopt and promulgate rules and
14 regulations governing the submission of plans and specifications of
15 manufactured homes and recreational vehicles. A person who submits
16 recreational-vehicle plans and specifications to the commission
17 for review and approval shall be assessed an hourly rate by
18 the commission for performing the review of the plans and
19 specifications and related functions. The hourly rate shall be not
20 less than fifteen dollars per hour and not more than seventy-five
21 dollars per hour as determined annually by the commission after
22 published notice and hearing based on the number of hours of review
23 time as follows:

24 (a) New model, one hour;

25 (b) Quality control manual, two hours;

- 1 (c) Typicals, one-half hour;
2 (d) Revisions, three-fourths hour;
3 (e) Engineering calculations, three-fourths hour;
4 (f) Initial package, fifteen hours; and
5 (g) Yearly renewal, two hours plus the three-fourths hour
6 for revisions.

7 (4) The commission shall charge each manufacturer an
8 inspection fee of two hundred fifty dollars for each inspection
9 of any new recreational vehicle manufactured by such manufacturer
10 and not bearing a seal issued by the State of Nebraska or some
11 reciprocal state.

12 (5) All fees collected pursuant to the Uniform Standard
13 Code for Manufactured Homes and Recreational Vehicles shall be
14 remitted to the State Treasurer for credit to the Manufactured
15 Homes and Recreational Vehicles Public Service Commission Housing
16 and Recreational Vehicle Cash Fund, which is hereby created. Money
17 credited to the fund pursuant to this section shall be used by
18 the commission for the purpose of administering the code. Any
19 money in the Manufactured Homes and Recreational Vehicles Cash Fund
20 available for investment shall be invested by the state investment
21 officer pursuant to the Nebraska Capital Expansion Act and the
22 Nebraska State Funds Investment Act.

23 Sec. 27. Section 71-7447, Reissue Revised Statutes of
24 Nebraska, is amended to read:

25 71-7447 (1) No person or entity may act as a wholesale

1 drug distributor in this state without first obtaining a wholesale
2 drug distributor license from the department. The department shall
3 issue a license to any applicant that satisfies the requirements
4 for licensure under the Wholesale Drug Distributor Licensing Act.
5 Manufacturers are exempt from any licensing and other requirements
6 of the act to the extent not required by federal law or
7 regulation except for those requirements deemed necessary and
8 appropriate under rules and regulations adopted and promulgated by
9 the department.

10 (2) Wholesale medical gas distributors shall be exempt
11 from any licensing and other requirements of the Wholesale Drug
12 Distributor Licensing Act to the extent not required under federal
13 law but shall be licensed as wholesale drug distributors by the
14 department for the limited purpose of engaging in the wholesale
15 distribution of medical gases upon application to the department,
16 payment of a licensure fee, and inspection of the applicant's
17 facility by the department, except that the applicant may submit
18 and the department may accept an inspection accepted in another
19 state or an inspection conducted by a nationally recognized
20 accreditation program approved by the board. For purposes of
21 such licensure, wholesale medical gas distributors shall only be
22 required to provide information required under subdivisions (1)(a)
23 through (1)(c) of section 71-7448.

24 (3) The Wholesale Drug Distributor Licensing Act does not
25 apply to:

1 (a) An agent or employee of a licensed wholesale drug
2 distributor who possesses drug samples when such agent or employee
3 is acting in the usual course of his or her business or employment;
4 or

5 (b) Any person who (i) engages in a wholesale transaction
6 relating to the manufacture, distribution, sale, transfer, or
7 delivery of medical gases the gross dollar value of which does not
8 exceed five percent of the total retail sales of medical gases by
9 such person during the immediately preceding calendar year and (ii)
10 has either a pharmacy permit or license ~~or a drug dispensing permit~~
11 or a delegated dispensing permit or is exempt from the practice of
12 pharmacy under subdivision (12) of section 38-2850.

13 Sec. 28. Section 71-8403, Reissue Revised Statutes of
14 Nebraska, is amended to read:

15 71-8403 (1) A patient may request a copy of the patient's
16 medical records or may request to examine such records. Access to
17 such records shall be provided upon request pursuant to sections
18 71-8401 to 71-8407, except that mental health medical records may
19 be withheld if any treating physician, psychologist, or mental
20 health practitioner determines in his or her professional opinion
21 that release of the records would not be in the best interest
22 of the patient unless the release is required by court order.
23 The request and any authorization shall be in writing. If an
24 authorization does not contain an expiration date or specify an
25 event the occurrence of which causes the authorization to expire,

1 the authorization shall expire twelve months after the date the
2 authorization was executed by the patient. and shall be valid for
3 one hundred eighty days after the date of execution by the patient.

4 (2) Upon receiving a written request for a copy of the
5 patient's medical records under subsection (1) of this section, the
6 provider shall furnish the person making the request a copy of such
7 records not later than thirty days after the written request is
8 received.

9 (3) Upon receiving a written request to examine the
10 patient's medical records under subsection (1) of this section, the
11 provider shall, as promptly as required under the circumstances but
12 no later than ten days after receiving the request: (a) Make the
13 medical records available for examination during regular business
14 hours; (b) inform the patient if the records do not exist or
15 cannot be found; (c) if the provider does not maintain the records,
16 inform the patient of the name and address of the provider who
17 maintains such records, if known; or (d) if unusual circumstances
18 have delayed handling the request, inform the patient in writing
19 of the reasons for the delay and the earliest date, not later than
20 twenty-one days after receiving the request, when the records will
21 be available for examination. The provider shall furnish a copy of
22 medical records to the patient as provided in subsection (2) of
23 this section if requested.

24 (4) This section does not require the retention of
25 records or impose liability for the destruction of records in the

1 ordinary course of business prior to receipt of a request made
2 under subsection (1) of this section. A provider shall not be
3 required to disclose confidential information in any medical record
4 concerning another patient or family member who has not consented
5 to the release of the record.

6 Sec. 29. Section 77-27,165, Reissue Revised Statutes of
7 Nebraska, is amended to read:

8 77-27,165 ~~Prior to December 1 of each year,~~ the
9 Department of Health and Human Services shall send notification
10 to the debtor of the assertion of the department's rights, or of
11 the rights of an individual not eligible as a public assistance
12 recipient, to all or a portion of the debtor's income tax refund.
13 The notice shall contain the procedures available to the debtor
14 for protesting the offset, the debtor's opportunity to give written
15 notice of intent to contest the validity of the claim before the
16 department within thirty days of the date of mailing the notice,
17 and the defenses the debtor may raise. The debt shall be certified
18 by the department through a preoffset review.

19 Sec. 30. Section 83-1217, Revised Statutes Supplement,
20 2009, is amended to read:

21 83-1217 The department shall contract for specialized
22 services and shall only contract with specialized programs
23 which meet certification and accreditation requirements. Assisted
24 services provided under this section through community-based
25 developmental disability programs shall be reimbursed on a daily

1 rate basis, including such services provided to eligible recipients
2 under the medical assistance program established in section 68-903
3 upon approval for such reimbursement from the federal Centers for
4 Medicare and Medicaid Services. The department shall apply to the
5 federal Centers for Medicare and Medicaid Services for approval
6 of any necessary waiver amendments to permit such reimbursement
7 ~~no later than September 1, 2009,~~ and shall begin reimbursing such
8 services on a daily rate basis no later than ~~ninety days after such~~
9 ~~approval.~~ March 1, 2011. In order to be certified, each specialized
10 program shall:

- 11 (1) Have an internal quality assurance process;
- 12 (2) Have a program evaluation component;
- 13 (3) Have a complaint mechanism for persons with
14 developmental disabilities and their families;
- 15 (4) Have a process to ensure direct and open
16 communication with the department;
- 17 (5) Develop, implement, and regularly evaluate a plan to
18 ensure retention of quality employees and prevent staff turnover;
- 19 (6) Have measures to enhance staff training and
20 development;
- 21 (7) Be governed by a local governing board or have an
22 advisory committee, the membership of which consists of (a) ~~county~~
23 ~~commissioners or other locally elected officials,~~ (b) persons with
24 ~~developmental disabilities or members of their families,~~ and (c)
25 ~~persons who are not elected officials,~~ persons with developmental

1 disabilities, ~~or~~ (b) family members or legal guardians of persons
2 with developmental disabilities, and (c) persons who are interested
3 community members; ~~At least one-third of the membership shall~~
4 ~~be persons with developmental disabilities or members of their~~
5 ~~families. No more than one-third of the membership shall be elected~~
6 ~~officials, and no more than one-third of the membership shall be~~
7 ~~persons who are not elected officials, persons with developmental~~
8 ~~disabilities, or family members of persons with developmental~~
9 ~~disabilities;~~

10 (8) Meet accreditation standards developed by the
11 department;

12 (9) Require a criminal history record information check
13 of all employees hired on or after September 13, 1997, who work
14 directly with clients receiving services and who are not licensed
15 or certified as members of their profession; and

16 (10) Meet any other certification requirements developed
17 by the department to further the purposes of the Developmental
18 Disabilities Services Act.

19 Sec. 31. Section 83-1220, Reissue Revised Statutes of
20 Nebraska, is amended to read:

21 83-1220 The department shall conduct hearings initiated
22 under section 83-1219 using hearing officers. The department may
23 employ, retain, or approve such qualified hearing officers as are
24 necessary to conduct the hearings. The hearing officers shall not
25 be persons who are employees or officers of a local agency which

1 is involved in providing services to the person with developmental
2 disabilities. A person who otherwise qualifies to conduct a hearing
3 shall not be considered an employee of the agency solely because
4 the person is paid by the agency to serve as a hearing officer.
5 No hearing officer shall participate in any way in any hearing
6 or matter in which the hearing officer may have a conflict of
7 interest. ~~Hearing officers appointed and assigned by the~~ The
8 department shall have exclusive original jurisdiction over cases
9 arising under sections 83-1219 to 83-1224, and in no event shall
10 juvenile courts have jurisdiction over such matters.

11 Sec. 32. Section 83-1221, Reissue Revised Statutes of
12 Nebraska, is amended to read:

13 83-1221 Upon the receipt of a petition pursuant to
14 section 83-1219, the department shall assign it to a hearing
15 officer. The hearing officer shall receive all subsequent pleadings
16 and shall conduct the hearing. At the hearing the parties shall
17 present evidence on the issues raised in the pleadings. At the
18 completion of the proceedings, the hearing officer shall prepare a
19 report based on the evidence presented containing recommendations
20 for the director to make findings of fact and conclusions of
21 law. Within forty-five days after the receipt of a request for
22 a hearing, the ~~hearing officer~~ director shall prepare a final
23 decision and order directing such action as may be necessary. At
24 the request of either party for good cause shown, the hearing
25 officer may grant specific extensions of time beyond this period.

1 The report and the final decision and order shall be delivered to
2 each party or attorney of record by certified mail, ~~and to the~~
3 ~~director.~~

4 Sec. 33. Section 83-1222, Reissue Revised Statutes of
5 Nebraska, is amended to read:

6 83-1222 Any party at a hearing conducted pursuant to
7 section 83-1219 shall have the right to:

8 (1) Be accompanied and advised by counsel and by
9 individuals with special knowledge or training with respect to
10 the needs of persons with developmental disabilities;

11 (2) Present evidence and confront, cross-examine, and
12 compel the attendance of witnesses;

13 (3) Prohibit the introduction of any evidence at the
14 hearing that has not been disclosed to that party at least five
15 days before the hearing;

16 (4) Obtain a written or electronic verbatim record of the
17 hearing; and

18 (5) Obtain written findings of fact and decisions from
19 the director.

20 The hearing officer may also produce evidence on his or
21 her own motion.

22 Sec. 34. Section 83-1223, Reissue Revised Statutes of
23 Nebraska, is amended to read:

24 83-1223 The hearing officer shall have the power by
25 subpoena to compel the appearance of witnesses and the production

1 of any relevant evidence. Any witness compelled to attend or
2 produce evidence shall be entitled to the fees and expenses allowed
3 in district court. Any failure to respond to such subpoena shall be
4 certified by the ~~hearing officer~~ director to the district court of
5 Lancaster County for enforcement or for punishment for contempt of
6 the district court.

7 Sec. 35. Section 83-1224, Reissue Revised Statutes of
8 Nebraska, is amended to read:

9 83-1224 (1) Any party aggrieved by the findings,
10 conclusions, or final decision and order of the ~~hearing officer~~
11 director shall be entitled to judicial review under this section.
12 Any party of record also may seek enforcement of the final decision
13 and order of the ~~hearing officer~~ director pursuant to this section.

14 (2) Proceedings for judicial review shall be instituted
15 by filing a petition in the district court of Lancaster County
16 within thirty days after service of the final decision and order
17 on the party seeking such review. All parties of record shall be
18 made parties to the proceedings. The court, in its discretion, may
19 permit other interested parties to intervene.

20 (3) The filing of a petition for judicial review to such
21 district court shall operate to stay the enforcement of the final
22 decision and order of the ~~hearing officer~~. director. While judicial
23 proceedings are pending in district court and unless the parties
24 otherwise agree, the person with developmental disabilities shall
25 remain in his or her current placement. If the health or safety

1 of the person with developmental disabilities or of other persons
2 would be endangered by delaying a change in placement, the service
3 provider may make such change without prejudice to the rights of
4 any party.

5 (4) Within thirty days after receiving notification that
6 a petition for judicial review has been filed or, if good cause
7 is shown, within such further time as the court may allow, the
8 department shall prepare and transmit to the court a certified
9 transcript of the proceedings before the hearing officer.

10 (5) Judicial review shall be heard de novo on the
11 record. The court shall receive the records of the administrative
12 proceedings, base its decision on the preponderance of the
13 evidence, and grant such relief as the court determines is
14 appropriate. The district court may affirm, reverse, or modify
15 the decision of the ~~hearing officer,~~ director, or remand the case
16 to the ~~hearing officer~~ director for further proceedings, including
17 the receipt of additional evidence, for good cause shown.

18 (6) An aggrieved party may secure a review of any final
19 judgment of the district court under this section by appeal to the
20 Court of Appeals. Such appeal shall be taken in the manner provided
21 by law for appeals in civil cases and shall be heard de novo on the
22 record.

23 (7) When no petition for judicial review or other civil
24 action is filed within thirty days after service of the final
25 decision and order on all of the parties, the ~~hearing officer's~~

1 director's final decision and order shall become effective.
2 Proceedings for enforcement of a ~~hearing officer's~~ the director's
3 final decision and order shall be instituted by filing a petition
4 for appropriate relief in the district court of Lancaster County
5 within one year after the date of the ~~hearing officer's~~ director's
6 final decision and order.

7 Sec. 36. (1) The Public Service Commission Housing and
8 Recreational Vehicle Cash Fund is created. The fund shall consist
9 of fees collected under the Nebraska Uniform Standards for Modular
10 Housing Units Act and fees collected pursuant to the Uniform
11 Standard Code for Manufactured Homes and Recreational Vehicles.

12 (2) Money credited to the fund shall be used by the
13 Public Service Commission for the purposes of administering the
14 Nebraska Uniform Standards for Modular Housing Units Act and the
15 Uniform Standard Code for Manufactured Homes and Recreational
16 Vehicles.

17 (3) Transfers from the fund to the General Fund may be
18 made at the direction of the Legislature. Any money in the Public
19 Service Commission Housing and Recreational Vehicle Cash Fund
20 available for investment shall be invested by the state investment
21 officer pursuant to the Nebraska Capital Expansion Act and the
22 Nebraska State Funds Investment Act.

23 (4) On the operative date of this section, the State
24 Treasurer shall transfer any money in the Modular Housing Units
25 Cash Fund and any money in the Manufactured Homes and Recreational

1 Vehicles Cash Fund to the Public Service Commission Housing and
2 Recreational Vehicle Cash Fund.

3 Sec. 37. Sections 24, 26, 36, and 40 of this act become
4 operative on July 1, 2010. Sections 6, 7, 8, 9, 10, 11, 12, 13,
5 14, 15, 16, 19, 20, 21, 22, 23, 27, 30, 31, 32, 33, 34, 35, and
6 39 of this act become operative three calendar months after the
7 adjournment of this legislative session. The other sections of this
8 act become operative on their effective date.

9 Sec. 38. Original sections 38-1901, 38-1902, 38-1908,
10 38-1918, 70-1603, 70-1605, 71-1796, 71-8403, and 77-27,165, Reissue
11 Revised Statutes of Nebraska, are repealed.

12 Sec. 39. Original sections 38-2605, 38-2617, 38-2841,
13 68-906, 68-1017, 68-1017.01, 68-1070, 71-401, 71-403, 71-415,
14 71-516.04, 71-7447, 83-1220, 83-1221, 83-1222, 83-1223, and
15 83-1224, Reissue Revised Statutes of Nebraska, and sections
16 38-2826, 38-2850, 38-2867, 38-2869, and 83-1217, Revised Statutes
17 Supplement, 2009, are repealed.

18 Sec. 40. Original sections 71-1559 and 71-4604.01,
19 Reissue Revised Statutes of Nebraska, are repealed.

20 Sec. 41. The following section is outright repealed:
21 Section 71-17,100, Reissue Revised Statutes of Nebraska.

22 Sec. 42. Since an emergency exists, this act takes effect
23 when passed and approved according to law.