

E AND R AMENDMENTS TO LB 23

Introduced by Murante, 49, Chairman Enrollment and Review

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

3           Section 1. Section 21-610, Reissue Revised Statutes of  
4 Nebraska, is amended to read:

5           21-610 When any such organization ~~shall have~~ has  
6 established in this state an institution for the care of children  
7 or persons who are incapacitated in any manner and such institution  
8 ~~shall have~~ has been incorporated under the laws of Nebraska, such  
9 corporation shall have power to act either by itself or jointly  
10 with any natural person or persons (1) as administrator of the  
11 estate of any deceased person whose domicile was within the county  
12 in which the corporation is located or whose domicile was outside  
13 the State of Nebraska, (2) as executor under a last will and  
14 testament or as guardian of the property of any infant, person  
15 with ~~mental retardation,~~ an intellectual disability, person with  
16 a mental disorder, or person under other disability, or (3) as  
17 trustee for any person or of the estate of any deceased person  
18 under the appointment of any court of record having jurisdiction of  
19 the estate of such person.

20           Sec. 2. Section 23-104.03, Reissue Revised Statutes of  
21 Nebraska, is amended to read:

22           23-104.03 Each county shall have the authority (1)  
23 to plan, initiate, fund, maintain, administer, and evaluate

1 facilities, programs, and services that meet the rehabilitation,  
2 treatment, care, training, educational, residential, diagnostic,  
3 evaluation, community supervision, and protective service needs of  
4 dependent, aged, blind, disabled, ill, or infirm persons, persons  
5 with a mental disorder, and persons with ~~mental retardation~~ an  
6 intellectual disability domiciled in the county, (2) to purchase  
7 outright by installment contract or by mortgage with the power to  
8 borrow funds in connection with such contract or mortgage, hold,  
9 sell, and lease for a period of more than one year real estate  
10 necessary for use of the county to plan, initiate, fund, maintain,  
11 administer, and evaluate such facilities, programs, and services,  
12 (3) to lease personal property necessary for such facilities,  
13 programs, and services, and such lease may provide for installment  
14 payments which extend over a period of more than one year,  
15 notwithstanding the provisions of section 23-132 or 23-916, (4)  
16 to enter into compacts with other counties, state agencies, other  
17 political subdivisions, and private nonprofit agencies to exercise  
18 and carry out the powers to plan, initiate, fund, maintain,  
19 administer, and evaluate such facilities, programs, and services,  
20 and (5) to contract for such services from agencies, either public  
21 or private, which provide such services on a vendor basis. Compacts  
22 with other public agencies pursuant to subdivision (4) of this  
23 section shall be subject to the Interlocal Cooperation Act.

24           Sec. 3. Section 28-105.01, Reissue Revised Statutes of  
25 Nebraska, is amended to read:

26           28-105.01 (1) Notwithstanding any other provision of law,  
27 the death penalty shall not be imposed upon any person who was

1 under the age of eighteen years at the time of the commission of  
2 the crime.

3 (2) Notwithstanding any other provision of law, the  
4 death penalty shall not be imposed upon any person with ~~mental~~  
5 ~~retardation~~, an intellectual disability.

6 (3) As used in subsection (2) of this section, ~~mental~~  
7 ~~retardation~~ intellectual disability means significantly subaverage  
8 general intellectual functioning existing concurrently with  
9 deficits in adaptive behavior. An intelligence quotient of seventy  
10 or below on a reliably administered intelligence quotient test  
11 shall be presumptive evidence of ~~mental retardation~~, intellectual  
12 disability.

13 (4) If (a) a jury renders a verdict finding the  
14 existence of one or more aggravating circumstances as provided  
15 in section 29-2520 or (b) (i) the information contains a notice of  
16 aggravation as provided in section 29-1603 and (ii) the defendant  
17 waives his or her right to a jury determination of the alleged  
18 aggravating circumstances, the court shall hold a hearing prior  
19 to any sentencing determination proceeding as provided in section  
20 29-2521 upon a verified motion of the defense requesting a ruling  
21 that the penalty of death be precluded under subsection (2) of  
22 this section. If the court finds, by a preponderance of the  
23 evidence, that the defendant is a person with ~~mental retardation~~,  
24 an intellectual disability, the death sentence shall not be  
25 imposed. A ruling by the court that the evidence of diminished  
26 intelligence introduced by the defendant does not preclude the  
27 death penalty under subsection (2) of this section shall not

1 restrict the defendant's opportunity to introduce such evidence  
2 at the sentencing determination proceeding as provided in section  
3 29-2521 or to argue that such evidence should be given mitigating  
4 significance.

5 Sec. 4. Section 28-401, Revised Statutes Cumulative  
6 Supplement, 2012, is amended to read:

7 28-401 As used in the Uniform Controlled Substances Act,  
8 unless the context otherwise requires:

9 (1) Administer shall mean to directly apply a controlled  
10 substance by injection, inhalation, ingestion, or any other means  
11 to the body of a patient or research subject;

12 (2) Agent shall mean an authorized person who acts on  
13 behalf of or at the direction of another person but shall not  
14 include a common or contract carrier, public warehouse keeper, or  
15 employee of a carrier or warehouse keeper;

16 (3) Administration shall mean the Drug Enforcement  
17 Administration, United States Department of Justice;

18 (4) Controlled substance shall mean a drug, biological,  
19 substance, or immediate precursor in Schedules I to V of section  
20 28-405. Controlled substance shall not include distilled spirits,  
21 wine, malt beverages, tobacco, or any nonnarcotic substance if such  
22 substance may, under the Federal Food, Drug, and Cosmetic Act, 21  
23 U.S.C. 301 et seq., as such act existed on January 1, 2009, and  
24 the law of this state, be lawfully sold over the counter without a  
25 prescription;

26 (5) Counterfeit substance shall mean a controlled  
27 substance which, or the container or labeling of which, without

1 authorization, bears the trademark, trade name, or other  
2 identifying mark, imprint, number, or device, or any likeness  
3 thereof, of a manufacturer, distributor, or dispenser other than  
4 the person or persons who in fact manufactured, distributed, or  
5 dispensed such substance and which thereby falsely purports or is  
6 represented to be the product of, or to have been distributed by,  
7 such other manufacturer, distributor, or dispenser;

8 (6) Department shall mean the Department of Health and  
9 Human Services;

10 (7) Division of Drug Control shall mean the personnel of  
11 the Nebraska State Patrol who are assigned to enforce the Uniform  
12 Controlled Substances Act;

13 (8) Dispense shall mean to deliver a controlled substance  
14 to an ultimate user or a research subject pursuant to a medical  
15 order issued by a practitioner authorized to prescribe, including  
16 the packaging, labeling, or compounding necessary to prepare the  
17 controlled substance for such delivery;

18 (9) Distribute shall mean to deliver other than by  
19 administering or dispensing a controlled substance;

20 (10) Prescribe shall mean to issue a medical order;

21 (11) Drug shall mean (a) articles recognized in  
22 the official United States Pharmacopoeia, official Homeopathic  
23 Pharmacopoeia of the United States, official National Formulary,  
24 or any supplement to any of them, (b) substances intended for use  
25 in the diagnosis, cure, mitigation, treatment, or prevention of  
26 disease in human beings or animals, and (c) substances intended for  
27 use as a component of any article specified in subdivision (a) or

1 (b) of this subdivision, but shall not include devices or their  
2 components, parts, or accessories;

3 (12) Deliver or delivery shall mean the actual,  
4 constructive, or attempted transfer from one person to another  
5 of a controlled substance, whether or not there is an agency  
6 relationship;

7 (13) Marijuana shall mean all parts of the plant of  
8 the genus cannabis, whether growing or not, the seeds thereof,  
9 and every compound, manufacture, salt, derivative, mixture, or  
10 preparation of such plant or its seeds, but shall not include  
11 the mature stalks of such plant, hashish, tetrahydrocannabinols  
12 extracted or isolated from the plant, fiber produced from such  
13 stalks, oil or cake made from the seeds of such plant, any other  
14 compound, manufacture, salt, derivative, mixture, or preparation of  
15 such mature stalks, or the sterilized seed of such plant which is  
16 incapable of germination. When the weight of marijuana is referred  
17 to in the Uniform Controlled Substances Act, it shall mean its  
18 weight at or about the time it is seized or otherwise comes into  
19 the possession of law enforcement authorities, whether cured or  
20 uncured at that time;

21 (14) Manufacture shall mean the production, preparation,  
22 propagation, conversion, or processing of a controlled substance,  
23 either directly or indirectly, by extraction from substances of  
24 natural origin, independently by means of chemical synthesis, or  
25 by a combination of extraction and chemical synthesis, and shall  
26 include any packaging or repackaging of the substance or labeling  
27 or relabeling of its container. Manufacture shall not include

1 the preparation or compounding of a controlled substance by an  
2 individual for his or her own use, except for the preparation or  
3 compounding of components or ingredients used for or intended to  
4 be used for the manufacture of methamphetamine, or the preparation,  
5 compounding, conversion, packaging, or labeling of a controlled  
6 substance: (a) By a practitioner as an incident to his or her  
7 prescribing, administering, or dispensing of a controlled substance  
8 in the course of his or her professional practice; or (b) by a  
9 practitioner, or by his or her authorized agent under his or her  
10 supervision, for the purpose of, or as an incident to, research,  
11 teaching, or chemical analysis and not for sale;

12 (15) Narcotic drug shall mean any of the following,  
13 whether produced directly or indirectly by extraction from  
14 substances of vegetable origin, independently by means of chemical  
15 synthesis, or by a combination of extraction and chemical  
16 synthesis: (a) Opium, opium poppy and poppy straw, coca leaves,  
17 and opiates; (b) a compound, manufacture, salt, derivative, or  
18 preparation of opium, coca leaves, or opiates; or (c) a substance  
19 and any compound, manufacture, salt, derivative, or preparation  
20 thereof which is chemically equivalent to or identical with any  
21 of the substances referred to in subdivisions (a) and (b) of this  
22 subdivision, except that the words narcotic drug as used in the  
23 Uniform Controlled Substances Act shall not include decocainized  
24 coca leaves or extracts of coca leaves, which extracts do not  
25 contain cocaine or ecgonine, or isoquinoline alkaloids of opium;

26 (16) Opiate shall mean any substance having an  
27 addiction-forming or addiction-sustaining liability similar to

1 morphine or being capable of conversion into a drug having  
2 such addiction-forming or addiction-sustaining liability. Opiate  
3 shall not include the dextrorotatory isomer of 3-methoxy-n  
4 methylmorphinan and its salts. Opiate shall include its racemic and  
5 levorotatory forms;

6 (17) Opium poppy shall mean the plant of the species  
7 *Papaver somniferum* L., except the seeds thereof;

8 (18) Poppy straw shall mean all parts, except the seeds,  
9 of the opium poppy after mowing;

10 (19) Person shall mean any corporation, association,  
11 partnership, limited liability company, or one or more individuals;

12 (20) Practitioner shall mean a physician, a physician  
13 assistant, a dentist, a veterinarian, a pharmacist, a podiatrist,  
14 an optometrist, a certified nurse midwife, a certified registered  
15 nurse anesthetist, a nurse practitioner, a scientific investigator,  
16 a pharmacy, a hospital, or any other person licensed, registered,  
17 or otherwise permitted to distribute, dispense, prescribe, conduct  
18 research with respect to, or administer a controlled substance in  
19 the course of practice or research in this state, including an  
20 emergency medical service as defined in section 38-1207;

21 (21) Production shall include the manufacture, planting,  
22 cultivation, or harvesting of a controlled substance;

23 (22) Immediate precursor shall mean a substance which is  
24 the principal compound commonly used or produced primarily for use  
25 and which is an immediate chemical intermediary used or likely  
26 to be used in the manufacture of a controlled substance, the  
27 control of which is necessary to prevent, curtail, or limit such



1 manufacture;

2 (23) State shall mean the State of Nebraska;

3 (24) Ultimate user shall mean a person who lawfully  
4 possesses a controlled substance for his or her own use, for the  
5 use of a member of his or her household, or for administration  
6 to an animal owned by him or her or by a member of his or her  
7 household;

8 (25) Hospital shall have the same meaning as in section  
9 71-419;

10 (26) Cooperating individual shall mean any person, other  
11 than a commissioned law enforcement officer, who acts on behalf of,  
12 at the request of, or as agent for a law enforcement agency for the  
13 purpose of gathering or obtaining evidence of offenses punishable  
14 under the Uniform Controlled Substances Act;

15 (27) Hashish or concentrated cannabis shall mean: (a) The  
16 separated resin, whether crude or purified, obtained from a plant  
17 of the genus cannabis; or (b) any material, preparation, mixture,  
18 compound, or other substance which contains ten percent or more by  
19 weight of tetrahydrocannabinols;

20 (28) Exceptionally hazardous drug shall mean (a)  
21 a narcotic drug, (b) thiophene analog of phencyclidine,  
22 (c) phencyclidine, (d) amobarbital, (e) secobarbital, (f)  
23 pentobarbital, (g) amphetamine, or (h) methamphetamine;

24 (29) Imitation controlled substance shall mean a  
25 substance which is not a controlled substance but which, by way  
26 of express or implied representations and consideration of other  
27 relevant factors including those specified in section 28-445,

1 would lead a reasonable person to believe the substance is a  
2 controlled substance. A placebo or registered investigational drug  
3 manufactured, distributed, possessed, or delivered in the ordinary  
4 course of practice or research by a health care professional shall  
5 not be deemed to be an imitation controlled substance;

6 (30) (a) Controlled substance analogue shall mean a  
7 substance (i) the chemical structure of which is substantially  
8 similar to the chemical structure of a Schedule I or Schedule  
9 II controlled substance as provided in section 28-405 or (ii)  
10 which has a stimulant, depressant, analgesic, or hallucinogenic  
11 effect on the central nervous system that is substantially similar  
12 to or greater than the stimulant, depressant, analgesic, or  
13 hallucinogenic effect on the central nervous system of a Schedule I  
14 or Schedule II controlled substance as provided in section 28-405.  
15 A controlled substance analogue shall, to the extent intended for  
16 human consumption, be treated as a controlled substance under  
17 Schedule I of section 28-405 for purposes of the Uniform Controlled  
18 Substances Act; and

19 (b) Controlled substance analogue shall not include (i)  
20 a controlled substance, (ii) any substance generally recognized as  
21 safe and effective within the meaning of the Federal Food, Drug,  
22 and Cosmetic Act, 21 U.S.C. 301 et seq., as such act existed on  
23 January 1, 2009, (iii) any substance for which there is an approved  
24 new drug application, or (iv) with respect to a particular person,  
25 any substance if an exemption is in effect for investigational use  
26 for that person, under section 505 of the Federal Food, Drug, and  
27 Cosmetic Act, 21 U.S.C. 355, as such section existed on January

1 1, 2009, to the extent conduct with respect to such substance is  
2 pursuant to such exemption;

3 (31) Anabolic steroid shall mean any drug or hormonal  
4 substance, chemically and pharmacologically related to testosterone  
5 (other than estrogens, progestins, and corticosteroids), that  
6 promotes muscle growth and includes any controlled substance in  
7 Schedule III(d) of section 28-405. Anabolic steroid shall not  
8 include any anabolic steroid which is expressly intended for  
9 administration through implants to cattle or other nonhuman species  
10 and has been approved by the Secretary of Health and Human Services  
11 for such administration, but if any person prescribes, dispenses,  
12 or distributes such a steroid for human use, such person shall  
13 be considered to have prescribed, dispensed, or distributed an  
14 anabolic steroid within the meaning of this subdivision;

15 (32) Chart order shall mean an order for a controlled  
16 substance issued by a practitioner for a patient who is in the  
17 hospital where the chart is stored or for a patient receiving  
18 detoxification treatment or maintenance treatment pursuant to  
19 section 28-412. Chart order shall not include a prescription;

20 (33) Medical order shall mean a prescription, a  
21 chart order, or an order for pharmaceutical care issued by a  
22 practitioner;

23 (34) Prescription shall mean an order for a controlled  
24 substance issued by a practitioner. Prescription shall not include  
25 a chart order;

26 (35) Registrant shall mean any person who has a  
27 controlled substances registration issued by the state or the

1 administration;

2 (36) Reverse distributor shall mean a person whose  
3 primary function is to act as an agent for a pharmacy, wholesaler,  
4 manufacturer, or other entity by receiving, inventorying, and  
5 managing the disposition of outdated, expired, or otherwise  
6 nonsaleable controlled substances;

7 (37) Signature shall mean the name, word, or mark of  
8 a person written in his or her own hand with the intent to  
9 authenticate a writing or other form of communication or a digital  
10 signature which complies with section 86-611 or an electronic  
11 signature;

12 (38) Facsimile shall mean a copy generated by a  
13 system that encodes a document or photograph into electrical  
14 signals, transmits those signals over telecommunications lines,  
15 and reconstructs the signals to create an exact duplicate of the  
16 original document at the receiving end;

17 (39) Electronic signature shall have the definition found  
18 in section 86-621;

19 (40) Electronic transmission shall mean transmission  
20 of information in electronic form. Electronic transmission may  
21 include computer-to-computer transmission or computer-to-facsimile  
22 transmission; and

23 (41) Long-term care facility shall mean an intermediate  
24 care facility, an intermediate care facility for ~~the mentally~~  
25 ~~retarded,~~ persons with developmental disabilities, a long-term care  
26 hospital, a mental health center, a nursing facility, or a skilled  
27 nursing facility, as such terms are defined in the Health Care

1 Facility Licensure Act.

2           Sec. 5. Section 30-2624, Reissue Revised Statutes of  
3 Nebraska, is amended to read:

4           30-2624 A visitor shall be trained in law, nursing,  
5 social work, mental health, ~~mental retardation~~, gerontology, or  
6 developmental disabilities and shall be an officer, employee, or  
7 special appointee of the court with no personal interest in the  
8 proceedings.

9           Any qualified person may be appointed visitor of a  
10 proposed ward, except that it shall be unlawful for any owner, part  
11 owner, manager, administrator, or employee, or any spouse of an  
12 owner, part owner, manager, administrator, or employee of a nursing  
13 home, room and board home, convalescent home, group care home,  
14 or institution providing residential care to any person ~~physically~~  
15 ~~or mentally handicapped, infirm, or~~ with a physical disability,  
16 with an intellectual disability, with an infirmity, or who is aged  
17 to be appointed visitor of any such person residing, being under  
18 care, receiving treatment, or being housed in any such home or  
19 institution within the State of Nebraska.

20           The court shall select the visitor who has the expertise  
21 to most appropriately evaluate the needs of the person who is  
22 allegedly incapacitated.

23           The court shall maintain a current list of persons  
24 trained in or having demonstrated expertise in the areas of mental  
25 health, ~~mental retardation~~, intellectual disability, drug abuse,  
26 alcoholism, gerontology, nursing, and social work, for the purpose  
27 of appointing a suitable visitor.

1           Sec. 6. Section 31-113, Reissue Revised Statutes of  
2 Nebraska, is amended to read:

3           31-113 The county board on actual view of the premises  
4 shall fix and allow such compensation for land appropriated and  
5 assess such damages as will in its judgment accrue from the  
6 construction of the improvement to each person or corporation  
7 making application as provided by section 31-112 and without such  
8 application to each person with ~~mental retardation~~, an intellectual  
9 disability, person with a mental disorder, or minor owning lands  
10 taken or affected by such improvement.

11          Sec. 7. Section 38-2404, Reissue Revised Statutes of  
12 Nebraska, is amended to read:

13          38-2404 Administrator or nursing home administrator means  
14 any individual who meets the education and training requirements  
15 of section 38-2419 and is responsible for planning, organizing,  
16 directing, and controlling the operation of a nursing home or  
17 an integrated system or who in fact performs such functions,  
18 whether or not such functions are shared by one or more other  
19 persons. Notwithstanding this section or any other provision of  
20 law, the administrator of an intermediate care facility for ~~the~~  
21 ~~mentally retarded~~ persons with developmental disabilities may be  
22 either a licensed nursing home administrator or a qualified ~~mental~~  
23 ~~retardation~~ developmental disabilities professional.

24          Sec. 8. Section 38-2826.01, Revised Statutes Cumulative  
25 Supplement, 2012, is amended to read:

26          38-2826.01 Long-term care facility means an intermediate  
27 care facility, an intermediate care facility for ~~the mentally~~

1 ~~retarded,~~ persons with developmental disabilities, a long-term care  
2 hospital, a mental health center, a nursing facility, or a skilled  
3 nursing facility, as such terms are defined in the Health Care  
4 Facility Licensure Act.

5           Sec. 9. Section 42-374, Reissue Revised Statutes of  
6 Nebraska, is amended to read:

7           42-374 A marriage may be annulled for any of the  
8 following causes:

9           (1) The marriage between the parties is prohibited by  
10 law;

11           (2) Either party is impotent at the time of marriage;

12           (3) Either party had a spouse living at the time of  
13 marriage; or

14           ~~(4) Either party was mentally ill or a person with mental~~  
15 ~~retardation at the time of marriage; or~~

16           ~~(5)~~ (4) Force or fraud.

17           Sec. 10. Section 43-289, Reissue Revised Statutes of  
18 Nebraska, is amended to read:

19           43-289 In no case shall a juvenile committed under the  
20 terms of the Nebraska Juvenile Code be confined after he or she  
21 reaches the age of majority. The court may, when the health or  
22 condition of any juvenile adjudged to be within the terms of such  
23 code shall require it, cause the juvenile to be placed in a public  
24 hospital or institution for treatment or special care or in an  
25 accredited and suitable private hospital or institution which will  
26 receive the juvenile for like purposes. Whenever any juvenile has  
27 been committed to the Department of Health and Human Services, the

1 department shall follow the court's orders, if any, concerning the  
2 juvenile's specific needs for treatment or special care for his  
3 or her physical well-being and healthy personality. If the court  
4 finds any such juvenile to be a person with ~~mental retardation,~~  
5 it an intellectual disability, the court may, upon attaching a  
6 physician's certificate and a report as to the mental capacity of  
7 such person, commit such juvenile directly to an authorized and  
8 appropriate state or local facility or home.

9           The marriage of any juvenile committed to a state  
10 institution under the age of nineteen years shall not make such  
11 juvenile of the age of majority.

12           A juvenile committed to any such institution shall be  
13 subject to the control of the superintendent thereof, and the  
14 superintendent, with the advice and consent of the Department of  
15 Health and Human Services, shall adopt and promulgate rules and  
16 regulations for the promotion, paroling, and final discharge of  
17 residents such as shall be considered mutually beneficial for  
18 the institution and the residents. Upon final discharge of any  
19 resident, such department shall file a certified copy of the  
20 discharge with the court which committed the resident.

21           Sec. 11. Section 44-710.01, Reissue Revised Statutes of  
22 Nebraska, is amended to read:

23           44-710.01 No policy of sickness and accident insurance  
24 shall be delivered or issued for delivery to any person in  
25 this state unless (1) the entire money and other considerations  
26 therefor are expressed therein, (2) the time at which the insurance  
27 takes effect and terminates is expressed therein, (3) it purports



1 to insure only one person, except that a policy may insure,  
2 originally or by subsequent amendment, upon the application of an  
3 adult member of a family who shall be deemed the policyholder,  
4 any two or more eligible members of that family, including  
5 husband, wife, dependent children, any children enrolled on a  
6 full-time basis in any college, university, or trade school, or  
7 any children under a specified age which shall not exceed thirty  
8 years and any other person dependent upon the policyholder; any  
9 individual policy hereinafter delivered or issued for delivery  
10 in this state which provides that coverage of a dependent child  
11 shall terminate upon the attainment of the limiting age for  
12 dependent children specified in the policy shall also provide in  
13 substance that attainment of such limiting age shall not operate  
14 to terminate the coverage of such child during the continuance  
15 of such policy and while the child is and continues to be both  
16 (a) incapable of self-sustaining employment by reason of ~~mental~~  
17 ~~retardation~~ an intellectual disability or a physical handicap  
18 disability and (b) chiefly dependent upon the policyholder for  
19 support and maintenance, if proof of such incapacity and dependency  
20 is furnished to the insurer by the policyholder within thirty-one  
21 days of the child's attainment of the limiting age and subsequently  
22 as may be required by the insurer but not more frequently than  
23 annually after the two-year period following the child's attainment  
24 of the limiting age; such insurer may charge an additional premium  
25 for and with respect to any such continuation of coverage beyond  
26 the limiting age of the policy with respect to such child, which  
27 premium shall be determined by the insurer on the basis of the

1 class of risks applicable to such child, (4) it contains a title  
2 on the face of the policy correctly describing the policy, (5)  
3 the exceptions and reductions of indemnity are set forth in  
4 the policy and, except those which are set forth in sections  
5 44-710.03 and 44-710.04, are printed, at the insurer's option,  
6 either included with the benefit provision to which they apply  
7 or under an appropriate caption such as EXCEPTIONS, or EXCEPTIONS  
8 AND REDUCTIONS; if an exception or reduction specifically applies  
9 only to a particular benefit of the policy, a statement of such  
10 exception or reduction shall be included with the benefit provision  
11 to which it applies, (6) each such form, including riders and  
12 endorsements, shall be identified by a form number in the lower  
13 left-hand corner of the first page thereof, (7) it contains no  
14 provision purporting to make any portion of the charter, rules,  
15 constitution, or bylaws of the insurer a part of the policy unless  
16 such portion is set forth in full in the policy, except in the  
17 case of the incorporation of, or reference to, a statement of  
18 rates or classification of risks, or short-rate table filed with  
19 the Director of Insurance, and (8) on or after January 1, 1999,  
20 any restrictive rider contains a notice of the existence of the  
21 Comprehensive Health Insurance Pool if the policy provides health  
22 insurance as defined in section 44-4209.

23           Sec. 12. Section 68-911, Reissue Revised Statutes of  
24 Nebraska, is amended to read:

25           68-911 (1) Medical assistance shall include coverage for  
26 health care and related services as required under Title XIX of the  
27 federal Social Security Act, including, but not limited to:

- 1 (a) Inpatient and outpatient hospital services;
- 2 (b) Laboratory and X-ray services;
- 3 (c) Nursing facility services;
- 4 (d) Home health services;
- 5 (e) Nursing services;
- 6 (f) Clinic services;
- 7 (g) Physician services;
- 8 (h) Medical and surgical services of a dentist;
- 9 (i) Nurse practitioner services;
- 10 (j) Nurse midwife services;
- 11 (k) Pregnancy-related services;
- 12 (l) Medical supplies; and
- 13 (m) Early and periodic screening and diagnosis and
- 14 treatment services for children.

15 (2) In addition to coverage otherwise required under this  
16 section, medical assistance may include coverage for health care  
17 and related services as permitted but not required under Title XIX  
18 of the federal Social Security Act, including, but not limited to:

- 19 (a) Prescribed drugs;
- 20 (b) Intermediate care facilities for ~~the mentally~~  
21 ~~retarded;~~ persons with developmental disabilities;
- 22 (c) Home and community-based services for aged persons  
23 and persons with disabilities;
- 24 (d) Dental services;
- 25 (e) Rehabilitation services;
- 26 (f) Personal care services;
- 27 (g) Durable medical equipment;

- 1 (h) Medical transportation services;
- 2 (i) Vision-related services;
- 3 (j) Speech therapy services;
- 4 (k) Physical therapy services;
- 5 (l) Chiropractic services;
- 6 (m) Occupational therapy services;
- 7 (n) Optometric services;
- 8 (o) Podiatric services;
- 9 (p) Hospice services;
- 10 (q) Mental health and substance abuse services;
- 11 (r) Hearing screening services for newborn and infant
- 12 children; and

13 (s) Administrative expenses related to administrative  
14 activities, including outreach services, provided by school  
15 districts and educational service units to students who are  
16 eligible or potentially eligible for medical assistance.

17 (3) No later than July 1, 2009, the department  
18 shall submit a state plan amendment or waiver to the federal  
19 Centers for Medicare and Medicaid Services to provide coverage  
20 under the medical assistance program for community-based secure  
21 residential and subacute behavioral health services for all  
22 eligible recipients, without regard to whether the recipient has  
23 been ordered by a mental health board under the Nebraska Mental  
24 Health Commitment Act to receive such services.

25 Sec. 13. Section 68-919, Reissue Revised Statutes of  
26 Nebraska, is amended to read:

27 68-919 (1) The recipient of medical assistance under the

1 medical assistance program shall be indebted to the department for  
2 the total amount paid for medical assistance on behalf of the  
3 recipient if:

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

6 (b) The recipient resided in a medical institution and,  
7 at the time of institutionalization or application for medical  
8 assistance, whichever is later, the department determines that the  
9 recipient could not have reasonably been expected to be discharged  
10 and resume living at home. For purposes of this section, medical  
11 institution means a nursing facility, an intermediate care facility  
12 for ~~the mentally retarded,~~ persons with developmental disabilities,  
13 or an inpatient hospital.

14 (2) The debt accruing under subsection (1) of this  
15 section arises during the life of the recipient but shall be held  
16 in abeyance until the death of the recipient. Any such debt to the  
17 department that exists when the recipient dies shall be recovered  
18 only after the death of the recipient's spouse, if any, and only  
19 when the recipient is not survived by a child who either is under  
20 twenty-one years of age or is blind or totally and permanently  
21 disabled as defined by the Supplemental Security Income criteria.

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

26 (4) In any probate proceedings in which the department  
27 has filed a claim under this section, no additional evidence of

1 foundation shall be required for the admission of the department's  
2 payment record supporting its claim if the payment record bears the  
3 seal of the department, is certified as a true copy, and bears the  
4 signature of an authorized representative of the department.

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

10 Sec. 14. Section 68-921, Reissue Revised Statutes of  
11 Nebraska, is amended to read:

12 68-921 For purposes of sections 68-921 to 68-925:

13 (1) Assets means property which is not exempt from  
14 consideration in determining eligibility for medical assistance  
15 under rules and regulations adopted and promulgated under section  
16 68-922;

17 (2) Community spouse monthly income allowance means the  
18 amount of income determined by the department in accordance with  
19 section 1924 of the federal Social Security Act, as amended, Public  
20 Law 100-360, 42 U.S.C. 1396r-5;

21 (3) Community spouse resource allowance means the amount  
22 of assets determined in accordance with section 1924 of the federal  
23 Social Security Act, as amended, Public Law 100-360, 42 U.S.C.  
24 1396r-5. For purposes of 42 U.S.C. 1396r-5(f)(2)(A)(i), the amount  
25 specified by the state shall be twelve thousand dollars;

26 (4) Home and community-based services means services  
27 furnished under home and community-based waivers as defined in

1 Title XIX of the federal Social Security Act, as amended, 42 U.S.C.  
2 1396;

3 (5) Qualified applicant means a person (a) who applies  
4 for medical assistance on or after July 9, 1988, (b) who is  
5 under care in a state-licensed hospital, a nursing facility, an  
6 intermediate care facility for ~~the mentally retarded~~, persons  
7 with developmental disabilities, an assisted-living facility, or  
8 a center for the developmentally disabled, as such terms are  
9 defined in the Health Care Facility Licensure Act, or an adult  
10 family home certified by the department or is receiving home  
11 and community-based services, and (c) whose spouse is not under  
12 such care or receiving such services and is not applying for or  
13 receiving medical assistance;

14 (6) Qualified recipient means a person (a) who has  
15 applied for medical assistance before July 9, 1988, and is eligible  
16 for such assistance, (b) who is under care in a facility certified  
17 to receive medical assistance funds or is receiving home and  
18 community-based services, and (c) whose spouse is not under such  
19 care or receiving such services and is not applying for or  
20 receiving medical assistance; and

21 (7) Spouse means the spouse of a qualified applicant or  
22 qualified recipient.

23 Sec. 15. Section 68-1202, Revised Statutes Cumulative  
24 Supplement, 2012, is amended to read:

25 68-1202 Social services may be provided on behalf of  
26 recipients with payments for such social services made directly  
27 to vendors. Social services shall include those mandatory and

1 optional services to former, present, or potential social services  
2 recipients provided for under the federal Social Security Act,  
3 as amended, and described by the State of Nebraska in the  
4 approved State Plan for Services. Such services may include, but  
5 shall not be limited to, foster care for children, child care,  
6 family planning, treatment for alcoholism and drug addiction,  
7 treatment for persons with ~~mental retardation~~, an intellectual  
8 disability, health-related services, protective services for  
9 children, homemaker services, employment services, foster care  
10 for adults, protective services for adults, transportation  
11 services, home management and other functional education services,  
12 housing improvement services, legal services, adult day services,  
13 home delivered or congregate meals, educational services, and  
14 secondary prevention services, including, but not limited to, home  
15 visitation, child screening and early intervention, and parenting  
16 education programs.

17 Sec. 16. Section 68-1801, Reissue Revised Statutes of  
18 Nebraska, is amended to read:

19 68-1801 Sections 68-1801 to 68-1809 and section 22 of  
20 this act shall be known and may be cited as the ~~ICF/MR~~ ICF/DD  
21 Reimbursement Protection Act.

22 Sec. 17. Section 68-1802, Reissue Revised Statutes of  
23 Nebraska, is amended to read:

24 68-1802 For purposes of the ~~ICF/MR~~ ICF/DD Reimbursement  
25 Protection Act:

26 (1) Department means the Department of Health and Human  
27 Services;



1           (2) Intermediate care facility for ~~the mentally retarded~~  
2 persons with developmental disabilities has the definition found in  
3 section 71-421;

4           (3) Medical assistance program means the program  
5 established pursuant to the Medical Assistance Act; and

6           (4) Net revenue means the revenue paid to an intermediate  
7 care facility for ~~the mentally retarded~~ persons with developmental  
8 disabilities for resident care, room, board, and services less  
9 contractual adjustments and does not include revenue from sources  
10 other than operations, including, but not limited to, interest and  
11 guest meals.

12           Sec. 18. Section 68-1803, Reissue Revised Statutes of  
13 Nebraska, is amended to read:

14           68-1803 (1) Each intermediate care facility for ~~the~~  
15 ~~mentally retarded~~ persons with developmental disabilities shall pay  
16 a tax equal to a percentage of its net revenue for the most recent  
17 State of Nebraska fiscal year. The percentage shall be (a) six  
18 percent prior to January 1, 2008, (b) five and one-half percent  
19 beginning January 1, 2008, through September 30, 2011, and (c) six  
20 percent beginning October 1, 2011.

21           (2) Taxes collected under this section shall be  
22 remitted to the State Treasurer for credit to the ~~ICF/MR~~ ICF/DD  
23 Reimbursement Protection Fund.

24           (3) Taxes collected pursuant to this section shall be  
25 reported on a separate line on the cost report of the intermediate  
26 care facility for ~~the mentally retarded,~~ persons with developmental  
27 disabilities, regardless of how such costs are reported on any

1 other cost report or income statement. The department shall  
2 recognize such tax as an allowable cost within the state plan  
3 for reimbursement of intermediate care facilities for ~~the mentally~~  
4 ~~retarded persons with developmental disabilities~~ which participate  
5 in the medical assistance program. The tax shall be a direct  
6 pass-through and shall not be subject to cost limitations.

7 Sec. 19. Section 68-1804, Revised Statutes Cumulative  
8 Supplement, 2012, is amended to read:

9 68-1804 (1) The ~~ICF/MR~~ ICF/DD Reimbursement Protection  
10 Fund is created. Any money in the fund available for investment  
11 shall be invested by the state investment officer pursuant to  
12 the Nebraska Capital Expansion Act and the Nebraska State Funds  
13 Investment Act. Interest and income earned by the fund shall be  
14 credited to the fund.

15 ~~(2) For fiscal year 2004-05, proceeds from the tax~~  
16 ~~imposed under section 68-1803 shall be allocated as follows:~~

17 ~~(a) First, fifty-five thousand dollars to the department~~  
18 ~~for administration of the fund;~~

19 ~~(b) Second, payment to intermediate care facilities for~~  
20 ~~the mentally retarded for the cost of the tax;~~

21 ~~(c) Third, three hundred thousand dollars, in addition~~  
22 ~~to any federal medicaid matching funds, for increases in payments~~  
23 ~~to non-state-operated intermediate care facilities for the mentally~~  
24 ~~retarded which shall be such facilities' only increase in payments~~  
25 ~~for such fiscal year;~~

26 ~~(d) Fourth, three hundred twelve thousand dollars, in~~  
27 ~~addition to any federal medicaid matching funds, for payment to~~

1 providers of community-based services for the purpose of reducing  
2 the waiting list of persons with developmental disabilities; and

3       ~~(e) Fifth, any money remaining in the fund after the~~  
4 ~~allocations required by subdivisions (2)(a) through (d) of this~~  
5 ~~section have been made shall be transferred to the General Fund.~~

6       ~~(3) For FY2005-06 through FY2010-11, proceeds from the~~  
7 ~~tax imposed pursuant to section 68-1803 shall be remitted to the~~  
8 ~~State Treasurer for credit as follows:~~

9       ~~(a) To the ICF/MR Reimbursement Protection Fund for~~  
10 ~~allocation as described in this subdivision: (i) Fifty-five~~  
11 ~~thousand dollars for administration of the fund; (ii) the amount~~  
12 ~~needed to reimburse intermediate care facilities for the mentally~~  
13 ~~retarded for the cost of the tax; (iii) three hundred thousand~~  
14 ~~dollars for payment of rates to non-state-operated intermediate~~  
15 ~~care facilities; and (iv) three hundred twelve thousand dollars~~  
16 ~~for community-based services for persons with developmental~~  
17 ~~disabilities; and~~

18       ~~(b) To the General Fund: The remainder of the proceeds.~~

19       (2) Beginning July 1, 2014, the department shall use  
20 the ICF/DD Reimbursement Protection Fund, including the matching  
21 federal financial participation under Title XIX of the Social  
22 Security Act, as amended, for purposes of enhancing rates  
23 paid under the medical assistance program to intermediate care  
24 facilities for persons with developmental disabilities and for  
25 an annual contribution to community-based programs for persons  
26 with developmental disabilities as specified in subsection (4)  
27 of this section, exclusive of the reimbursement paid under the

1 medical assistance program and any other state appropriations  
2 to intermediate care facilities for persons with developmental  
3 disabilities.

4 ~~(4)~~ (3) ~~For FY2011-12 and each fiscal year thereafter,~~  
5 through FY2013-14, proceeds from the tax imposed pursuant to  
6 section 68-1803 shall be remitted to the State Treasurer for credit  
7 to the ~~ICF/MR~~ ICF/DD Reimbursement Protection Fund for allocation  
8 as follows:

9 (a) First, fifty-five thousand dollars for administration  
10 of the fund;

11 (b) Second, the amount needed to reimburse intermediate  
12 care facilities for ~~the mentally retarded~~ persons with  
13 developmental disabilities for the cost of the tax;

14 (c) Third, three hundred twelve thousand dollars  
15 for community-based services for persons with developmental  
16 disabilities;

17 (d) Fourth, six hundred thousand dollars or such lesser  
18 amount as may be available in the fund for non-state-operated  
19 intermediate care facilities for ~~the mentally retarded,~~ persons  
20 with developmental disabilities, in addition to any continuation  
21 appropriations percentage increase provided by the Legislature  
22 to nongovernmental intermediate care facilities for ~~the mentally~~  
23 ~~retarded~~ persons with developmental disabilities under the  
24 medical assistance program, subject to approval by the federal  
25 Centers for Medicare and Medicaid Services of the department's  
26 annual application amending the medicaid state plan reimbursement  
27 methodology for intermediate care facilities for ~~the mentally~~

1 ~~retarded;~~ persons with developmental disabilities; and

2 (e) Fifth, the remainder of the proceeds to the General  
3 Fund.

4 (4) For FY2014-15 and each fiscal year thereafter, the  
5 ICF/DD Reimbursement Protection Fund shall be used as follows:

6 (a) First, fifty-five thousand dollars to the department  
7 for administration of the fund;

8 (b) Second, payment to the intermediate care facilities  
9 for persons with developmental disabilities for the cost of the  
10 tax;

11 (c) Third, three hundred twelve thousand dollars, in  
12 addition to any federal medicaid matching funds, for payment  
13 to providers of community-based services for persons with  
14 developmental disabilities; and

15 (d) Fourth, rebase rates under the medical assistance  
16 program in accordance with the medicaid state plan as defined  
17 in section 68-907. In calculating rates, the proceeds of the tax  
18 provided for in section 68-1803 and not utilized under subdivisions

19 (a), (b), and (c) of this subsection shall be used to enhance rates  
20 in non-state-operated intermediate care facilities for persons  
21 with developmental disabilities by increasing the annual inflation  
22 factor to the extent allowed by such proceeds and any funds  
23 appropriated by the Legislature.

24 Sec. 20. Section 68-1805, Reissue Revised Statutes of  
25 Nebraska, is amended to read:

26 68-1805 (1) On or before July 1, 2004, the department  
27 shall submit an application to the Centers for Medicare and

1 Medicaid Services of the United States Department of Health and  
2 Human Services amending the state medicaid plan to provide for  
3 utilization of money in the ~~ICF/MR~~ ICF/DD Reimbursement Protection  
4 Fund to increase medicaid payments to intermediate care facilities  
5 for ~~the mentally retarded~~, persons with developmental disabilities.

6 (2) The tax imposed under section 68-1803 is not due and  
7 payable until such amendment to the state medicaid plan is approved  
8 by the Centers for Medicare and Medicaid Services.

9 Sec. 21. Section 68-1806, Reissue Revised Statutes of  
10 Nebraska, is amended to read:

11 68-1806 (1) Until July 1, 2014:

12 ~~(1)~~ (a) Collection of the tax imposed by section 68-1803  
13 shall be discontinued if:

14 ~~(a)~~ (i) The amendment to the state medicaid plan  
15 described in section 68-1805 is disapproved by the Centers for  
16 Medicare and Medicaid Services;

17 ~~(b)~~ (ii) The department reduces rates paid to  
18 intermediate care facilities for ~~the mentally retarded persons~~  
19 with developmental disabilities to an amount less than the rates  
20 effective September 1, 2003; or

21 ~~(c)~~ (iii) The department or any other state agency  
22 attempts to utilize the money in the ~~ICF/MR~~ ICF/DD Reimbursement  
23 Protection Fund for any use other than uses permitted pursuant to  
24 the ~~ICF/MR~~ ICF/DD Reimbursement Protection Act; and-

25 ~~(2)~~ (b) If collection of the tax is discontinued as  
26 provided in ~~subsection (1)~~ subdivision (a) of this section,  
27 subsection, all money in the fund shall be returned to the

1 intermediate care facilities for ~~the mentally retarded~~ persons with  
2 developmental disabilities from which the tax was collected on the  
3 same basis as the tax was assessed.

4 (2) Beginning on July 1, 2014:

5 (a) The department shall discontinue collection of the  
6 tax provided for in section 68-1803:

7 (i) If federal financial participation to match the  
8 payments by intermediate care facilities for persons with  
9 developmental disabilities pursuant to section 68-1803 becomes  
10 unavailable under federal law or the rules and regulations of the  
11 Centers for Medicare and Medicaid Services of the United States  
12 Department of Health and Human Services; or

13 (ii) If money in the ICF/DD Reimbursement Protection Fund  
14 is appropriated, transferred, or otherwise expended for any use  
15 other than uses permitted pursuant to the ICF/DD Reimbursement  
16 Protection Act; and

17 (b) If collection of the tax provided for in section  
18 68-1803 is discontinued as provided in subdivision (a) of this  
19 subsection, the money in the ICF/DD Reimbursement Protection Fund  
20 shall be returned to the intermediate care facilities for persons  
21 with developmental disabilities from which the tax was collected on  
22 the same basis as collected.

23 Sec. 22. The department shall collect the tax provided  
24 for in section 68-1803 and remit the tax to the State Treasurer for  
25 credit to the ICF/DD Reimbursement Protection Fund. Beginning July  
26 1, 2014, no proceeds from the tax provided for in section 68-1803,  
27 including the federal match, shall be placed in the General Fund

1 unless otherwise provided in the ICF/DD Reimbursement Protection  
2 Act.

3           Sec. 23. Section 68-1807, Reissue Revised Statutes of  
4 Nebraska, is amended to read:

5           68-1807 (1) An intermediate care facility for ~~the~~  
6 mentally retarded persons with developmental disabilities that  
7 fails to pay the tax required by section 68-1803 shall be subject  
8 to a penalty of five hundred dollars per day of delinquency. The  
9 total amount of the penalty assessed under this section shall  
10 not exceed five percent of the tax due from the intermediate  
11 care facility for ~~the mentally retarded~~ persons with developmental  
12 disabilities for the year for which the tax is assessed.

13           (2) The department shall collect the penalties and remit  
14 them to the State Treasurer for distribution in accordance with  
15 Article VII, section 5, of the Constitution of Nebraska.

16           Sec. 24. Section 68-1808, Reissue Revised Statutes of  
17 Nebraska, is amended to read:

18           68-1808 An intermediate care facility for ~~the mentally~~  
19 retarded persons with developmental disabilities that has paid a  
20 tax that is not required by section 68-1803 may file a claim  
21 for refund with the department. The department may by rule and  
22 regulation establish procedures for filing and consideration of  
23 such claims.

24           Sec. 25. Section 68-1809, Reissue Revised Statutes of  
25 Nebraska, is amended to read:

26           68-1809 The department may adopt and promulgate rules and  
27 regulations to carry out the ~~ICF/MR~~ ICF/DD Reimbursement Protection



1 Act.

2           Sec. 26. Section 71-413, Reissue Revised Statutes of  
3 Nebraska, is amended to read:

4           71-413 Health care facility means an ambulatory surgical  
5 center, an assisted-living facility, a center or group home for  
6 the developmentally disabled, a critical access hospital, a general  
7 acute hospital, a health clinic, a hospital, an intermediate  
8 care facility, an intermediate care facility for ~~the mentally~~  
9 ~~retarded~~, persons with developmental disabilities, a long-term care  
10 hospital, a mental health center, a nursing facility, a pharmacy,  
11 a psychiatric or mental hospital, a public health clinic, a  
12 rehabilitation hospital, a skilled nursing facility, or a substance  
13 abuse treatment center.

14           Sec. 27. Section 71-421, Reissue Revised Statutes of  
15 Nebraska, is amended to read:

16           71-421 Intermediate care facility for ~~the mentally~~  
17 ~~retarded~~ persons with developmental disabilities means a facility  
18 where shelter, food, and training or habilitation services, advice,  
19 counseling, diagnosis, treatment, care, nursing care, or related  
20 services are provided for a period of more than twenty-four  
21 consecutive hours to four or more persons residing at such facility  
22 who have ~~mental retardation or related conditions~~, including  
23 ~~epilepsy, cerebral palsy, or other developmental disabilities~~. a  
24 developmental disability.

25           Sec. 28. Section 71-434, Reissue Revised Statutes of  
26 Nebraska, is amended to read:

27           71-434 (1) Licensure activities under the Health Care

1 Facility Licensure Act shall be funded by license fees. An  
2 applicant for an initial or renewal license under section 71-433  
3 shall pay a license fee as provided in this section.

4 (2) License fees shall include a base fee of fifty  
5 dollars and an additional fee based on:

6 (a) Variable costs to the department of inspections,  
7 architectural plan reviews, and receiving and investigating  
8 complaints, including staff salaries, travel, and other similar  
9 direct and indirect costs;

10 (b) The number of beds available to persons residing at  
11 the health care facility;

12 (c) The program capacity of the health care facility or  
13 health care service; or

14 (d) Other relevant factors as determined by the  
15 department.

16 Such additional fee shall be no more than two thousand  
17 six hundred dollars for a hospital or a health clinic operating  
18 as an ambulatory surgical center, no more than two thousand  
19 dollars for an assisted-living facility, a health clinic providing  
20 hemodialysis or labor and delivery services, an intermediate care  
21 facility, an intermediate care facility for ~~the mentally retarded,~~  
22 persons with developmental disabilities, a nursing facility, or  
23 a skilled nursing facility, no more than one thousand dollars  
24 for home health agencies, hospice services, and centers for the  
25 developmentally disabled, and no more than seven hundred dollars  
26 for all other health care facilities and health care services.

27 (3) If the licensure application is denied, the license

1 fee shall be returned to the applicant, except that the department  
2 may retain up to twenty-five dollars as an administrative fee  
3 and may retain the entire license fee if an inspection has been  
4 completed prior to such denial.

5 (4) The department shall also collect the fee provided in  
6 subsection (1) of this section for reinstatement of a license that  
7 has lapsed or has been suspended or revoked. The department shall  
8 collect a fee of ten dollars for a duplicate original license.

9 (5) The department shall collect a fee from any applicant  
10 or licensee requesting an informal conference with a representative  
11 peer review organization under section 71-452 to cover all costs  
12 and expenses associated with such conference.

13 (6) The department shall adopt and promulgate rules  
14 and regulations for the establishment of license fees under this  
15 section.

16 (7) The department shall remit all license fees collected  
17 under this section to the State Treasurer for credit to the Health  
18 and Human Services Cash Fund. License fees collected under this  
19 section shall only be used for activities related to the licensure  
20 of health care facilities and health care services.

21 Sec. 29. Section 71-1101, Reissue Revised Statutes of  
22 Nebraska, is amended to read:

23 71-1101 Sections 71-1101 to 71-1134 and section 32 of  
24 this act shall be known and may be cited as the Developmental  
25 Disabilities Court-Ordered Custody Act.

26 Sec. 30. Section 71-1104, Reissue Revised Statutes of  
27 Nebraska, is amended to read:

1           71-1104 For purposes of the Developmental Disabilities  
2 Court-Ordered Custody Act, the definitions in sections 71-1105 to  
3 71-1116 and section 32 of this act apply.

4           Sec. 31. Section 71-1107, Reissue Revised Statutes of  
5 Nebraska, is amended to read:

6           71-1107 Developmental disability means ~~mental retardation~~  
7 an intellectual disability or a severe chronic cognitive  
8 impairment, other than mental illness, that is manifested before  
9 the age of twenty-two years and is likely to continue indefinitely.

10          Sec. 32. Section 71-1110, Reissue Revised Statutes of  
11 Nebraska, is amended to read:

12          ~~71-1110 Mental retardation~~ Intellectual disability  
13 means a state of significantly subaverage general intellectual  
14 functioning existing concurrently with deficits in adaptive  
15 behavior which originates in the developmental period.

16          Sec. 33. Section 71-2102, Reissue Revised Statutes of  
17 Nebraska, is amended to read:

18          71-2102 The Legislature finds that shaken baby syndrome  
19 is the medical term used to describe the violent shaking of an  
20 infant or child and the injuries or other results sustained by  
21 the infant or child. The Legislature further finds that shaken  
22 baby syndrome may occur when an infant or child is violently  
23 shaken as part of a pattern of abuse or because an adult has  
24 momentarily succumbed to the frustration of responding to a crying  
25 infant or child. The Legislature further finds that these injuries  
26 can include brain swelling and damage, subdural hemorrhage, ~~mental~~  
27 ~~retardation,~~ intellectual disability, or death. The Legislature

1 further finds and declares that there is a present and growing need  
2 to provide programs aimed at reducing the number of cases of shaken  
3 baby syndrome in Nebraska.

4 Sec. 34. Section 71-2411, Reissue Revised Statutes of  
5 Nebraska, is amended to read:

6 71-2411 For purposes of the Emergency Box Drug Act:

7 (1) Authorized personnel means any medical doctor, doctor  
8 of osteopathy, registered nurse, licensed practical nurse, nurse  
9 practitioner, pharmacist, or physician assistant;

10 (2) Department means the Department of Health and Human  
11 Services;

12 (3) Drug means any prescription drug or device or legend  
13 drug or device defined under section 38-2841, any nonprescription  
14 drug as defined under section 38-2829, any controlled substance  
15 as defined under section 28-405, or any device as defined under  
16 section 38-2814;

17 (4) Emergency box drugs means drugs required to meet the  
18 immediate therapeutic needs of patients when the drugs are not  
19 available from any other authorized source in time to sufficiently  
20 prevent risk of harm to such patients by the delay resulting from  
21 obtaining such drugs from such other authorized source;

22 (5) Long-term care facility means an intermediate care  
23 facility, an intermediate care facility for ~~the mentally retarded,~~  
24 persons with developmental disabilities, a long-term care hospital,  
25 a mental health center, a nursing facility, or a skilled nursing  
26 facility, as such terms are defined in the Health Care Facility  
27 Licensure Act;

1           (6) Multiple dose vial means any bottle in which more  
2 than one dose of a liquid drug is stored or contained;

3           (7) Pharmacist means a pharmacist as defined in section  
4 38-2832 who is employed by a supplying pharmacy or who has  
5 contracted with a long-term care facility to provide consulting  
6 services; and

7           (8) Supplying pharmacy means a pharmacy that supplies  
8 drugs for an emergency box located in a long-term care facility.  
9 Drugs in the emergency box are owned by the supplying pharmacy.

10           Sec. 35. Section 71-2445, Reissue Revised Statutes of  
11 Nebraska, is amended to read:

12           71-2445 For purposes of the Automated Medication Systems  
13 Act:

14           (1) Automated medication distribution machine means a  
15 type of automated medication system that stores medication to  
16 be administered to a patient by a person credentialed under the  
17 Uniform Credentialing Act;

18           (2) Automated medication system means a mechanical system  
19 that performs operations or activities, other than compounding,  
20 administration, or other technologies, relative to storage and  
21 packaging for dispensing or distribution of medications and that  
22 collects, controls, and maintains all transaction information  
23 and includes, but is not limited to, a prescription medication  
24 distribution machine or an automated medication distribution  
25 machine. An automated medication system may only be used in  
26 conjunction with the provision of pharmacist care;

27           (3) Chart order means an order for a drug or device

1 issued by a practitioner for a patient who is in the hospital  
2 where the chart is stored or for a patient receiving detoxification  
3 treatment or maintenance treatment pursuant to section 28-412.  
4 Chart order does not include a prescription;

5 (4) Hospital has the definition found in section 71-419;

6 (5) Long-term care facility means an intermediate care  
7 facility, an intermediate care facility for ~~the mentally retarded,~~  
8 persons with developmental disabilities, a long-term care hospital,  
9 a mental health center, a nursing facility, or a skilled nursing  
10 facility, as such terms are defined in the Health Care Facility  
11 Licensure Act;

12 (6) Medical order means a prescription, a chart order, or  
13 an order for pharmaceutical care issued by a practitioner;

14 (7) Pharmacist means any person who is licensed by the  
15 State of Nebraska to practice pharmacy;

16 (8) Pharmacist care means the provision by a pharmacist  
17 of medication therapy management, with or without the dispensing of  
18 drugs or devices, intended to achieve outcomes related to the cure  
19 or prevention of a disease, elimination or reduction of a patient's  
20 symptoms, or arresting or slowing of a disease process;

21 (9) Pharmacist remote order entry means entering an order  
22 into a computer system or drug utilization review by a pharmacist  
23 licensed to practice pharmacy in the State of Nebraska and located  
24 within the United States, pursuant to medical orders in a hospital,  
25 long-term care facility, or pharmacy licensed under the Health Care  
26 Facility Licensure Act;

27 (10) Practice of pharmacy means (a) the interpretation,

1 evaluation, and implementation of a medical order, (b) the  
2 dispensing of drugs and devices, (c) drug product selection,  
3 (d) the administration of drugs or devices, (e) drug utilization  
4 review, (f) patient counseling, (g) the provision of pharmaceutical  
5 care, and (h) the responsibility for compounding and labeling of  
6 dispensed or repackaged drugs and devices, proper and safe storage  
7 of drugs and devices, and maintenance of proper records. The active  
8 practice of pharmacy means the performance of the functions set  
9 out in this subdivision by a pharmacist as his or her principal or  
10 ordinary occupation;

11 (11) Practitioner means a certified registered nurse  
12 anesthetist, a certified nurse midwife, a dentist, an optometrist,  
13 a nurse practitioner, a physician assistant, a physician, a  
14 podiatrist, or a veterinarian;

15 (12) Prescription means an order for a drug or device  
16 issued by a practitioner for a specific patient, for emergency use,  
17 or for use in immunizations. Prescription does not include a chart  
18 order;

19 (13) Prescription medication distribution machine means  
20 a type of automated medication system that packages, labels, or  
21 counts medication in preparation for dispensing of medications by a  
22 pharmacist pursuant to a prescription; and

23 (14) Telepharmacy means the provision of pharmacist  
24 care, by a pharmacist located within the United States, using  
25 telecommunications, remote order entry, or other automations and  
26 technologies to deliver care to patients or their agents who are  
27 located at sites other than where the pharmacist is located.



1           Sec. 36. Section 71-5803.09, Reissue Revised Statutes of  
2 Nebraska, is amended to read:

3           71-5803.09 Intermediate care facility has the same  
4 meaning as in section 71-420 and includes an intermediate care  
5 facility for ~~the mentally retarded~~ persons with developmental  
6 disabilities that has sixteen or more beds. Intermediate care  
7 facility for ~~the mentally retarded~~ persons with developmental  
8 disabilities has the same meaning as in section 71-421.

9           Sec. 37. Section 71-6018.01, Reissue Revised Statutes of  
10 Nebraska, is amended to read:

11           71-6018.01 (1) Unless a waiver is granted pursuant to  
12 subsection (2) of this section, a nursing facility shall use the  
13 services of (a) a licensed registered nurse for at least eight  
14 consecutive hours per day, seven days per week and (b) a licensed  
15 registered nurse or licensed practical nurse on a twenty-four-hour  
16 basis seven days per week. Except when waived under subsection  
17 (2) of this section, a nursing facility shall designate a licensed  
18 registered nurse or licensed practical nurse to serve as a charge  
19 nurse on each tour of duty. The Director of Nursing Services shall  
20 be a licensed registered nurse, and this requirement shall not be  
21 waived. The Director of Nursing Services may serve as a charge  
22 nurse only when the nursing facility has an average daily occupancy  
23 of sixty or fewer residents.

24           (2) The department may waive either the requirement that  
25 a nursing facility or long-term care hospital certified under  
26 Title XIX of the federal Social Security Act, as amended, use  
27 the services of a licensed registered nurse for at least eight

1 consecutive hours per day, seven days per week, or the requirement  
2 that a nursing facility or long-term care hospital certified under  
3 Title XIX of the federal Social Security Act, as amended, use the  
4 services of a licensed registered nurse or licensed practical nurse  
5 on a twenty-four-hour basis seven days per week, including the  
6 requirement for a charge nurse on each tour of duty, if:

7 (a)(i) The facility or hospital demonstrates to the  
8 satisfaction of the department that it has been unable, despite  
9 diligent efforts, including offering wages at the community  
10 prevailing rate for the facilities or hospitals, to recruit  
11 appropriate personnel;

12 (ii) The department determines that a waiver of the  
13 requirement will not endanger the health or safety of individuals  
14 staying in the facility or hospital; and

15 (iii) The department finds that, for any periods in which  
16 licensed nursing services are not available, a licensed registered  
17 nurse or physician is obligated to respond immediately to telephone  
18 calls from the facility or hospital; or

19 (b) The department has been granted any waiver by the  
20 federal government of staffing standards for certification under  
21 Title XIX of the federal Social Security Act, as amended, and the  
22 requirements of subdivisions (a)(ii) and (iii) of this subsection  
23 have been met.

24 (3) The department shall apply for such a waiver from the  
25 federal government to carry out subdivision (1)(b) of this section.

26 (4) A waiver granted under this section shall be subject  
27 to annual review by the department. As a condition of granting

1 or renewing a waiver, a facility or hospital may be required to  
2 employ other qualified licensed personnel. The department may grant  
3 a waiver under this section if it determines that the waiver will  
4 not cause the State of Nebraska to fail to comply with any of  
5 the applicable requirements of medicaid so as to make the state  
6 ineligible for the receipt of all funds to which it might otherwise  
7 be entitled.

8 (5) The department shall provide notice of the granting  
9 of a waiver to the office of the state long-term care ombudsman and  
10 to the Nebraska Advocacy Services or any successor designated for  
11 the protection of and advocacy for persons with mental illness  
12 or ~~mental retardation.~~ an intellectual disability. A nursing  
13 facility granted a waiver shall provide written notification to  
14 each resident of the facility or, if appropriate, to the guardian,  
15 legal representative, or immediate family of the resident.

16 Sec. 38. Section 71-6039, Reissue Revised Statutes of  
17 Nebraska, is amended to read:

18 71-6039 (1) No person shall act as a nursing assistant in  
19 a nursing home unless such person:

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

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

25 (c) Has successfully completed a basic course of training  
26 approved by the department for nursing assistants within one  
27 hundred twenty days of initial employment in the capacity of a

1 nursing assistant at any nursing home.

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

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

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

15 (3) The department may prescribe a curriculum for  
16 training nursing assistants and may adopt and promulgate rules  
17 and regulations for such courses of training. The content of  
18 the courses of training and competency evaluation programs shall  
19 be consistent with federal requirements unless exempted. The  
20 department may approve courses of training if such courses of  
21 training meet the requirements of this section. Such courses of  
22 training shall include instruction on the responsibility of each  
23 nursing assistant to report suspected abuse or neglect pursuant  
24 to sections 28-372 and 28-711. Nursing homes may carry out  
25 approved courses of training within the nursing home, except that  
26 nursing homes may not conduct the competency evaluation part of  
27 the program. The prescribed training shall be administered by a

1 licensed registered nurse.

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

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

13 Sec. 39. Section 71-6721, Reissue Revised Statutes of  
14 Nebraska, is amended to read:

15 71-6721 For purposes of the Medication Aide Act:

16 (1) Ability to take medications independently means the  
17 individual is physically capable of (a) the act of taking or  
18 applying a dose of a medication, (b) taking or applying the  
19 medication according to a specific prescription or recommended  
20 protocol, and (c) observing and monitoring himself or herself for  
21 desired effect, side effects, interactions, and contraindications  
22 of the medication and taking appropriate actions based upon those  
23 observations;

24 (2) Administration of medication includes, but is not  
25 limited to (a) providing medications for another person according  
26 to the five rights, (b) recording medication provision, and (c)  
27 observing, monitoring, reporting, and otherwise taking appropriate

1 actions regarding desired effects, side effects, interactions, and  
2 contraindications associated with the medication;

3 (3) Caretaker means a parent, foster parent, family  
4 member, friend, or legal guardian who provides care for an  
5 individual;

6 (4) Child care facility means an entity or a person  
7 licensed under the Child Care Licensing Act;

8 (5) Competent individual means an adult who is the  
9 ultimate recipient of medication and who has the capability and  
10 capacity to make an informed decision about taking medications;

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

13 (7) Direction and monitoring means the acceptance  
14 of responsibility for observing and taking appropriate action  
15 regarding any desired effects, side effects, interactions, and  
16 contraindications associated with the medication by a (a) competent  
17 individual for himself or herself, (b) caretaker, or (c) licensed  
18 health care professional;

19 (8) Facility means a health care facility or health  
20 care service as defined in section 71-413 or 71-415 or an  
21 entity or person certified by the department to provide home  
22 and community-based services;

23 (9) Five rights means getting the right drug to the right  
24 recipient in the right dosage by the right route at the right time;

25 (10) Health care professional means an individual for  
26 whom administration of medication is included in the scope of  
27 practice;

1 (11) Home means the residence of an individual but does  
2 not include any facility or school;

3 (12) Intermediate care facility for ~~the mentally retarded~~  
4 persons with developmental disabilities has the definition found in  
5 section 71-421;

6 (13) Informed decision means a decision made knowingly,  
7 based upon capacity to process information about choices and  
8 consequences, and made voluntarily;

9 (14) Medication means any prescription or nonprescription  
10 drug intended for treatment or prevention of disease or to affect  
11 body function in humans;

12 (15) Medication aide means an individual who is listed on  
13 the medication aide registry operated by the department;

14 (16) Nonprescription drug has the definition found in  
15 section 38-2829;

16 (17) Nursing home means any facility or a distinct part  
17 of any facility that provides care as defined in sections 71-420,  
18 71-422, 71-424, and 71-429;

19 (18) Prescription drug has the definition of prescription  
20 drug or device as found in section 38-2841;

21 (19) Provision of medication means the component of the  
22 administration of medication that includes giving or applying a  
23 dose of a medication to an individual and includes helping an  
24 individual in giving or applying such medication to himself or  
25 herself;

26 (20) PRN means an administration scheme in which a  
27 medication is not routine, is taken as needed, and requires

1 assessment for need and effectiveness;

2 (21) Recipient means a person who is receiving  
3 medication;

4 (22) Routine, with reference to medication, means the  
5 frequency of administration, amount, strength, and method are  
6 specifically fixed; and

7 (23) School means an entity or person meeting the  
8 requirements for a school set by Chapter 79.

9 Sec. 40. Section 71-6725, Reissue Revised Statutes of  
10 Nebraska, is amended to read:

11 71-6725 (1) The minimum competencies for a medication  
12 aide, a person licensed to operate a child care facility or a staff  
13 member of a child care facility, or a staff member of a school  
14 shall include (a) maintaining confidentiality, (b) complying with  
15 a recipient's right to refuse to take medication, (c) maintaining  
16 hygiene and current accepted standards for infection control, (d)  
17 documenting accurately and completely, (e) providing medications  
18 according to the five rights, (f) having the ability to understand  
19 and follow instructions, (g) practicing safety in application  
20 of medication procedures, (h) complying with limitations and  
21 conditions under which a medication aide may provide medications,  
22 and (i) having an awareness of abuse and neglect reporting  
23 requirements and any other areas as shall be determined by rules or  
24 regulations.

25 (2) The Department of Health and Human Services shall  
26 adopt and promulgate rules and regulations setting minimum  
27 standards for competencies listed in subsection (1) of this section



1 and methods for competency assessment of medication aides. The  
2 Department of Health and Human Services shall adopt and promulgate  
3 rules and regulations setting methods for competency assessment  
4 of the person licensed to operate a child care facility or staff  
5 of child care facilities. The State Department of Education shall  
6 adopt and promulgate rules and regulations setting methods for  
7 competency assessment of the school staff member.

8 (3) A medication aide, except ~~(except~~ one who is  
9 employed by a nursing home, an intermediate care facility for  
10 ~~the mentally retarded,~~ persons with developmental disabilities,  
11 ~~or an assisted-living facility)~~, facility, a person licensed to  
12 operate a child care facility or a staff member of a child care  
13 facility, or a staff member of a school shall not be required to  
14 take a course. The medication aide shall be assessed to determine  
15 that the medication aide has the competencies listed in subsection  
16 (1) of this section.

17 (4) A medication aide providing services in an  
18 assisted-living facility as defined in section 71-406, a nursing  
19 home, or an intermediate care facility for ~~the mentally retarded~~  
20 persons with developmental disabilities shall be required to  
21 have completed a forty-hour course on the competencies listed in  
22 subsection (1) of this section and competency standards established  
23 through rules and regulations as provided for in subsection (2)  
24 of this section, except that a medication aide who has, prior  
25 to January 1, 2003, completed a twenty-hour course and passed  
26 an examination developed and administered by the Department of  
27 Health and Human Services may complete a second twenty-hour course

1 supplemental to the first twenty-hour course in lieu of completing  
2 the forty-hour course. The department shall adopt and promulgate  
3 rules and regulations regarding the procedures and criteria  
4 for curriculum. Competency assessment shall include passing an  
5 examination developed and administered by the department. Criteria  
6 for establishing a passing standard for the examination shall be  
7 established in rules and regulations.

8 (5) Medication aides providing services in nursing homes  
9 or intermediate care facilities for ~~the mentally retarded persons~~  
10 with developmental disabilities shall also meet the requirements  
11 set forth in section 71-6039.

12 Sec. 41. Section 71-6727, Reissue Revised Statutes of  
13 Nebraska, is amended to read:

14 71-6727 (1) The department shall list each medication  
15 aide registration in the Medication Aide Registry as a Medication  
16 Aide-40-Hour, Medication Aide-20-Hour, or Medication Aide. A  
17 listing in the registry shall be valid for the term of the  
18 registration and upon renewal unless such listing is refused  
19 renewal or is removed as provided in section 71-6730.

20 (2) The registry shall contain the following information  
21 on each individual who meets the conditions in section 71-6726:

22 (a) The individual's full name; (b) information necessary to  
23 identify individuals, including those qualified to provide  
24 medications in nursing homes, intermediate care facilities for  
25 ~~the mentally retarded,~~ persons with developmental disabilities,  
26 or assisted-living facilities; (c) any conviction of a felony or  
27 misdemeanor reported to the department; and (d) other information

1 as the department may require by rule and regulation.

2 Sec. 42. Section 77-1827, Reissue Revised Statutes of  
3 Nebraska, is amended to read:

4 77-1827 The real property of persons with ~~mental~~  
5 ~~retardation~~ or an intellectual disability or a mental disorder so  
6 sold, or any interest they may have in real property sold for  
7 taxes, may be redeemed at any time within five years after such  
8 sale.

9 Sec. 43. Section 77-2704.12, Revised Statutes Cumulative  
10 Supplement, 2012, is amended to read:

11 77-2704.12 (1) Sales and use taxes shall not be imposed  
12 on the gross receipts from the sale, lease, or rental of  
13 and the storage, use, or other consumption in this state of  
14 purchases by (a) any nonprofit organization created exclusively  
15 for religious purposes, (b) any nonprofit organization providing  
16 services exclusively to the blind, (c) any nonprofit private  
17 educational institution established under sections 79-1601 to  
18 79-1607, (d) any regionally or nationally accredited, nonprofit,  
19 privately controlled college or university with its primary campus  
20 physically located in Nebraska, (e) any nonprofit (i) hospital,  
21 (ii) health clinic when one or more hospitals or the parent  
22 corporations of the hospitals own or control the health clinic  
23 for the purpose of reducing the cost of health services or when  
24 the health clinic receives federal funds through the United States  
25 Public Health Service for the purpose of serving populations that  
26 are medically underserved, (iii) skilled nursing facility, (iv)  
27 intermediate care facility, (v) assisted-living facility, (vi)

1 intermediate care facility for ~~the mentally retarded~~, persons  
2 with developmental disabilities, (vii) nursing facility, (viii)  
3 home health agency, (ix) hospice or hospice service, (x) respite  
4 care service, or (xi) mental health center licensed under the  
5 Health Care Facility Licensure Act, (f) any nonprofit licensed  
6 child-caring agency, (g) any nonprofit licensed child placement  
7 agency, or (h) any nonprofit organization certified by the  
8 Department of Health and Human Services to provide community-based  
9 services for persons with developmental disabilities.

10 (2) Any organization listed in subsection (1) of this  
11 section shall apply for an exemption on forms provided by the  
12 Tax Commissioner. The application shall be approved and a numbered  
13 certificate of exemption received by the applicant organization in  
14 order to be exempt from the sales and use tax.

15 (3) The appointment of purchasing agents shall be  
16 recognized for the purpose of altering the status of the  
17 construction contractor as the ultimate consumer of building  
18 materials which are physically annexed to the structure and  
19 which subsequently belong to the owner of the organization or  
20 institution. The appointment of purchasing agents shall be in  
21 writing and occur prior to having any building materials annexed  
22 to real estate in the construction, improvement, or repair. The  
23 contractor who has been appointed as a purchasing agent may apply  
24 for a refund of or use as a credit against a future use tax  
25 liability the tax paid on inventory items annexed to real estate  
26 in the construction, improvement, or repair of a project for a  
27 licensed not-for-profit institution.

1           (4) Any organization listed in subsection (1) of this  
2 section which enters into a contract of construction, improvement,  
3 or repair upon property annexed to real estate without first  
4 issuing a purchasing agent authorization to a contractor or  
5 repairperson prior to the building materials being annexed to  
6 real estate in the project may apply to the Tax Commissioner for  
7 a refund of any sales and use tax paid by the contractor or  
8 repairperson on the building materials physically annexed to real  
9 estate in the construction, improvement, or repair.

10           (5) Any person purchasing, storing, using, or  
11 otherwise consuming building materials in the performance of any  
12 construction, improvement, or repair by or for any institution  
13 enumerated in subsection (1) of this section which is licensed upon  
14 completion although not licensed at the time of construction or  
15 improvement, which building materials are annexed to real estate  
16 and which subsequently belong to the owner of the institution,  
17 shall pay any applicable sales or use tax thereon. Upon becoming  
18 licensed and receiving a numbered certificate of exemption,  
19 the institution organized not for profit shall be entitled to  
20 a refund of the amount of taxes so paid in the performance  
21 of such construction, improvement, or repair and shall submit  
22 whatever evidence is required by the Tax Commissioner sufficient  
23 to establish the total sales and use tax paid upon the building  
24 materials physically annexed to real estate in the construction,  
25 improvement, or repair.

26           Sec. 44. Section 79-712, Reissue Revised Statutes of  
27 Nebraska, is amended to read:

1           79-712 Provisions shall be made by the proper local  
2 school authorities for instructing the pupils in all public  
3 schools in a comprehensive health education program which shall  
4 include instruction (1) as to the physiological, psychological, and  
5 sociological aspects of drug use, misuse, and abuse and (2) on  
6 ~~mental retardation~~ intellectual disability and other developmental  
7 disabilities, such as cerebral palsy, autism, and epilepsy, their  
8 causes, and the prevention thereof through proper nutrition and  
9 the avoidance of the consumption of drugs as defined in this  
10 section. For purposes of this section, drugs means any and all  
11 biologically active substances used in the treatment of illnesses  
12 or for recreation or pleasure. Special emphasis shall be placed  
13 upon the commonly abused drugs of tobacco, alcohol, marijuana,  
14 hallucinogenics, amphetamines, barbiturates, and narcotics.

15           Sec. 45. Section 79-1118.01, Reissue Revised Statutes of  
16 Nebraska, is amended to read:

17           79-1118.01 Disability means an impairment which causes  
18 a child to be classified as ~~mentally retarded, hard of hearing,~~  
19 ~~deaf, speech and language impaired, blind and visually impaired,~~  
20 ~~behaviorally disordered, orthopedically impaired, other health~~  
21 ~~impaired, deaf-blind, or developmentally delayed~~ diagnosed  
22 with an intellectual disability; a hearing, speech, language,  
23 or visual impairment; a behavioral disorder; an orthopedic  
24 impairment; another health impairment; deafness or blindness; or a  
25 developmental delay or as having multiple disabilities or specific  
26 learning disabilities, traumatic brain injury, or autism and causes  
27 such child to need special education and related services. For

1 purposes of this section:

2 (1) Autism means a developmental disability significantly  
3 affecting verbal and nonverbal communication and social  
4 interaction, generally evident before age three, that adversely  
5 affects a child's educational performance. Other characteristics  
6 often associated with autism are engagement in repetitive  
7 activities and stereotyped movements, resistance to environmental  
8 change or change in daily routines, and unusual responses to  
9 sensory experiences. Autism does not apply if a child's educational  
10 performance is adversely affected primarily because the child has  
11 a serious emotional disturbance;

12 (2) ~~Behaviorally disordered~~ Behavior disorder means a  
13 condition in which a child exhibits one or more of the following  
14 characteristics over a long period of time and to a marked degree  
15 which adversely affects educational performance:

16 (a) An inability to learn which cannot be explained by  
17 intellectual, sensory, or health factors;

18 (b) An inability to build or maintain satisfactory  
19 interpersonal relationships with peers and teachers;

20 (c) Inappropriate types of behavior or feelings under  
21 normal circumstances;

22 (d) A general pervasive mood of unhappiness or  
23 depression; or

24 (e) A tendency to develop physical symptoms or fears  
25 associated with personal or school problems.

26 ~~Behaviorally disordered~~ Behavior disorder includes  
27 schizophrenia but does not include social maladjustment unless

1 the characteristics defined in subdivision (a) or (b) of this  
2 subdivision are also present;

3 (3) Blind and visually impaired means partially seeing  
4 or blind, which visual impairment, even with correction, adversely  
5 affects a child's educational performance;

6 (4) Deaf means a hearing impairment which is so severe  
7 that processing linguistic information through hearing, with or  
8 without amplification, is impaired to the extent that educational  
9 performance is adversely affected;

10 (5) Deaf-blind means concomitant hearing and visual  
11 impairments, the combination of which causes such severe  
12 communication and other developmental and educational problems  
13 that such impairments cannot be accommodated in special education  
14 programs solely for children who are deaf or blind;

15 (6) Developmental delay means either a significant  
16 delay in function in one or more of the following areas: (a)  
17 Cognitive development; (b) physical development; (c) communication  
18 development; (d) social or emotional development; or (e) adaptive  
19 behavior or skills development, or a diagnosed physical or mental  
20 condition that has a high probability of resulting in a substantial  
21 delay in function in one or more of such areas;

22 (7) Hard of hearing means a hearing impairment, whether  
23 permanent or fluctuating, which adversely affects educational  
24 performance but is not included under the term deaf in subdivision  
25 (4) of this section;

26 (8) ~~Mentally retarded~~ Intellectual disability means a  
27 condition in which a child exhibits significantly subaverage



1 general intellectual functioning existing concurrently with  
2 deficits in adaptive behavior and manifested during the  
3 developmental period which adversely affects educational  
4 performance;

5 (9) Multiple disabilities means concomitant impairments,  
6 such as ~~mentally retarded-blind~~ intellectual disability-blind  
7 or ~~mentally retarded-orthopedically impaired,~~ intellectual  
8 disability-orthopedic impairment, the combination of which causes  
9 such severe educational problems that a child with such impairments  
10 cannot be accommodated in special education programs for one of the  
11 impairments. Multiple disabilities does not include deaf-blind;

12 (10) ~~Orthopedically impaired~~ Orthopedic impairment means  
13 a severe orthopedic impairment which adversely affects a child's  
14 educational performance. Severe orthopedic impairments include  
15 impairments caused by (a) congenital anomaly, including, but  
16 not limited to, clubfoot or absence of a member, (b) disease,  
17 including, but not limited to, poliomyelitis or bone tuberculosis,  
18 or (c) other causes, including, but not limited to, cerebral palsy,  
19 amputations, and fractures and burns which cause contractures;

20 (11) Other health impaired means having limited strength,  
21 vitality, or alertness due to chronic or acute health problems,  
22 including, but not limited to, a heart condition, tuberculosis,  
23 rheumatic fever, nephritis, asthma, sickle cell anemia, hemophilia,  
24 epilepsy, lead poisoning, leukemia, or diabetes, which adversely  
25 affects a child's educational performance;

26 (12) Specific learning disability means a disorder in  
27 one or more of the basic psychological processes involved in

1 understanding or in using language, spoken or written, which may  
2 manifest itself in an imperfect ability to listen, think, speak,  
3 read, write, spell, or do mathematical calculations. Specific  
4 learning disability includes, but is not limited to, perceptual  
5 disabilities, brain injury, minimal brain dysfunction, dyslexia,  
6 and developmental aphasia;

7 (13) Speech-and-language-impaired means having a  
8 communication disorder such as stuttering, impaired articulation,  
9 language impairments, or voice impairment which adversely affects a  
10 child's educational performance; and

11 (14) Traumatic brain injury means an acquired injury  
12 to the brain caused by an external physical force, resulting  
13 in total or partial functional disability or psychosocial  
14 impairment, or both, that adversely affects a child's educational  
15 performance. Traumatic brain injury applies to open or closed  
16 head injuries resulting in impairments in one or more areas,  
17 including cognition; language; memory; attention; reasoning;  
18 abstract thinking; judgment; problem solving; sensory, perceptual,  
19 and motor abilities; psychosocial behavior; physical functions;  
20 information processing; and speech. Traumatic brain injury does not  
21 include brain injuries that are congenital or degenerative or brain  
22 injuries induced by birth trauma.

23 The State Department of Education may group or subdivide  
24 the classifications of children with disabilities for the purpose  
25 of program description and reporting. The department shall  
26 establish eligibility criteria and age ranges for the disability  
27 classification of developmental delay.

1           Sec. 46. Section 79-1124, Revised Statutes Cumulative  
2 Supplement, 2012, is amended to read:

3           79-1124 Service agency means the school district,  
4 educational service unit, local or regional office of ~~mental~~  
5 ~~retardation~~, intellectual disability, interim-program school, or  
6 some combination thereof or such other agency as may provide a  
7 special education program approved by the State Department of  
8 Education, including an institution not wholly owned or controlled  
9 by the state or any political subdivision to the extent that  
10 it provides educational or other services for the benefit of  
11 children from the age of five to the age of twenty-one years with  
12 disabilities if such services are nonsectarian in nature.

13           Sec. 47. Section 79-1128, Reissue Revised Statutes of  
14 Nebraska, is amended to read:

15           79-1128 The special education programs required by  
16 section 79-1127 may be provided by any school district, by  
17 contracting with another school district or service agency, or by  
18 some combination of school districts, an educational service unit,  
19 combination of educational service units, the local or regional  
20 office of ~~mental retardation~~, intellectual disability, any program  
21 approved by the State of Nebraska, or any combination thereof,  
22 except that only nonsectarian services shall be considered for  
23 approval by the State of Nebraska. Any ~~office of mental retardation~~  
24 program receiving funds under the Special Education Act shall not  
25 use such funds to match state funds under the provisions of other  
26 programs. The members of the school board of any school district  
27 not offering continuous special education programs acceptable to

1 the State Board of Education shall be in violation of the law.  
2 No state funds shall be paid to any school district as long as  
3 such violation exists, but no deduction shall be made from any  
4 funds required by the Constitution of Nebraska to be paid to such  
5 district.

6 Sec. 48. Section 83-101.06, Reissue Revised Statutes of  
7 Nebraska, is amended to read:

8 83-101.06 The Department of Health and Human Services  
9 shall:

10 (1) Administer the clinical programs and services of the  
11 Beatrice State Developmental Center, the Lincoln Regional Center,  
12 the Norfolk Regional Center, the Hastings Regional Center, and  
13 such other medical facilities, including skilled nursing care and  
14 intermediate care facilities, as may be provided by the department;

15 (2) Plan, develop, administer, and operate mental health  
16 and ~~mental retardation~~ intellectual disability clinics, programs,  
17 and services;

18 (3) Plan, develop, and execute the clinical programs and  
19 services carried on by the department; and

20 (4) Represent the department in its work with the  
21 University of Nebraska Medical Center concerning psychiatric  
22 services.

23 Sec. 49. Section 83-112, Reissue Revised Statutes of  
24 Nebraska, is amended to read:

25 83-112 (1) The Department of Health and Human Services  
26 shall gather information as to the expenditures of charitable  
27 institutions in this and other countries and regarding the best

1 and most successful methods of caring for persons with ~~mental~~  
2 ~~retardation~~ an intellectual disability and persons with a mental  
3 disorder.

4 (2) The Department of Health and Human Services shall  
5 encourage scientific investigation of the treatment of mental  
6 problems, epilepsy, and all other diseases and causes that  
7 contribute to mental disabilities by the medical staffs of the  
8 state medical institutions. The department shall provide forms for  
9 statistical returns to be made by the institutions. The department  
10 shall make an investigation of the conditions, causes, prevention,  
11 and cure of epilepsy, ~~mental retardation~~, intellectual disability,  
12 and mental disorders. The department shall give special attention  
13 to the methods of care, treatment, education, and improvement of  
14 the persons served by the institutions under its control and shall  
15 exercise a careful supervision of the methods to the end that, so  
16 far as practicable, the best treatment and care known to modern  
17 science shall be given to such persons and that the best methods of  
18 teaching, improving, and educating such persons shall be used.

19 Sec. 50. Section 83-217, Reissue Revised Statutes of  
20 Nebraska, is amended to read:

21 83-217 The Nebraska institution for ~~children with~~  
22 ~~mental retardation~~ and adults ~~requiring~~ persons with intellectual  
23 disabilities who require residential care shall be known and  
24 designated as the Beatrice State Developmental Center.

25 Sec. 51. Section 83-218, Reissue Revised Statutes of  
26 Nebraska, is amended to read:

27 83-218 The Beatrice State Developmental Center shall

1 provide residential care and humane treatment for those persons  
2 with ~~mental retardation~~ intellectual disabilities who require  
3 residential care, shall study to improve their condition, shall  
4 classify them, and shall furnish such training in industrial,  
5 mechanical, agricultural, and academic subjects as they may be  
6 capable of learning. Whenever the Department of Health and Human  
7 Services determines that continued residence in the Beatrice State  
8 Developmental Center is no longer necessary for the welfare, care,  
9 treatment, or training of such person, it shall have authority  
10 to discharge or transfer such person as provided in section  
11 83-387. The Department of Health and Human Services shall discharge  
12 any person from the Beatrice State Developmental Center without  
13 requiring sterilization of such person, if the discharge satisfies  
14 the requirements of this section, notwithstanding any court order,  
15 judgment, or decree rendered prior to December 25, 1969, requiring  
16 sterilization as a condition of discharge.

17           Sec. 52. Section 83-363, Reissue Revised Statutes of  
18 Nebraska, is amended to read:

19           83-363 As used in sections 83-227.01, 83-227.02, 83-350,  
20 and 83-363 to 83-380, unless the context otherwise requires:

21           (1) Department means the Department of Health and Human  
22 Services;

23           (2) State institution means the state hospitals at  
24 Lincoln, Norfolk, and Hastings, the Beatrice State Developmental  
25 Center, and such other institutions as may hereafter be established  
26 by the Legislature for the care and treatment of persons with a  
27 mental disorder or ~~mental retardation~~, persons with an intellectual

1 disability;

2 (3) Relative means the spouse of a patient or, if the  
3 patient has no spouse and is under the age of majority at the  
4 time he or she is admitted, the parents of a patient in a state  
5 institution; and

6 (4) Parents means either or both of a patient's natural  
7 parents unless such patient has been legally adopted by other  
8 parents, in which case parents means either or both of the adoptive  
9 parents.

10 Sec. 53. Section 83-381, Reissue Revised Statutes of  
11 Nebraska, is amended to read:

12 83-381 As used in sections 83-217, 83-218, and 83-381 to  
13 83-390, unless the context otherwise requires:

14 (1) Person with ~~mental retardation~~ an intellectual  
15 disability means any person of subaverage general intellectual  
16 functioning which is associated with a significant impairment in  
17 adaptive behavior;

18 (2) Department means the Department of Health and Human  
19 Services or such person or agency within the Department of Health  
20 and Human Services as the chief executive officer of the department  
21 may designate; and

22 (3) Residential facility means an institution specified  
23 under section 83-217 to provide residential care by the State  
24 of Nebraska for persons with ~~mental retardation.~~ an intellectual  
25 disability.

26 Sec. 54. Section 83-382, Reissue Revised Statutes of  
27 Nebraska, is amended to read:

1           83-382 Except as provided in sections 79-1148 and  
2 79-1149, the department shall have jurisdiction of the admission  
3 of persons with ~~mental retardation~~ an intellectual disability to a  
4 residential facility. Applications for admission to a residential  
5 facility shall be filed with the department.

6           Sec. 55. Section 83-383, Reissue Revised Statutes of  
7 Nebraska, is amended to read:

8           83-383 (1) An application for admission shall be made in  
9 writing by one of the following persons:

10           (a) If the person applying for admission has a  
11 court-appointed guardian, the application shall be made by the  
12 guardian; and

13           (b) If the person applying for admission does not have a  
14 court-appointed guardian and has not reached the age of majority,  
15 as established by section 43-2101, as such section may from time to  
16 time be amended, the application shall be made by both parents if  
17 they are living together or by the parent having custody of such  
18 person if both parents are not then living or are not then living  
19 together.

20           (2) The county court of the county of residence of any  
21 person with ~~mental retardation~~ an intellectual disability or the  
22 county court of the county in which a state residential facility  
23 is located shall have authority to appoint a guardian for any  
24 person with ~~mental retardation~~ an intellectual disability upon the  
25 petition of the husband, wife, parent, person standing in loco  
26 parentis to such person, a county attorney, or any authorized  
27 official of the department. If the guardianship proceedings are



1 initiated by an official of the department, the costs thereof may  
2 be taxed to and paid by the department if the person with ~~mental~~  
3 ~~retardation~~ an intellectual disability is without means to pay the  
4 costs. The department shall pay such costs upon presentation of  
5 a proper claim by the judge of the county court in which the  
6 proceedings were initiated. The costs of such proceedings shall  
7 include court costs, attorneys' fees, sheriffs' fees, psychiatric  
8 fees, and other necessary expenses of the guardianship.

9           Sec. 56. Section 83-386, Reissue Revised Statutes of  
10 Nebraska, is amended to read:

11           83-386 The department shall examine all information  
12 concerning the person for whom admission is requested and shall  
13 determine therefrom whether the person is a person with ~~mental~~  
14 ~~retardation~~ an intellectual disability and whether residence in the  
15 residential facility is necessary for the welfare, care, treatment,  
16 or training of such person. Such determination shall be made in  
17 writing and shall set forth the reasons for the determination. If  
18 at any time it shall become necessary, for want of room or other  
19 cause, to discriminate in the admission of persons with ~~mental~~  
20 ~~retardation~~ an intellectual disability to residential facilities,  
21 the selection shall be made as follows: (1) Persons whose care is  
22 necessary in order to protect themselves or the public health and  
23 safety; (2) persons who are most likely to be benefited thereby;  
24 (3) persons shall next be admitted in the order in which their  
25 applications for admission have been filed with the department; and  
26 (4) when cases are equally meritorious in all other respects, an  
27 indigent person or a person from an indigent family shall be given

1 preference.

2           Sec. 57. Section 83-387, Reissue Revised Statutes of  
3 Nebraska, is amended to read:

4           83-387 At such time as the department determines  
5 that continued residence in a residential facility will no  
6 longer benefit a person with ~~mental retardation~~, an intellectual  
7 disability, the department shall arrange for the discharge or  
8 transfer of such person from the residential facility. The  
9 department shall give reasonable notice to the person authorized to  
10 make an application for admission for such person under subsection  
11 (1) of section 83-383 that the department intends to discharge  
12 or transfer such person. The department shall also be responsible  
13 for the placement of such person in any other available program  
14 or facility and in the development of other methods for the care,  
15 treatment, and training of such person.

16           Sec. 58. Section 83-389, Reissue Revised Statutes of  
17 Nebraska, is amended to read:

18           83-389 A person admitted to a residential facility under  
19 the provisions of sections 83-217, 83-218, and 83-381 to 83-390  
20 shall be immediately discharged from the residential facility after  
21 notice of intention to remove the person with ~~mental retardation~~ an  
22 intellectual disability has been given by the person authorized to  
23 make an application for admission under subsection (1) of section  
24 83-383 and the normal discharge procedures are completed.

25           Sec. 59. Section 83-1205, Reissue Revised Statutes of  
26 Nebraska, is amended to read:

27           83-1205 Developmental disability shall mean:

- 1                   (1) ~~Mental retardation;~~ Intellectual disability; or
- 2                   (2) A severe, chronic disability other than ~~mental~~
- 3 ~~retardation~~ an intellectual disability or mental illness which:
- 4                   (a) Is attributable to a mental or physical impairment
- 5 other than a mental or physical impairment caused solely by mental
- 6 illness;
- 7                   (b) Is manifested before the age of twenty-two years;
- 8                   (c) Is likely to continue indefinitely; and
- 9                   (d) Results in:
- 10                   (i) In the case of a person under three years of age, at
- 11 least one developmental delay; or
- 12                   (ii) In the case of a person three years of age or older,
- 13 a substantial limitation in three or more of the following areas of
- 14 major life activity, as appropriate for the person's age:
- 15                   (A) Self-care;
- 16                   (B) Receptive and expressive language development and
- 17 use;
- 18                   (C) Learning;
- 19                   (D) Mobility;
- 20                   (E) Self-direction;
- 21                   (F) Capacity for independent living; and
- 22                   (G) Economic self-sufficiency.

23                   Sec. 60. Original sections 21-610, 23-104.03, 28-105.01,

24 30-2624, 31-113, 38-2404, 42-374, 43-289, 44-710.01, 68-911,

25 68-919, 68-921, 68-1801, 68-1802, 68-1803, 68-1805, 68-1806,

26 68-1807, 68-1808, 68-1809, 71-413, 71-421, 71-434, 71-1101,

27 71-1104, 71-1107, 71-1110, 71-2102, 71-2411, 71-2445, 71-5803.09,

1 71-6018.01, 71-6039, 71-6721, 71-6725, 71-6727, 77-1827, 79-712,  
2 79-1118.01, 79-1128, 83-101.06, 83-112, 83-217, 83-218, 83-363,  
3 83-381, 83-382, 83-383, 83-386, 83-387, 83-389, and 83-1205,  
4 Reissue Revised Statutes of Nebraska, and sections 28-401,  
5 38-2826.01, 68-1202, 68-1804, 77-2704.12, and 79-1124, Revised  
6 Statutes Cumulative Supplement, 2012, are repealed.

7           2. On page 1, strike beginning with "the" in line 1  
8 through line 7 and insert "intellectual disability; to amend  
9 sections 21-610, 23-104.03, 28-105.01, 30-2624, 31-113, 38-2404,  
10 42-374, 43-289, 44-710.01, 68-911, 68-919, 68-921, 68-1801,  
11 68-1802, 68-1803, 68-1805, 68-1806, 68-1807, 68-1808, 68-1809,  
12 71-413, 71-421, 71-434, 71-1101, 71-1104, 71-1107, 71-1110,  
13 71-2102, 71-2411, 71-2445, 71-5803.09, 71-6018.01, 71-6039,  
14 71-6721, 71-6725, 71-6727, 77-1827, 79-712, 79-1118.01, 79-1128,  
15 83-101.06, 83-112, 83-217, 83-218, 83-363, 83-381, 83-382, 83-383,  
16 83-386, 83-387, 83-389, and 83-1205, Reissue Revised Statutes  
17 of Nebraska, and sections 28-401, 38-2826.01, 68-1202, 68-1804,  
18 77-2704.12, and 79-1124, Revised Statutes Cumulative Supplement,  
19 2012; to change terminology related to mental retardation; to  
20 define and redefine terms; to rename an act and a fund; to change  
21 allocation provisions for taxes on intermediate care facilities;  
22 to eliminate obsolete provisions; to harmonize provisions; and to  
23 repeal the original sections."