

LEGISLATURE OF NEBRASKA  
ONE HUNDRED SIXTH LEGISLATURE  
SECOND SESSION

**LEGISLATIVE BILL 1053**

FINAL READING

Introduced by Health and Human Services Committee: Howard, 9,  
Chairperson; Arch, 14; Cavanaugh, 6; Hansen, B., 16;  
Murman, 38; Walz, 15; Williams, 36.

Read first time January 21, 2020

Committee: Health and Human Services

1 A BILL FOR AN ACT relating to public health and welfare; to amend  
2 sections 71-401, 71-403, 71-404, 71-413, 71-415, 71-416, 71-417,  
3 71-436, 71-2085, 71-2086, 71-2087, 71-2092, 71-2093, 71-2094, and  
4 71-6720, Reissue Revised Statutes of Nebraska, and section 68-901,  
5 Revised Statutes Supplement, 2019; to require adoption of rules and  
6 regulations for certain reimbursement rates under the Medical  
7 Assistance Act; to define and redefine terms and change licensure  
8 provisions under the Health Care Facility Licensure Act; to change  
9 receiver and receivership provisions relating to health care  
10 facilities; to change applicability of the Medication Aide Act; to  
11 harmonize provisions; to provide operative dates; and to repeal the  
12 original sections.

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

1 Section 1. Section 68-901, Revised Statutes Supplement, 2019, is  
2 amended to read:

3 68-901 Sections 68-901 to 68-994 and section 2 of this act shall be  
4 known and may be cited as the Medical Assistance Act.

5 Sec. 2. The department shall adopt and promulgate rules and  
6 regulations regarding the rate methodology for reimbursement of hospital  
7 and nursing facility services. Any change to the rate methodology is  
8 considered substantive and requires a new rulemaking or regulationmaking  
9 proceeding under the Administrative Procedure Act.

10 Sec. 3. Section 71-401, Reissue Revised Statutes of Nebraska, is  
11 amended to read:

12 71-401 Sections 71-401 to 71-475 and sections 10 to 12 of this act  
13 shall be known and may be cited as the Health Care Facility Licensure  
14 Act.

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

17 71-403 For purposes of the Health Care Facility Licensure Act,  
18 unless the context otherwise requires, the definitions found in sections  
19 71-404 to 71-431 and sections 10 to 12 of this act shall apply.

20 Sec. 5. Section 71-404, Reissue Revised Statutes of Nebraska, is  
21 amended to read:

22 71-404 (1) Adult day service means a person or any legal entity  
23 which provides care and an array of social, medical, or other support  
24 services for a period of less than twenty-four consecutive hours in a  
25 community-based group program to four or more persons who require or  
26 request such services due to age or functional impairment.

27 (2) Adult day service does not include services provided under the  
28 Developmental Disabilities Services Act or a PACE center.

29 Sec. 6. Section 71-413, Reissue Revised Statutes of Nebraska, is  
30 amended to read:

31 71-413 Health care facility means an ambulatory surgical center, an

1 assisted-living facility, a center or group home for the developmentally  
2 disabled, a critical access hospital, a general acute hospital, a health  
3 clinic, a hospital, an intermediate care facility, an intermediate care  
4 facility for persons with developmental disabilities, a long-term care  
5 hospital, a mental health substance use treatment center, a nursing  
6 facility, a PACE center, a pharmacy, a psychiatric or mental hospital, a  
7 public health clinic, a rehabilitation hospital, or a skilled nursing  
8 facility.

9 Sec. 7. Section 71-415, Reissue Revised Statutes of Nebraska, is  
10 amended to read:

11 71-415 Health care service means an adult day service, a children's  
12 day health service, a home health agency, a hospice or hospice service, a  
13 PACE center, ~~or a respite care service, or beginning January 1, 2011, a~~  
14 ~~children's day health service~~. Health care service does not include an  
15 in-home personal services agency as defined in section 71-6501.

16 Sec. 8. Section 71-416, Reissue Revised Statutes of Nebraska, is  
17 amended to read:

18 71-416 (1) Health clinic means a facility where advice, counseling,  
19 diagnosis, treatment, surgery, care, or services relating to the  
20 preservation or maintenance of health are provided on an outpatient basis  
21 for a period of less than twenty-four consecutive hours to persons not  
22 residing or confined at such facility. Health clinic includes, but is not  
23 limited to, an ambulatory surgical center or a public health clinic.

24 (2) Health clinic does not include (a) a health care practitioner  
25 facility (i) unless such facility is an ambulatory surgical center, (ii)  
26 unless ten or more abortions, as defined in subdivision (1) of section  
27 28-326, are performed during any one calendar week at such facility, or  
28 (iii) unless hemodialysis or labor and delivery services are provided at  
29 such facility, ~~or~~ (b) a facility which provides only routine health  
30 screenings, health education, or immunizations, or (c) a PACE center.

31 (3) For purposes of this section:

1 (a) Public health clinic means the department, any county, city-  
2 county, or multicounty health department, or any private not-for-profit  
3 family planning clinic licensed as a health clinic;

4 (b) Routine health screenings means the collection of health data  
5 through the administration of a screening tool designed for a specific  
6 health problem, evaluation and comparison of results to referral  
7 criteria, and referral to appropriate sources of care, if indicated; and

8 (c) Screening tool means a simple interview or testing procedure to  
9 collect basic information on health status.

10 Sec. 9. Section 71-417, Reissue Revised Statutes of Nebraska, is  
11 amended to read:

12 71-417 (1) Home health agency means a person or any legal entity  
13 which provides skilled nursing care or a minimum of one other therapeutic  
14 service as defined by the department on a full-time, part-time, or  
15 intermittent basis to persons in a place of temporary or permanent  
16 residence used as the person's home.

17 (2) Home health agency does not include a PACE center.

18 Sec. 10. PACE center means a facility from which a PACE provider  
19 offers services within the scope of a PACE program pursuant to a written  
20 agreement between the provider, the United States Department of Health  
21 and Human Services, and the Nebraska Department of Health and Human  
22 Services.

23 Sec. 11. PACE program means a program of all-inclusive care for  
24 elderly under 42 U.S.C. 1396u-4, as such section existed on January 1,  
25 2020.

26 Sec. 12. PACE provider means provider of services pursuant to a  
27 PACE program meeting the requirements of 42 U.S.C. 1396u-4(a)(3), as such  
28 section existed on January 1, 2020.

29 Sec. 13. Section 71-436, Reissue Revised Statutes of Nebraska, is  
30 amended to read:

31 71-436 (1) Except as otherwise provided in section 71-470, an

1 applicant for licensure under the Health Care Facility Licensure Act  
2 shall obtain a separate license for each type of health care facility or  
3 health care service that the applicant seeks to operate. A single license  
4 may be issued for (a) a facility or service operating in separate  
5 buildings or structures on the same premises under one management, (b) an  
6 inpatient facility that provides services on an outpatient basis at  
7 multiple locations, or (c) a health clinic operating satellite clinics on  
8 an intermittent basis within a portion of the total geographic area  
9 served by such health clinic and sharing administration with such  
10 clinics. A single license shall be issued for a PACE center which meets  
11 the requirements for licensure established by the department pursuant to  
12 section 71-457.

13 (2) The department may issue one license document that indicates the  
14 various types of health care facilities or health care services for which  
15 the entity is licensed. The department may inspect any of the locations  
16 that are covered by the license. If an entity is licensed in multiple  
17 types of licensure for one location, the department shall conduct all  
18 required inspections simultaneously for all types of licensure when  
19 requested by the entity.

20 Sec. 14. Section 71-2085, Reissue Revised Statutes of Nebraska, is  
21 amended to read:

22 71-2085 The department may petition the district court of Lancaster  
23 County or the county where the health care facility is located for  
24 appointment of a receiver for a health care facility when any of the  
25 following conditions exist:

26 (1) If the department determines that the health, safety, or welfare  
27 of the residents or patients is in immediate danger;

28 (2) The health care facility is operating without a license;

29 (3) The department has suspended, revoked, or refused to renew the  
30 existing license of the health care facility;

31 (4) The health care facility is closing, or has informed the

1 department that it intends to close, and adequate arrangements for the  
2 relocation of the residents or patients of such health care facility have  
3 not been made at least thirty days prior to closure; or

4 (5) The department determines that an emergency exists, whether or  
5 not it has initiated revocation or nonrenewal procedures, and because of  
6 the unwillingness or inability of the licensee, owner, or operator to  
7 remedy the emergency, the department believes a receiver is necessary.

8 Sec. 15. Section 71-2086, Reissue Revised Statutes of Nebraska, is  
9 amended to read:

10 71-2086 (1) The department shall file the petition for the  
11 appointment of a receiver provided for in section 71-2085 in the district  
12 court of Lancaster County or the county where the health care facility is  
13 located and shall request that a receiver be appointed for the health  
14 care facility. Unless otherwise approved by the court, no person shall be  
15 appointed as a receiver for more than six health care facilities at the  
16 same time.

17 (2) The court shall expeditiously hold a hearing on the petition  
18 within seven days after the filing of the petition. The department shall  
19 present evidence at the hearing in support of the petition. The licensee,  
20 owner, or operator may also present evidence, and both parties may  
21 subpoena witnesses. The court may appoint a temporary receiver for the  
22 health care facility ex parte if the department, by affidavit, states  
23 that an emergency exists which presents an imminent danger of death or  
24 physical harm to the residents or patients of the health care facility.  
25 If a temporary receiver is appointed, notice of the petition and order  
26 shall be served on the licensee, owner, operator, or administrator of the  
27 health care facility within seventy-two hours after the entry of the  
28 order. The petition and order may be served by any method specified in  
29 section 25-505.01 or the court may permit substitute or constructive  
30 service as provided in section 25-517.02 when service cannot be made with  
31 reasonable diligence by any of the methods specified in section

1 25-505.01. A hearing on the petition and temporary order shall be held  
2 within seventy-two hours after notice has been served unless the  
3 licensee, owner, or operator consents to a later date. After the hearing  
4 the court may terminate, continue, or modify the temporary order. If the  
5 court determines that the department did not have probable cause to  
6 submit the affidavit in support of the appointment of the temporary  
7 receiver, the court shall have the jurisdiction to determine and award  
8 compensatory damages against the state to the owner or operator. If the  
9 licensee, owner, or operator informs the court at or before the time set  
10 for hearing that the licensee, owner, or operator ~~he or she~~ does not  
11 object to the petition, the court shall waive the hearing and at once  
12 appoint a receiver for the health care facility.

13 (3) The purpose of a receivership created under this section is to  
14 safeguard the health, safety, and continuity of care of residents and  
15 patients and to protect them from adverse health effects. A receiver  
16 shall not take any actions or assume any responsibilities inconsistent  
17 with this purpose. No person shall impede the operation of a receivership  
18 created under this section. After the appointment of a receiver, there  
19 shall be an automatic stay of any action that would interfere with the  
20 functioning of the health care facility, including, but not limited to,  
21 cancellation of insurance policies executed by the licensee, owner, or  
22 operator, termination of utility services, attachments or setoffs of  
23 resident trust funds or working capital accounts, and repossession of  
24 equipment used in the health care facility. The stay shall not apply to  
25 any licensure, certification, or injunctive action taken by the  
26 department.

27 Sec. 16. Section 71-2087, Reissue Revised Statutes of Nebraska, is  
28 amended to read:

29 71-2087 When a receiver is appointed under section 71-2086, the  
30 licensee, owner, or operator shall be divested of possession and control  
31 of the health care facility in favor of the receiver. The appointment of

1 the receiver shall not affect the rights of the owner or operator to  
2 defend against any claim, suit, or action against such owner or operator  
3 or the health care facility, including, but not limited to, any  
4 licensure, certification, or injunctive action taken by the department. A  
5 receiver shall:

6 (1) Take such action as is reasonably necessary to protect and  
7 conserve the assets or property of which the receiver takes possession or  
8 the proceeds of any transfer of the assets or property and may use them  
9 only in the performance of the powers and duties set forth in this  
10 section and section 71-2088 or by order of the court;

11 (2) Apply the current revenue and current assets of the health care  
12 facility to current operating expenses and to debts incurred by the  
13 licensee, owner, or operator prior to the appointment of the receiver.  
14 The receiver may apply to the court for approval for payment of debts  
15 incurred prior to appointment if the debts appear extraordinary, of  
16 questionable validity, or unrelated to the normal and expected  
17 maintenance and operation of the health care facility or if the payment  
18 of the debts will interfere with the purposes of the receivership. The  
19 receiver shall give priority to expenditures for current, direct resident  
20 care, including nursing care, social services, dietary services, and  
21 housekeeping;

22 (3) Be responsible for the payment of taxes against the health care  
23 facility which become due during the receivership, including property  
24 taxes, sales and use taxes, withholding, taxes imposed pursuant to the  
25 Federal Insurance Contributions Act, and other payroll taxes, but not  
26 including state and federal taxes which are the liability of the owner or  
27 operator;

28 (4) Be entitled to and take possession of all property or assets of  
29 residents or patients which are in the possession of the licensee, owner,  
30 operator, or administrator of the health care facility. The receiver  
31 shall preserve all property, assets, and records of residents or patients



1 of which the receiver takes possession and shall provide for the prompt  
2 transfer of the property, assets, and necessary and appropriate records  
3 to the alternative placement of any transferred or discharged resident;

4 (5) Upon order of the court, provide for the orderly transfer of all  
5 residents or patients in the health care facility to other suitable  
6 facilities if correction of violations of federal and state laws and  
7 regulations is not possible or cannot be completed in a timely manner or  
8 there are reasonable grounds to believe the health care facility cannot  
9 be operated on a sound financial basis and in compliance with all  
10 applicable federal or state laws and regulations or make other provisions  
11 for the continued health, safety, and welfare of the residents or  
12 patients;

13 (6) Conduct a thorough analysis of the financial records of the  
14 health care facility within the first thirty days of the receivership,  
15 perform ongoing accountings throughout the remainder of the receivership,  
16 and provide monthly reports of the financial status of the health care  
17 facility to the court and the department ~~Perform regular accountings;~~ and

18 (7) Make monthly ~~periodic~~ reports to the court and the department  
19 related to plans for continued operation or sale of the health care  
20 facility.

21 Sec. 17. Section 71-2092, Reissue Revised Statutes of Nebraska, is  
22 amended to read:

23 71-2092 (1) A receivership established under section 71-2086 may be  
24 terminated by the district court which established it after a hearing  
25 upon an application for termination. The application may be filed:

26 (a) Jointly by the receiver and the current licensee of the health  
27 care facility which is in receivership, stating that the deficiencies in  
28 the operation, maintenance, or other circumstances which were the grounds  
29 for establishment of the receivership have been corrected and that there  
30 are reasonable grounds to believe that the health care facility will be  
31 operated in compliance with all applicable statutes and the rules and

1 regulations adopted and promulgated pursuant thereto;

2 (b) By the current licensee of the health care facility, alleging  
3 that termination of the receivership is merited for the reasons set forth  
4 in subdivision (a) of this subsection, but that the receiver has declined  
5 to join in the petition for termination of the receivership;

6 (c) By the receiver, stating that all residents or patients of the  
7 health care facility have been relocated elsewhere and that there are  
8 reasonable grounds to believe it will not be feasible to again operate  
9 the health care facility on a sound financial basis and in compliance  
10 with federal and state laws and regulations and asking that the court  
11 approve the surrender of the license of the health care facility to the  
12 department and the subsequent return of the control of the premises of  
13 the health care facility to the owner of the premises; or

14 (d) By the department (i) stating that the deficiencies in the  
15 operation, maintenance, or other circumstances which were the grounds for  
16 establishment of the receivership have been corrected and that there are  
17 reasonable grounds to believe that the health care facility will be  
18 operated in compliance with all applicable statutes and the rules and  
19 regulations adopted and promulgated pursuant thereto or (ii) stating that  
20 there are reasonable grounds to believe that the health care facility  
21 cannot be operated in compliance with federal or state law and  
22 regulations and asking that the court order the removal of the residents  
23 or patients to appropriate alternative placements, the closure of the  
24 facility, and the license, if any, surrendered to the department or that  
25 the health care facility be sold under reasonable terms approved by the  
26 court to a new owner meeting the requirements ~~approved~~ for licensure by  
27 the department.

28 (2) If the receivership has not been terminated within six ~~twelve~~  
29 months after the appointment of the receiver, the court shall, after  
30 hearing, order either that the health care facility be closed after an  
31 orderly transfer of the residents or patients to appropriate alternative

1 placements or that the health care facility be sold under reasonable  
2 terms approved by the court to a new owner meeting the requirements  
3 ~~approved~~ for licensure by the department. The closure or sale shall occur  
4 within sixty days after the court order, unless ordered otherwise,  
5 ~~receivership period may be extended as necessary~~ to protect the health,  
6 safety, and welfare of the residents or patients.

7 Sec. 18. Section 71-2093, Reissue Revised Statutes of Nebraska, is  
8 amended to read:

9 71-2093 The health care facility for which a receiver is appointed  
10 shall be responsible for payment of the expenses of a receivership  
11 established under section 71-2086 unless the court directs otherwise. The  
12 expenses include, but are not limited to:

13 (1) Compensation for the receiver and any related receivership  
14 expenses approved by the court;

15 (2) Expenses incurred by the health care facility for the continuing  
16 care of the residents or patients of the health care facility;

17 (3) Expenses incurred by the health care facility for the  
18 maintenance of buildings and grounds of the health care facility; and

19 (4) Expenses incurred by the health care facility in the ordinary  
20 course of business, such as employees' salaries and accounts payable.

21 Sec. 19. Section 71-2094, Reissue Revised Statutes of Nebraska, is  
22 amended to read:

23 71-2094 (1) No person shall bring an action against a receiver  
24 appointed under section 71-2086 without first securing leave of the  
25 court. The receiver and the members and officers of the receiver are  
26 liable in their individual ~~is liable in his or her personal~~ capacity for  
27 intentional wrongdoing or gross negligence.

28 (2) In all other cases, the receiver is liable in the receiver's his  
29 ~~or her~~ official capacity only, and any judgment rendered shall be  
30 satisfied out of the receivership assets. The receiver is not ~~personally~~  
31 liable in the receiver's individual capacity for the expenses of the

1 health care facility during the receivership. The receiver is an employee  
2 of the state only for the purpose of defending a claim filed against the  
3 receiver in the receiver's official capacity. If an action is brought  
4 against a receiver in the receiver's official capacity, the receiver may  
5 file a written request for counsel with the Attorney General asserting  
6 that such civil action is based in fact upon an alleged act or omission  
7 in the course and scope of the receiver's duties. The Attorney General  
8 shall thereupon appear and defend the receiver unless after investigation  
9 the Attorney General finds that the claim or demand does not arise out of  
10 an alleged act or omission occurring in the course and scope of the  
11 receiver's duties or the act or omission complained of amounted to  
12 intentional wrongdoing or gross negligence, in which case the Attorney  
13 General shall give the receiver written notice that defense of the claim  
14 or representation before the court has been rejected ~~The Attorney General~~  
15 ~~shall defend or arrange for the defense of all suits filed against the~~  
16 ~~receiver personally.~~

17 (3) A receiver against whom a claim is made, which is not rejected  
18 by the Attorney General pursuant to subsection (2) of this section, shall  
19 cooperate fully with the Attorney General in the defense of such claim.  
20 If the Attorney General determines that such receiver has not cooperated  
21 or has otherwise acted to prejudice the defense of the claim or the  
22 appearance, the Attorney General may at any time reject the defense of  
23 the claim before the court.

24 (4) If the Attorney General rejects the defense of a claim pursuant  
25 to subsection (2) of this section or if it is established by the judgment  
26 ultimately rendered on the claim that the act or omission complained of  
27 was not in the course or scope of the receiver's duties or amounted to  
28 intentional wrongdoing or gross negligence, no public money shall be paid  
29 in settlement of such claim or in payment of any judgment against such  
30 receiver. Such action by the Attorney General shall not prejudice the  
31 right of the receiver to assert and establish as a defense that the claim

1 arose out of an alleged act or omission occurring in the course and scope  
2 of the receiver's duties or that the act or omission complained of did  
3 not amount to intentional wrongdoing or gross negligence. If the receiver  
4 is successful in asserting such defense, the receiver shall be  
5 indemnified for the reasonable costs of defending the claim.

6 (5) If the receiver has been defended by the Attorney General and it  
7 is established by the judgment ultimately rendered on the claim that the  
8 act or omission complained of amounted to intentional wrongdoing or gross  
9 negligence, the judgment against the receiver shall provide for payment  
10 to the state of the state's costs, including a reasonable attorney's fee.

11 Sec. 20. Section 71-6720, Reissue Revised Statutes of Nebraska, is  
12 amended to read:

13 71-6720 (1) The purposes of the Medication Aide Act are to ensure  
14 the health, safety, and welfare of the public by providing for the  
15 accurate, cost-effective, efficient, and safe utilization of medication  
16 aides to assist in the administration of medications by (a) competent  
17 individuals, (b) caretakers who are parents, foster parents, family,  
18 friends or legal guardians, and (c) licensed health care professionals.

19 (2) The act applies to all settings in which medications are  
20 administered except the home, unless the in-home administration of  
21 medication is provided through a licensed home health agency, ~~a or~~  
22 licensed or certified home and community-based provider, or a licensed  
23 PACE center as defined in section 10 of this act.

24 (3) The act does not apply to the provision of reminders to persons  
25 to self-administer medication or assistance to persons in the delivery of  
26 nontherapeutic topical applications by in-home personal services workers.  
27 For purposes of this subsection, in-home personal services worker has the  
28 definition found in section 71-6501.

29 Sec. 21. Sections 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 20, and 22  
30 of this act become operative on January 1, 2021. The other sections of  
31 this act become operative on their effective date.

1           Sec. 22. Original sections 71-401, 71-403, 71-404, 71-413, 71-415,  
2 71-416, 71-417, 71-436, and 71-6720, Reissue Revised Statutes of  
3 Nebraska, are repealed.

4           Sec. 23. Original sections 71-2085, 71-2086, 71-2087, 71-2092,  
5 71-2093, and 71-2094, Reissue Revised Statutes of Nebraska, and section  
6 68-901, Revised Statutes Supplement, 2019, are repealed.