

LEGISLATURE OF NEBRASKA  
ONE HUNDRED SIXTH LEGISLATURE  
SECOND SESSION

**LEGISLATIVE BILL 783**

FINAL READING

Introduced by Lowe, 37.

Read first time January 08, 2020

Committee: Health and Human Services

1 A BILL FOR AN ACT relating to health care; to amend section 71-405,  
2 Reissue Revised Statutes of Nebraska, section 38-2025, Revised  
3 Statutes Cumulative Supplement, 2018, and section 71-7910.01,  
4 Revised Statutes Supplement, 2019; to provide an exemption from  
5 licensure under the Medicine and Surgery Practice Act; to redefine  
6 ambulatory surgical center under the Health Care Facility Licensure  
7 Act; to redefine professional health care service entity under the  
8 Health Care Quality Improvement Act; and to repeal the original  
9 sections.  
10 Be it enacted by the people of the State of Nebraska,

1 Section 1. Section 38-2025, Revised Statutes Cumulative Supplement,  
2 2018, is amended to read:

3 38-2025 The following classes of persons shall not be construed to  
4 be engaged in the unauthorized practice of medicine:

5 (1) Persons rendering gratuitous services in cases of emergency;

6 (2) Persons administering ordinary household remedies;

7 (3) The members of any church practicing its religious tenets,  
8 except that they shall not prescribe or administer drugs or medicines,  
9 perform surgical or physical operations, nor assume the title of or hold  
10 themselves out to be physicians, and such members shall not be exempt  
11 from the quarantine laws of this state;

12 (4) Students of medicine who are studying in an accredited school or  
13 college of medicine and who gratuitously prescribe for and treat disease  
14 under the supervision of a licensed physician;

15 (5) Physicians who serve in the armed forces of the United States or  
16 the United States Public Health Service or who are employed by the United  
17 States Department of Veterans Affairs or other federal agencies, if their  
18 practice is limited to that service or employment;

19 (6) Physicians who are licensed in good standing to practice  
20 medicine under the laws of another state when incidentally called into  
21 this state or contacted via electronic or other medium for consultation  
22 with a physician licensed in this state. For purposes of this  
23 subdivision, consultation means evaluating the medical data of the  
24 patient as provided by the treating physician and rendering a  
25 recommendation to such treating physician as to the method of treatment  
26 or analysis of the data. The interpretation of a radiological image by a  
27 physician who specializes in radiology is not a consultation;

28 (7) Physicians who are licensed in good standing to practice  
29 medicine in another state but who, from such other state, order  
30 diagnostic or therapeutic services on an irregular or occasional basis,  
31 to be provided to an individual in this state, if such physicians do not

1 maintain and are not furnished for regular use within this state any  
2 office or other place for the rendering of professional services or the  
3 receipt of calls;

4 (8) Physicians who are licensed in good standing to practice  
5 medicine in another state and who, on an irregular and occasional basis,  
6 are granted temporary hospital privileges to practice medicine and  
7 surgery at a hospital or other medical facility licensed in this state;

8 (9) Persons providing or instructing as to use of braces, prosthetic  
9 appliances, crutches, contact lenses, and other lenses and devices  
10 prescribed by a physician licensed to practice medicine while working  
11 under the direction of such physician;

12 (10) Dentists practicing their profession when licensed and  
13 practicing in accordance with the Dentistry Practice Act;

14 (11) Optometrists practicing their profession when licensed and  
15 practicing under and in accordance with the Optometry Practice Act;

16 (12) Osteopathic physicians practicing their profession if licensed  
17 and practicing under and in accordance with sections 38-2029 to 38-2033;

18 (13) Chiropractors practicing their profession if licensed and  
19 practicing under the Chiropractic Practice Act;

20 (14) Podiatrists practicing their profession when licensed to  
21 practice in this state and practicing under and in accordance with the  
22 Podiatry Practice Act;

23 (15) Psychologists practicing their profession when licensed to  
24 practice in this state and practicing under and in accordance with the  
25 Psychology Interjurisdictional Compact or the Psychology Practice Act;

26 (16) Advanced practice registered nurses practicing in their  
27 clinical specialty areas when licensed under the Advanced Practice  
28 Registered Nurse Practice Act and practicing under and in accordance with  
29 their respective practice acts;

30 (17) Surgical first assistants practicing in accordance with the  
31 Surgical First Assistant Practice Act;

1 (18) Persons licensed or certified under the laws of this state to  
2 practice a limited field of the healing art, not specifically named in  
3 this section, when confining themselves strictly to the field for which  
4 they are licensed or certified, not assuming the title of physician,  
5 surgeon, or physician and surgeon, and not professing or holding  
6 themselves out as qualified to prescribe drugs in any form or to perform  
7 operative surgery;

8 (19) Persons obtaining blood specimens while working under an order  
9 of or protocols and procedures approved by a physician, registered nurse,  
10 or other independent health care practitioner licensed to practice by the  
11 state if the scope of practice of that practitioner permits the  
12 practitioner to obtain blood specimens;

13 (20) Physicians who are licensed in good standing to practice  
14 medicine under the laws of another state or jurisdiction who accompany an  
15 athletic team or organization into this state for an event from the state  
16 or jurisdiction of licensure. This exemption is limited to treatment  
17 provided to such athletic team or organization while present in Nebraska;  
18 and

19 (21) Persons who are not licensed, certified, or registered under  
20 the Uniform Credentialing Act, to whom are assigned tasks by a physician  
21 or osteopathic physician licensed under the Medicine and Surgery Practice  
22 Act, if such assignment of tasks is in a manner consistent with accepted  
23 medical standards and appropriate to the skill and training, on the job  
24 or otherwise, of the persons to whom the tasks are assigned. For purposes  
25 of this subdivision, assignment of tasks means the routine care,  
26 activities, and procedures that (a) are part of the routine functions of  
27 such persons who are not so licensed, certified, or registered, (b)  
28 reoccur frequently in the care of a patient or group of patients, (c) do  
29 not require such persons who are not so licensed, certified, or  
30 registered to exercise independent clinical judgment, (d) do not require  
31 the performance of any complex task, (e) have results which are

1 predictable and have minimal potential risk, and (f) utilize a standard  
2 and unchanging procedure; and

3 (22) (21) Other trained persons employed by a licensed health care  
4 facility or health care service defined in the Health Care Facility  
5 Licensure Act or clinical laboratory certified pursuant to the federal  
6 Clinical Laboratories Improvement Act of 1967, as amended, or Title XVIII  
7 or XIX of the federal Social Security Act to withdraw human blood for  
8 scientific or medical purposes.

9 Any person who has held or applied for a license to practice  
10 medicine and surgery in this state, and such license or application has  
11 been denied or such license has been refused renewal or disciplined by  
12 order of limitation, suspension, or revocation, shall be ineligible for  
13 the exceptions described in subdivisions (5) through (8) of this section  
14 until such license or application is granted or such license is renewed  
15 or reinstated. Every act or practice falling within the practice of  
16 medicine and surgery as defined in section 38-2024 and not specially  
17 excepted in this section shall constitute the practice of medicine and  
18 surgery and may be performed in this state only by those licensed by law  
19 to practice medicine in Nebraska.

20 Sec. 2. Section 71-405, Reissue Revised Statutes of Nebraska, is  
21 amended to read:

22 71-405 (1) Ambulatory surgical center means a facility (a) where  
23 surgical services are provided to persons not requiring hospitalization  
24 who are ~~admitted to and~~ discharged from such facility within twenty-three  
25 hours and fifty-nine minutes from the time of admission the same working  
26 ~~day and are not permitted to stay overnight at such facility,~~ (b) which  
27 meets all applicable requirements for licensure as a health clinic under  
28 the Health Care Facility Licensure Act, and (c) which has qualified for a  
29 written agreement with the Health Care Financing Administration of the  
30 United States Department of Health and Human Services or its successor to  
31 participate in medicare as an ambulatory surgical center as defined in 42

1 C.F.R. 416 et seq. or which receives other third-party reimbursement for  
2 such services.

3 (2) Ambulatory surgical center does not include an office or clinic  
4 used solely by a practitioner or group of practitioners in the practice  
5 of medicine, dentistry, or podiatry.

6 Sec. 3. Section 71-7910.01, Revised Statutes Supplement, 2019, is  
7 amended to read:

8 71-7910.01 Professional health care service entity means an entity  
9 which is organized under the Nebraska Nonprofit Corporation Act, ~~for~~  
10 ~~purposes of rendering professional services pursuant to~~ the Nebraska  
11 Professional Corporation Act, the Nebraska Uniform Limited Liability  
12 Company Act, or the Uniform Partnership Act of 1998 and which renders  
13 health care services through individuals credentialed under the Uniform  
14 Credentialing Act.

15 Sec. 4. Original section 71-405, Reissue Revised Statutes of  
16 Nebraska, section 38-2025, Revised Statutes Cumulative Supplement, 2018,  
17 and section 71-7910.01, Revised Statutes Supplement, 2019, are repealed.