

LEGISLATURE OF NEBRASKA
ONE HUNDRED FIFTH LEGISLATURE
FIRST SESSION

LEGISLATIVE BILL 402

Introduced by Hilkemann, 4.

Read first time January 13, 2017

Committee:

1 A BILL FOR AN ACT relating to the Nebraska Regulation of Health
2 Professions Act; to amend section 71-6227, Reissue Revised Statutes
3 of Nebraska, and sections 71-6201, 71-6202, 71-6221, 71-6223,
4 71-6223.02, and 71-6224, Revised Statutes Cumulative Supplement,
5 2016; to state intent; to change membership and powers and duties of
6 technical committees; to change provisions relating to review of
7 scope of practice; to require rules and regulations; to harmonize
8 provisions; and to repeal the original sections.
9 Be it enacted by the people of the State of Nebraska,

1 Section 1. Section 71-6201, Revised Statutes Cumulative Supplement,
2 2016, is amended to read:

3 71-6201 Sections 71-6201 to 71-6229 and section 6 of this act shall
4 be known and may be cited as the Nebraska Regulation of Health
5 Professions Act.

6 Sec. 2. Section 71-6202, Revised Statutes Cumulative Supplement,
7 2016, is amended to read:

8 71-6202 (1) The Nebraska Regulation of Health Professions Act was
9 enacted in 1985 with the intent of creating a process to review the
10 necessity of regulating unregulated health professions and to review
11 proposed changes in the scope of practice of regulated health professions
12 in order to protect the public and lessen the adversarial nature of the
13 process. The Legislature provided for technical committees to be
14 factfinding bodies in regard to the need for regulation or a change in
15 scope of practice. The Legislature finds that changes to the process are
16 needed in order to be more advisory in nature and less adversarial.

17 (2) The purpose of the Nebraska Regulation of Health Professions Act
18 is to establish guidelines for the regulation of health professions which
19 are not licensed or regulated and those licensed or regulated health
20 professions which seek to change their scope of practice. The Legislature
21 believes that all individuals should be permitted to provide a health
22 service, a health-related service, or an environmental service unless
23 there is an overwhelming need for the state to protect the public from
24 harm.

25 Sec. 3. Section 71-6221, Revised Statutes Cumulative Supplement,
26 2016, is amended to read:

27 71-6221 (1) A health profession shall be regulated by the state only
28 when:

29 (a) Unregulated practice can clearly harm or endanger the health,
30 safety, or welfare of the public;

31 (b) Regulation of the health profession does not impose significant

1 new economic hardship on the public, significantly diminish the supply of
2 qualified practitioners, or otherwise create barriers to service that are
3 not consistent with the public welfare and interest;

4 (c) The public needs assurance from the state of initial and
5 continuing professional ability; and

6 (d) The public cannot be protected by a more effective alternative.

7 (2) If it is determined that practitioners of a health profession
8 not currently regulated are prohibited from the full practice of their
9 profession in Nebraska, then the following criteria shall be used to
10 determine whether regulation is necessary:

11 (a) Absence of a separate regulated profession creates a situation
12 of harm or danger to the health, safety, or welfare of the public;

13 (b) Creation of a separate regulated profession would not create a
14 significant new danger to the health, safety, or welfare of the public;

15 (c) Creation of a separate regulated profession would benefit the
16 health, safety, or welfare of the public; and

17 (d) The public cannot be protected by a more effective alternative.

18 ~~(3) The scope of practice of a regulated health profession shall be~~
19 ~~changed only when:~~

20 ~~(a) The health, safety, and welfare of the public are inadequately~~
21 ~~addressed by the present scope of practice or limitations on the scope of~~
22 ~~practice;~~

23 ~~(b) Enactment of the proposed change in scope of practice would~~
24 ~~benefit the health, safety, or welfare of the public;~~

25 ~~(c) The proposed change in scope of practice does not create a~~
26 ~~significant new danger to the health, safety, or welfare of the public;~~

27 ~~(d) The current education and training for the health profession~~
28 ~~adequately prepares practitioners to perform the new skill or service;~~

29 ~~(e) There are appropriate postprofessional programs and competence~~
30 ~~assessment measures available to assure that the practitioner is~~
31 ~~competent to perform the new skill or service in a safe manner; and~~

1 ~~(f) There are adequate measures to assess whether practitioners are~~
2 ~~competently performing the new skill or service and to take appropriate~~
3 ~~action if they are not performing competently.~~

4 (3) ~~(4)~~ The division shall, by rule and regulation, establish
5 standards for the application of each criterion which shall be used by
6 the review bodies in recommending whether proposals for credentialing ~~or~~
7 ~~change in scope of practice~~ meet the criteria.

8 Sec. 4. Section 71-6223, Revised Statutes Cumulative Supplement,
9 2016, is amended to read:

10 71-6223 (1) An applicant group shall submit a letter of intent to
11 file an application to the director on forms prescribed by the director.
12 The letter of intent shall identify the applicant group, the proposed
13 regulation or change in scope of practice sought, and information
14 sufficient for the director to determine whether the application is
15 eligible for review.

16 (2) The director shall notify the applicant group as to whether it
17 is eligible for review within fifteen days after the receipt of the
18 letter of intent. The final application shall be submitted to the
19 director who shall notify the applicant group of its acceptance for
20 review within fifteen days after receipt of the final application. If
21 more than one application is received in a given year, the director may
22 establish the order in which applications shall be reviewed.

23 (3) ~~An~~ The application for regulation of a health professional group
24 not currently regulated shall include an explanation of:

25 (a) The problem created by not regulating a health professional
26 group not previously regulated ~~or by not changing the scope of practice~~
27 ~~of a regulated health profession;~~

28 (b) ~~All~~ If the application is for the regulation of a health
29 professional group not previously regulated, all feasible methods of
30 regulation, including those methods listed in section 71-6222, and the
31 impact of such methods on the public;

1 (c) The benefit to the public of regulating a health professional
2 group not previously regulated ~~or changing the scope of practice of a~~
3 ~~regulated health profession;~~

4 (d) The extent to which regulation ~~or the change of scope of~~
5 ~~practice~~ might harm the public;

6 (e) The type of standards that exist to ensure that a practitioner
7 of a health profession would maintain competency;

8 (f) A description of the health professional group proposed for
9 regulation, including a list of associations, organizations, and other
10 groups representing the practitioners in this state, an estimate of the
11 number of practitioners in each group, and whether the groups represent
12 different levels of practice;

13 (g) The role and availability of third-party reimbursement for the
14 services provided by the applicant group;

15 (h) The experience of other jurisdictions in regulating the
16 practitioners affected by the application;

17 (i) The expected costs of regulation, including (i) the impact
18 registration, certification, or licensure will have on the costs of the
19 services to the public and (ii) the cost to the state and to the general
20 public of implementing the proposed legislation; and

21 (j) Other information relevant to the requested review as determined
22 by the division.

23 Sec. 5. Section 71-6223.02, Revised Statutes Cumulative Supplement,
24 2016, is amended to read:

25 71-6223.02 At any time the director and the chairperson may initiate
26 a directed review or the chairperson in consultation with the members of
27 the Health and Human Services Committee of the Legislature may initiate a
28 directed review. The purpose of a directed review is to determine the
29 advisability of credentialing a health professional group not previously
30 regulated, of changing the scope of practice of a regulated health
31 profession, or of other issues regarding the regulation of health

1 professions. Before initiating a directed review, the director and the
2 chairperson, or the chairperson in consultation with the Health and Human
3 Services Committee, shall determine that no appropriate applicant group
4 exists. No letter of intent, applicant group, application, or application
5 fee shall be required in a directed review. The duty of the technical
6 committee in a directed review shall be to investigate the issues that
7 are the subject of the review, to hold a public hearing to receive
8 information from the public on the issues, to develop a specific proposal
9 to address the issues investigated taking into account the appropriate
10 criteria as set forth in section 71-6221 or section 6 of this act, as
11 applicable, and to prepare a final report containing the technical
12 committee's proposal, other options considered, and other relevant
13 information.

14 Sec. 6. (1) An applicant group which consists of one or more
15 members of a regulated health profession may apply at its discretion for
16 the review of a proposed change in the scope of practice for the
17 regulated health profession. The application shall be subject to the
18 procedures provided in subsections (1) and (2) of section 71-6223. The
19 application shall be accompanied by the fee as provided in section
20 71-6223.01. If the director determines that the application presents
21 issues identified in subsection (3) of this section, the director shall
22 appoint a technical committee as provided in section 71-6224.

23 (2) The committee shall perform factfinding functions and present a
24 report electronically to the chairperson of the Health and Human Services
25 Committee of the Legislature.

26 (3) Issues to be reviewed for changes to the scope of practice of a
27 regulated health profession are:

28 (a) The health, safety, and welfare of the public are inadequately
29 addressed by the present scope of practice or limitations on the scope of
30 practice;

31 (b) Enactment of changes in the scope of practice would benefit the

1 health, safety, or welfare of the public;

2 (c) Changes in scope of practice do not create a significant new
3 danger to the health, safety, or welfare of the public;

4 (d) The education and training for the health profession adequately
5 prepares practitioners to perform the new skill or service;

6 (e) There are appropriate postprofessional programs and competence
7 assessment measures available to assure that the practitioner is
8 competent to perform the new skill or service in a safe manner; and

9 (f) There are adequate measures to assess whether practitioners are
10 competently performing the new skill or service and to take appropriate
11 action if they are not performing competently.

12 Sec. 7. Section 71-6224, Revised Statutes Cumulative Supplement,
13 2016, is amended to read:

14 71-6224 (1) The director with the advice of the board shall appoint
15 an appropriate technical committee to examine and investigate each
16 application. The committee shall consist of six appointed board members,
17 one of whom ~~and one member of the board designated by the board who~~ shall
18 serve as chairperson of the committee. The chairperson of the committee
19 shall not be a member of the applicant group, any health profession
20 sought to be regulated by the application, or any health profession which
21 is directly or indirectly affected by the application. The director shall
22 ensure that the total composition of the committee is fair, impartial,
23 and equitable. In no event shall more than one member of the same
24 regulated health profession, the applicant group, or the health
25 profession sought to be regulated by an application serve on a technical
26 committee.

27 (2) As soon as possible after its appointment, the committee shall
28 meet and review the application assigned to it. The committee shall serve
29 as a factfinding body and undertake such investigation as it deems
30 necessary to address the issues identified in the application. As part of
31 its investigation, each committee shall consider available scientific

1 evidence and conduct public factfinding hearings. Each committee shall
2 comply with the Open Meetings Act.

3 (3) An applicant group shall have the burden of producing evidence
4 to support its application.

5 (4) Each committee shall detail its findings in a report and file
6 the report with the board and the director. Each committee shall evaluate
7 the application presented to it on the basis of the appropriate criteria
8 as established in sections 71-6221 to 71-6223, shall make written
9 findings on all criteria, ~~and shall make a recommendation for approval or~~
10 ~~denial. Whether it recommends approval or denial of an application, the~~
11 ~~committee~~ may make additional recommendations regarding changes to the
12 proposal or other solutions to problems identified during the review, and
13 may comment on the anticipated benefits to the health, safety, and
14 welfare of the public. The committee may recommend ~~If the committee~~
15 ~~recommends~~ approval of an application for regulation of a health
16 profession not currently regulated. If the committee recommends approval,
17 it shall also recommend the least restrictive method of regulation to be
18 implemented consistent with the cost-effective protection of the public
19 and with section 71-6222. The committee may recommend a specific method
20 of regulation not listed in section 71-6222 if it finds that such method
21 is the best alternative method of regulation.

22 Sec. 8. Section 71-6227, Reissue Revised Statutes of Nebraska, is
23 amended to read:

24 71-6227 (1)(a) The director may, with the advice of the board, adopt
25 and promulgate rules and regulations necessary to carry out the Nebraska
26 Regulation of Health Professions Act.

27 (b) The director shall adopt and promulgate rules and regulations
28 before October 1, 2018, to provide for a standard procedure for a
29 technical committee to conduct a review pursuant to section 6 of this
30 act. The rules and regulations shall include parameters for interested
31 parties to provide information and input to the technical committee and

1 for proponents and opponents of proposed changes to the scope of practice
2 to collaborate with the technical committee in order to best advise the
3 Legislature regarding potential modification or adoption of the proposed
4 changes.

5 (2) The director shall provide all necessary professional and
6 clerical services to assist the committees and the board. Records of all
7 official actions and minutes of all business coming before the committees
8 and the board shall be kept. The director shall be the custodian of all
9 records, documents, and other property of the committees and the board.

10 (3) Committee members shall receive no salary, but shall be
11 reimbursed for their actual and necessary expenses as provided in
12 sections 81-1174 to 81-1177 for state employees.

13 Sec. 9. Original section 71-6227, Reissue Revised Statutes of
14 Nebraska, and sections 71-6201, 71-6202, 71-6221, 71-6223, 71-6223.02,
15 and 71-6224, Revised Statutes Cumulative Supplement, 2016, are repealed.