

2009

STATE OF NEBRASKA

**STATUTES RELATING TO
NEBRASKA HEALTH CARE CERTIFICATE OF NEED ACT**



Department of Health and Human Services
Division of Public Health
Licensure Unit

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STATUTES PERTAINING TO NONPROFIT HOSPITAL SALE ACT

71-20,102. Act, how cited. Sections 71-20,102 to 71-20,113 shall be known and may be cited as the Nonprofit Hospital Sale Act.

Source: Laws 1996, LB 1188, §1. Effective date April 16, 1996.

71-20,103. Terms, defined. For purposes of the Nonprofit Hospital Sale Act:

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

(2) Hospital has the meaning found in section 71-419;

(3) Acquisition means any acquisition by a person or persons of an ownership or controlling interest in a hospital, whether by purchase, merger, lease, gift, or otherwise, which results in a change of ownership or control of twenty percent or greater or which results in the acquiring person or persons holding a fifty percent or greater interest in the ownership or control of a hospital, but acquisition does not include the acquisition of an ownership or controlling interest in a hospital owned by a nonprofit corporation if the transferee (a) is a nonprofit corporation having a substantially similar charitable health care purpose as the transferor or is a governmental entity, (b) is exempt from federal income tax under section 501(c)(3) of the Internal Revenue Code or as a governmental entity, and (c) will maintain representation from the affected community on the local board; and

(4) Person has the meaning found in section 71-5803.12.

Source: Laws 1996, LB 1188, § 2; Laws 1997, LB 307, § 185; Laws 1997, LB 798, § 1; Laws 2000, LB 819, § 104; Laws 2007, LB296, § 528. Operative date July 1, 2007.

71-20,104. Acquisition of hospital; approval required; exception; notice; application; procedure. No person shall engage in the acquisition of a hospital owned by a nonprofit corporation without first having applied for and received the approval of the department and without first having notified the Attorney General and, if applicable, received approval from the Attorney General pursuant to the Nonprofit Hospital Sale Act. No person shall engage in the acquisition of a hospital not owned by a nonprofit corporation without first having applied for and received the approval of the department pursuant to the act unless such acquiring person is a nonprofit corporation exempt from federal income tax under section 501 (c) (3) of the Internal Revenue Code or is a governmental entity. For purposes of the act, approval of the department and the Attorney General shall not be required for the acquisition of a hospital not owned by a nonprofit corporation as follows: (1) The lease of a county hospital approved under section 23-3504; or (2) the dissolution of a hospital district approved under sections 23-3544 to 23-3546 or the merger of hospital districts approved under sections 23-3573 to 23-3578.

Any person not required to obtain the approval of the department under the provisions of the Nonprofit Hospital Sale Act shall give the Attorney General at least thirty days' notice of an impending acquisition, during which time the Attorney General may take any necessary and appropriate action consistent with his or her general duties of oversight with regard to the conduct of charities. The notice shall briefly describe the impending acquisition, including any change in ownership of tangible or intangible assets.

The application shall be submitted to the department and the Attorney General on forms provided by the department and shall include the name of the seller, the name of the purchaser or other parties to an acquisition, the terms of the proposed agreement, the sale price, a copy of the acquisition agreement, a financial and economic analysis and report from an independent expert or consultant of the effect of the acquisition under the criteria set forth in section 71-20,108, and all other related documents. A copy of the application and copies of all additional related materials shall be submitted to the department and to the Attorney General at the same time. The applications and all related documents shall be considered public records for purposes of sections 84-712 to 84-712.09.

Source: Laws 1996, LB 1188, §3. Effective date April 16, 1996.

71-20,105. Application; department; Attorney General; duties; single unified review process; when. (1) Within five working days after receipt of an application under section 71-20,104, the department shall publish notice of the application in a newspaper of general circulation in the county or counties where the hospital is located and shall notify by first-class United States mail any person who has requested notice of the filing of such applications. The notice shall state that an application has been received, state the names of the parties to the agreement, describe the contents of the application, and state the date by which a person may submit written comments about the application to the department.

(2) Within sixty days after receiving an application, the department shall review the application in accordance with the standards set forth in the Nonprofit Hospital Sale Act and approve or disapprove the acquisition pursuant to the act.

Within twenty days after receiving an application, the Attorney General shall determine whether to review the application in accordance with section 71-20,108 and shall so notify the applicant. If the Attorney General determines to review the application in accordance with the act, the Attorney General shall, within sixty days after receiving the application, review the application in accordance with the standards set forth in section 71-20,108 and approve or disapprove the acquisition. If the Attorney General determines not to review the application in accordance with the act, then none of the other provisions of the act applicable to review by the Attorney General shall apply.

(3) For acquisitions which require approval from the department under the Nonprofit Hospital Sale Act and a certificate of need under the Nebraska Health Care Certificate of Need Act, the applicant shall submit a single application for both purposes and such application shall be reviewed under a single unified review process by the department. Following the single unified review process, the department shall simultaneously issue (a) its decision for purposes of the Nebraska Health Care Certificate of Need Act and (b) its decision for purposes of the Nonprofit Hospital Sale Act.

Source: Laws 1996, LB 1188, §4. Effective date April 16, 1996.

71-20,106. Review of acquisition; hearing; department or Attorney General; powers. The department, and the Attorney General if he or she determines to review the acquisition, shall during the course of review under section 71-20,105 or 71-20,107 hold a public hearing in which any person may file written comments and exhibits or appear and make a statement. The department or the Attorney General may subpoena additional information or witnesses, require and administer oaths, require sworn statements, take depositions, and use related discovery procedures for purposes of the hearing and at any time prior to making a decision on the application.

The hearing shall be held not later than thirty days after receipt of an application. The hearing shall be held upon ten working days' notice, not including days the application is deemed to be incomplete.

Source: Laws 1996, LB 1188, §5. Effective date April 16, 1996.

71-20,107. Review of application; Attorney General; department; duties; action for declaratory judgment; authorized; contest of denial. (1) If the Attorney General determines to review the application, he or she shall review the application in accordance with the standards enumerated in section 71-20,108. Within sixty days after receipt of an application, the Attorney General shall approve or disapprove the acquisition.

If the Attorney General does not act within sixty days after receipt of an application, the application shall be deemed approved. If the Attorney General approves or disapproves the acquisition, the applicant, or any person who has submitted comments under section 71-20,106, if the person has a legal interest in the hospital being acquired or in another hospital that has contracted with the acquired hospital for the provision of essential health services, may bring an action for declaratory judgment under the Uniform Declaratory Judgments Act for a determination that the acquisition is or is not in the public interest as provided in section 71-20,108.

(2) The department shall review the completed application in accordance with the standards enumerated in section 71-20,109. Within sixty days after receipt of a completed application, the department shall:

- (a) Approve the acquisition, with or without any specific modifications; or
- (b) Disapprove the acquisition.

The department shall not make its decision subject to any condition not directly related to criteria enumerated in section 71-20,109, and any condition or modification shall bear a direct and rational relationship to the application under review.

The applicant or any affected person may contest a denial in the manner provided in the Administrative Procedure Act for contested cases. The findings, conclusions, and decisions of the department shall constitute the determination of the department, except that the applicant, or any affected person who has intervened in the contested case before the department, may seek judicial review as provided in sections 84-917 to 84-919.

Source: Laws 1996, LB 1188, §6; Laws 1997, LB 798, §2. Effective date June 12, 1997.

71-20,108. Review of application; Attorney General; considerations. If the Attorney General determines to review the application, he or she shall approve the application unless he or she finds that the acquisition is not in the public interest. An acquisition is not in the public interest unless appropriate steps have been taken to safeguard the value of charitable assets and ensure that any proceeds of the transaction are used for appropriate charitable health care purposes as provided in subdivision (8) of this section. In determining whether the acquisition meets such criteria under the Nonprofit Hospital Sale Act, the Attorney General shall consider:

- (1) Whether the acquisition is permitted under the Nebraska Nonprofit Corporation Act and other laws of Nebraska governing nonprofit entities, trusts, or charities;
- (2) Whether the nonprofit hospital exercised due diligence in deciding to sell, selecting the purchaser, and negotiating the terms and conditions of the sale;
- (3) The procedures used by the seller in making its decision, including whether appropriate expert assistance was used;
- (4) Whether conflict of interest was disclosed, including, but not limited to, conflicts of interest related to board members of, executives of, and experts retained by the seller, purchaser, or parties to the acquisition;
- (5) Whether the seller will receive reasonably fair value for its assets. The Attorney General may employ, at the seller's expense, reasonably necessary expert assistance in making this determination;
- (6) Whether charitable funds are placed at unreasonable risk, if the acquisition is financed in part by the seller;
- (7) Whether any management contract under the acquisition is for reasonably fair value;
- (8) Whether the sale proceeds will be used for appropriate charitable health care purposes consistent with the seller's original purpose or for the support and promotion of health care in the affected community and whether the proceeds will be controlled as charitable funds independently of the purchaser or parties to the acquisition; and

(9) Whether a right of first refusal to repurchase the assets by a successor nonprofit corporation or foundation if the hospital is subsequently sold to, acquired by, or merged with another entity has been retained.

Source: Laws 1996, LB 1188, §7. Effective date April 16, 1996.

71-20,109. Review of application; department; considerations. In making a decision whether to approve or disapprove an application, the department shall consider:

(1) Whether sufficient safeguards are included to assure the affected community continued access to affordable care;

(2) Whether the purchaser and parties to the acquisition have made a commitment to provide health care to the disadvantaged, the uninsured, and the underinsured and to provide benefits to the affected community to promote improved health care. Activities and funding provided by the seller or its successor nonprofit corporation or foundation to provide such health care may be considered in evaluating compliance with this commitment; and

(3) If health care providers will be offered the opportunity to invest or own an interest in the purchaser or a related entity to the purchaser, whether procedures or safeguards are in place to avoid conflict of interest in patient referral and the nature of such procedures or safeguards.

This section does not apply higher standards to hospitals covered by the Nonprofit Hospital Sale Act than those applicable to hospitals not covered by the act.

Source: Laws 1996, LB 1188, §8. Effective date April 16, 1996.

71-20,110. Noncompliance with commitment to affected community; revocation of license; when. If the department receives information indicating that the acquiring person is not fulfilling the commitment to the affected community under section 71-20,109, the department shall hold a hearing upon ten days' notice to the affected parties. If after such hearing the department determines that the information is true, it may institute proceedings to revoke the license issued to the purchaser.

Source: Laws 1996, LB 1188, §9. Effective date April 16, 1996.

71-20,111. Attorney General; powers to ensure compliance. The Attorney General shall have the authority to ensure compliance with commitments which inure to the public interest.

Source: Laws 1996, LB 1188, §10. Effective date April 16, 1996.

71-20,112. Licensure; issuance, renewal, revocation, or suspension; when; section, how construed. No license to operate a hospital may be issued or renewed by the department pursuant to the Health Care Facility Licensure Act or any other state statute, and a license which has been issued shall be subject to revocation or suspension, if:

(1) There is an acquisition of a hospital without first having received the approval of the department under the Nonprofit Hospital Sale Act;

(2) There is an acquisition of a hospital without the approval of the Attorney General, if the Attorney General determines to review the application under the act;

(3) There is an acquisition of a hospital and the Attorney General disapproves the acquisition and there is a judicial determination under the Uniform Declaratory Judgments Act that the acquisition is not in the public interest; or

(4) The hospital is not fulfilling its commitment under section 71-20,109 or is not following procedures of safeguards committed to under subdivision (3) of such section.

This section does not limit the right to a hearing under section 71-454 or the right of appeal for a hospital from such decision as provided in section 71-455.

Source: Laws 1996, LB 1188, § 11; Laws 2000, LB 819, § 105. Operative date January 1, 2001.

71-20,113. Applicability of act. Any acquisition of a hospital before April 16, 1996, and any acquisition in which an application for a certificate of need under the Nebraska Health Care Certificate of Need Act has been granted by the Department of Health and Human Services Regulation and Licensure before April 16, 1996, is not subject to the Nonprofit Hospital Sale Act.

Source: Laws 1996, LB 1188, § 12; Laws 2007, LB296, § 529. Operative date July 1, 2007.

71-20,114. Authority of Attorney General; act; how construed. No provision of the Nonprofit Hospital Sale Act shall derogate from the common-law or statutory authority of the Attorney General.

Source: Laws 1996, LB 1188, §13. Effective date April 16, 1996.

NEBRASKA HEALTH CARE CERTIFICATE OF NEED ACT

71-5801. Act, how cited. Sections 71-5801 to 71-5870 shall be known and may be cited as the Nebraska Health Care Certificate of Need Act.

Source: Laws 1979, LB 172, §1; Laws 1982, LB 378, §1; Laws 1989, LB 429, §2; Laws 1991, LB 244, §9; Laws 1993,

LB 9, §1; Laws 1996, LB 1155, §58; Laws 1997, LB 798, §3. Effective date June 12, 1997.

71-5802. Repealed. Laws 1997, LB 798, §39.

71-5803. Definitions, where found. For purposes of the Nebraska Health Care Certificate of Need Act, unless the context otherwise requires, the definitions found in sections 71-5803.01 to 71-5803.15 shall be used.

Source: Laws 1979, LB 172, §3; Laws 1982, LB 378, §3; Laws 1989, LB 429, §4; Laws 1991, LB 244, §10; Laws 1996, LB 1155, §59; Laws 1997, LB 798, §4. Effective date June 12, 1997.

71-5803.01. Acute care bed, defined. Acute care bed means a bed in a hospital that is or will be licensed under the Health Care Facility Licensure Act for acute care services or a bed that is part of a hospital or unit of a hospital that is excluded from the prospective payment system under Title XVIII of the federal Social Security Act, as amended, as a rehabilitation hospital or rehabilitation unit.

Source: Laws 1997, LB 798, § 5; Laws 2000, LB 819, § 112. Operative date January 1, 2001.

71-5803.02. Ambulatory surgical center, defined. Ambulatory surgical center has the same meaning as in section 71-405.

Source: Laws 1979, LB 172, § 4; Laws 1989, LB 429, § 5; Laws 1994, LB 1210, § 145; R.S.1943, (1996), § 71-5804; Laws 1997, LB 798, § 6; Laws 2000, LB 819, § 113. Operative date January 1, 2001.

71-5803.03. Certificate of need, defined. Certificate of need means a written authorization by the department for a person to implement the project under review.

Source: Laws 1979, LB 172, §6; R.S. 1943, (1996), §71-5806; Laws 1997, LB 798, §7. Effective date June 12, 1997.

71-5803.04. Department, defined. Department means the Department of Health and Human Services.

Source: Laws 1979, LB 172, § 8; Laws 1996, LB 1044, § 736; R.S.1943, (1996), § 71-5808; Laws 1997, LB 798, § 8; Laws 2007, LB296, § 634. Operative date July 1, 2007.

71-5803.05. Assisted-living facility, defined. Assisted-living facility has the same meaning as in section 71-406.

Source: Laws 1989, LB 429, § 7; Laws 1997, LB 608, § 18; R.S.1943, (1996), § 71-5809.01; Laws 1997, LB 798, § 9; Laws 2000, LB 819, § 114. Operative date January 1, 2001.

71-5803.06. Health care facility, defined. Health care facility means hospitals, skilled nursing facilities, intermediate care facilities, and nursing facilities.

Source: Laws 1979, LB 172, §10; Laws 1982, LB 378, §6; Laws 1989, LB 429, §8; Laws 1991, LB 244, §12; Laws 1993, LB 121, §443; Laws 1994, LB 1210, §146; Laws 1996, LB 1155, §62; Laws 1997, LB 608, §19; R.S. 1943, (1996), §71-5810; Laws 1997, LB 798, §10.

Note: The changes made by LB 798 became effective June 12, 1997. The changes made by LB 608 became operative July 1, 1998.

71-5803.07. Health planning region, defined. Health planning region means one of the twenty-six health planning regions established in the Nebraska State Health Plan, 1986-1991.

Source: Laws 1997, LB 798, §11. Effective date June 12, 1997.

71-5803.08. Hospital, defined. Hospital has the same meaning as in section 71-419.

Source: Laws 1979, LB 172, § 16; R.S.1943, (1996), § 71-5816; Laws 1997, LB 798, § 12; Laws 2000, LB 819, § 115. Operative date January 1, 2001.

71-5803.09 Intermediate care facility, intermediate care facility for the mentally retarded, defined. Intermediate care facility has the same meaning as in section 71-420 and includes an intermediate care facility for the mentally retarded that has sixteen or more beds. Intermediate care facility for the mentally retarded has the same meaning as in section 71-421.

Source: Laws 1979, LB 172, § 19; Laws 1988, LB 1100, § 174; R.S.1943, (1996), § 71-5819; Laws 1997, LB 798, § 13; Laws 2000, LB 819, § 116; Laws 2009, LB511, § 1. Effective Date: April 23, 2009.

71-5803.10. Long-term care bed, defined. Long-term care bed means a bed in a health care facility that is or will be licensed under the Health Care Facility Licensure Act as a skilled nursing facility, intermediate care facility, nursing facility, or long-term care hospital. Long-term care beds do not include residential care beds, domiciliary beds, or swing beds. For purposes of this section, swing beds means beds which may be used by a hospital for acute or long-term care in a facility

located in an area which is not designated as urban by the United States Bureau of the Census and which has up to one hundred beds, excluding beds for newborns and intensive-care-type inpatient units.

Source: Laws 1997, LB 798, § 14; Laws 2000, LB 819, § 117. Operative date January 1, 2001.

71-5803.11. Nursing facility, defined. Nursing facility has the same meaning as in section 71-424.

Source: Laws 1991, LB 244, § 11; R.S.1943, (1996), § 71-5809.02; Laws 1997, LB 798, § 15; Laws 2000, LB 819, § 118. Operative date January 1, 2001.

71-5803.12. Person, defined. Person means an individual, a trust or estate, a partnership, a limited liability company, a corporation, including associations, joint-stock companies, and insurance companies, a state, a political subdivision or instrumentality, including a municipal corporation, of a state, or any legal entity recognized by the state.

Source: Laws 1979, LB 172, §22; Laws 1982, LB 378, §13; Laws 1993, LB 121, §445; R.S. 1943, (1996), §71-5822; Laws 1997, LB 798, §16. Effective date June 12, 1997.

71-5803.13. Rehabilitation bed, defined. Rehabilitation bed means a bed in a health care facility that is or will be licensed under the Health Care Facility Licensure Act if the bed is in an inpatient facility which is operated for the primary purpose of assisting in the rehabilitation of disabled persons through an integrated program of medical and other services which are provided under professional supervision and if the bed is part of a hospital or unit of a hospital that is excluded from the prospective payment system under Title XVIII of the federal Social Security Act as a rehabilitation hospital or rehabilitation unit.

Source: Laws 1982, LB 378, § 9; R.S.1943, (1996), § 71-5818.01; Laws 1997, LB 798, § 17; Laws 2000, LB 819, § 119. Operative date January 1, 2001.

71-5803.14. Repealed. Laws 1997, LB 608, §30. Operative date July 1, 1998.

71-5803.15. Skilled nursing facility, defined. Skilled nursing facility has the same meaning as in section 71-429.

Source: Laws 1979, LB 172, § 24; R.S.1943, (1996), § 71-5824; Laws 1997, LB798, § 19; Laws 2000, LB 819, § 120. Operative date January 1, 2001.

71-5804. Transferred to section 71-5803.02.

71-5805 and 71-5805.01. Repealed. Laws 1997, LB 798, §39.

71-5806. Transferred to section 71-5803.03.

71-5807. Repealed. Laws 1997, LB 798, §39.

71-5808. Transferred to section 71-5803.04.

71-5809. Repealed. Laws 1997, LB 798, §39.

71-5809.01. Transferred to section 71-5803.05.

71-5809.02. Transferred to section 71-5803.11.

71-5810. Transferred to section 71-5803.06.

71-5811 to 71-5815. Repealed. Laws 1997, LB 798, §39.

71-5816. Transferred to section 71-5803.08.

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71-5818.01 and 71-5818.02. Transferred to sections 71-5803.13 and 71-5803.14.

71-5818.03. Repealed. Laws 1997, LB 798, §39.

71-5819. Transferred to section 71-5803.09.

71-5820 to 71-5821.01. Repealed. Laws 1997, LB 798, §39.

71-5822. Transferred to section 71-5803.12.

71-5823. Repealed. Laws 1997, LB 798, §39.

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71-5825 and 71-5826. Repealed. Laws 1997, LB 798, §39.

71-5827. Repealed. Laws 1982, LB 378, §57.

71-5828 and 71-5829. Repealed. Laws 1997, LB 798, §39.

71-5829.01 and 71-5829.02 Repealed. Laws 2009, LB 195, § 111.

71-5829.03 Certificate of need; activities requiring. Except as provided in section 71-5830.01, no person, including persons acting for or on behalf of a health care facility, shall engage in any of the following activities without having first applied for and received the necessary certificate of need:

(1) The initial establishment of long-term care beds or rehabilitation beds except as permitted under subdivisions (4) and (5) of this section;

- (2) An increase in the long-term care beds of a health care facility by more than ten long-term care beds or more than ten percent of the total long-term care bed capacity of such facility, whichever is less, over a two-year period;
 - (3) An increase in the rehabilitation beds of a health care facility by more than ten rehabilitation beds or more than ten percent of the total rehabilitation bed capacity of such facility, whichever is less, over a two-year period;
 - (4) Any initial establishment of long-term care beds through conversion by a hospital of any type of hospital beds to long-term care beds if the total beds converted by the hospital are more than ten beds or more than ten percent of the total bed capacity of such hospital, whichever is less, over a two-year period;
 - (5) Any initial establishment of rehabilitation beds through conversion by a hospital of any type of hospital beds to rehabilitation beds if the total beds converted by the hospital are more than ten beds or more than ten percent of the total bed capacity of such hospital, whichever is less, over a two-year period; or
 - (6) Any relocation of rehabilitation beds in Nebraska from one health care facility to another health care facility.
- Source: Laws 1997, LB 798, § 22; Laws 2008, LB765, § 1; Laws 2009, LB195, § 84. Effective Date: August 30, 2009.

71-5829.04 Long-term care beds; moratorium; exceptions; department; duties. (1) All long-term care beds which require a certificate of need under section 71-5829.03 are subject to a moratorium unless one of the following exceptions applies:

- (a) An exception to the moratorium may be granted if the department establishes that the needs of individuals whose medical and nursing needs are complex or intensive and are above the level of capabilities of staff and above the services ordinarily provided in a long-term care bed are not currently being met by the long-term care beds licensed in the health planning region; or
- (b) If the average occupancy for all licensed long-term care beds located in a twenty-five mile radius of the proposed site have exceeded ninety percent occupancy during the most recent three consecutive calendar quarters as reported at the time of the application filing and there is a long-term care bed need as determined under this section, the department may grant an exception to the moratorium and issue a certificate of need. If the department determines average occupancy for all licensed long-term care beds located in a twenty-five mile radius of the proposed site has not exceeded ninety percent occupancy during the most recent three consecutive calendar quarters as reported at the time of the application filing, the department shall deny the application.

(2) The department shall review applications which require a certificate of need under section 71-5829.03 and determine if there is a need for additional long-term care beds as provided in this section. No such application shall be approved if the current supply of licensed long-term care beds in the health planning region of the proposed site exceeds the long-term care bed need for that health planning region. For purposes of this section:

- (a) Long-term care bed need is equal to the population of the health planning region, multiplied by the utilization rate of long-term care beds within the health planning region, and the result divided by the minimum occupancy rate of long-term care beds within the health planning region;
- (b) Population is the most recent projection of population for the health planning region for the year which is closest to the fifth year immediately following the date of the application. The applicant shall provide such projection as part of the application using data from the University of Nebraska-Lincoln Bureau of Business Research or other source approved by the department;
- (c) The utilization rate is the number of people using long-term care beds living in the health planning region in which the proposed project is located divided by the population of the health planning region; and
- (d) The minimum occupancy rate is ninety-five percent for health planning regions which are part of or contain a Metropolitan Statistical Area as defined by the United States Bureau of the Census. For all other health planning regions in the state, the minimum occupancy rate is ninety percent.

(3) To facilitate the review and determination required by this section, each health care facility with long-term care beds shall report on a quarterly basis to the department the number of residents at such facility on the last day of the immediately preceding quarter on a form provided by the department. Such report shall be provided to the department no later than ninety days after the last day of the immediately preceding quarter. The department shall provide the occupancy data collected from such reports upon request. Any facility failing to timely report such information shall be ineligible for any exception to the requirement for a certificate of need under section 71-5830.01 and any exception to the moratorium imposed under this section and may not receive, transfer, or relocate long-term care beds.

Source: Laws 1997, LB 798, § 23; Laws 2009, LB195, § 85. Effective Date: August 30, 2009.

71-5829.05. Long-term care beds; certificate of need; issuance; conditions. If two or more applications are submitted within thirty days after the receipt of the first application for the same health planning region and the approval of all the applications would result in long-term care beds in the health planning region in excess of the long-term care bed need established in section 71-5829.04, the department shall grant the application and issue a certificate of need, subject to any reduction in beds required by section 71-5846 to the applicant which is better able to: (1) Provide quality care; (2) operate a long-term care facility in a cost-effective manner based on annual cost reports submitted to the department; (3) accumulate financial resources to complete the project; and (4) serve medicare, medicaid, and medically indigent long-term care patients in the area. The department shall show a preference to an application filed by an applicant with facilities in Nebraska.

Information to make these determinations shall be limited to the application and data currently collected by the state. If the applicant does not have a facility in Nebraska, the department may request information from other states in which the applicant is offering services to make its determination.

Source: Laws 1997, LB 798, § 24; Laws 2007, LB296, § 635. Operative date July 1, 2007.

71-5829.06. Rehabilitation beds; moratorium; exceptions. All rehabilitation beds which require a certificate of need are subject to a moratorium, unless one of the following exceptions applies:

(1) If the average occupancy for all rehabilitation beds located in Nebraska has exceeded ninety percent occupancy during the most recent three consecutive calendar quarters as reported at the time of the filing of the application, the department may grant an exception to the moratorium and issue a certificate of need. If the department determines the average occupancy for all rehabilitation beds located in Nebraska does not exceed ninety percent occupancy during the most recent three consecutive calendar quarters as reported at the time of the filing of the application, the department shall deny the application; or

(2) If the average occupancy for all rehabilitation beds within a health planning region exceeds eighty percent occupancy during the most recent three consecutive calendar quarters as reported at the time of the filing of the application and no other comparable services are otherwise available in the health planning region, the department shall grant an exception to the moratorium and issue a certificate of need for up to three rehabilitation beds.

Source: Laws 1997, LB 798, § 25; Laws 2008, LB765, § 2. Effective date July 18, 2008.

71-5830. Repealed. Laws 1997, LB 798, §39.

71-5830.01 Certificate of need; exempt activities. Notwithstanding any other provisions of the Nebraska Health Care Certificate of Need Act, a certificate of need is not required for:

(1) A change in classification between an intermediate care facility, a nursing facility, or a skilled nursing facility;

(2) A project of a county in which is located a city of the metropolitan class for which a bond issue has been approved by the electorate of such county on or after January 1, 1994;

(3) A project of a federally recognized Indian tribe to be located on tribal lands within the exterior boundaries of the State of Nebraska where (a) a determination has been made by the tribe's governing body that the cultural needs of the tribe's members cannot be adequately met by existing facilities if such project has been approved by the tribe's governing body and (b) the tribe has a self-determination agreement in place with the Indian Health Service of the United States Department of Health and Human Services so that payment for enrolled members of a federally recognized Indian tribe who are served at such facility will be made with one hundred percent federal reimbursement; and

(4) A transfer or relocation of long-term care beds from one facility to another entity in the same health planning region or any other health planning region. The receiving entity shall obtain a license for the transferred or relocated beds within two years after the transfer or relocation. The department shall grant an extension of such time if the receiving entity is making progress toward the licensure of such beds.

Source: Laws 1982, LB 378, § 56; Laws 1989, LB 429, § 16; Laws 1997, LB 798, § 26; Laws 1999, LB 594, § 60; Laws 2008, LB928, § 31; Laws 2009, LB195, § 86. Effective Date: August 30, 2009.

71-5831 to 71-5832.01. Repealed. Laws 1997, LB 798, §39.

71-5832.02. Repealed. Laws 1989, LB 429, §43.

71-5833 to 71-5835. Repealed. Laws 1997, LB 798, §39.

71-5836. Department; duties. The department, after consulting with appropriate governmental agencies and affected persons, shall:

(1) Prescribe the form to be used in applying for certificates of need and for applying for renewal of such certificates. The application shall contain (a) the name and address of the sponsor, (b) the anticipated date for placing the beds in service, (c) the location, (d) the number of new beds, (e) a concise, narrative description of the project showing the type and description of proposed acute care beds, rehabilitation beds, or long-term care beds, and (f) the certification and telephone number of a responsible officer; and

(2) By rule and regulation describe and clarify the procedures to be followed in the review of an application. Such procedures shall be issued with each application form.

Source: Laws 1979, LB 172, §36; Laws 1982, LB 378, §25; Laws 1989, LB 429, §22; Laws 1997, LB 798, §27. Effective date June 12, 1997.

71-5836.01 and 71-5836.02. Repealed. Laws 1997, LB 798, §39.

71-5837. Certificate of need application; filing; fee. An application for a certificate of need shall be filed with the department. All applications for a certificate of need shall be accompanied by a one-thousand-dollar nonrefundable fee. Such

fee shall be remitted to the State Treasurer for credit to the General Fund.

Source: Laws 1979, LB 172, §37; Laws 1982, LB 378, §28; Laws 1989, LB 429, §24; Laws 1993, LB 840, §1; Laws 1997, LB 798, §28. Effective date June 12, 1997.

71-5838. Repealed. Laws 1997, LB 798, §39.

71-5839. Repealed. Laws 1982, LB 378, §57.

71-5840 and 71-5841. Repealed. Laws 1997, LB 798, §39.

71-5842 and 71-5843. Transferred to sections 71-5859.01 and 71-5859.02.

71-5844. Transferred to section 71-5859.04.

71-5844.01. Repealed. Laws 1989, LB 429, §43.

71-5845. Transferred to section 71-5859.03.

71-5846. Certificate of need; decision; department; duties. The department shall make a decision in writing to (1) approve the application and issue a certificate of need, (2) disapprove the application and deny a certificate of need, or (3) if the application is for more long-term care beds than allowed under section 71-5829.04, approve the application but issue a certificate of need only for the reduced number of beds that section 71-5829.04 allows. The department shall make its decision within sixty days after the date the application was received.

Source: Laws 1979, LB 172, §46; Laws 1982, LB 378, §37; Laws 1989, LB 429, §27; Laws 1996, LB 1155, §65; Laws 1997, LB 798, §29. Effective date June 12, 1997.

71-5847. Repealed. Laws 1989, LB 429, §43.

71-5848. Application; decision; findings and conclusions. The department shall, when it approves or rejects an application, provide in writing to the applicant the decision and the findings and conclusions on which it based the decision.

Source: Laws 1979, LB 172, §48; Laws 1982, LB 378, §39; Laws 1989, LB 429, §28; Laws 1997, LB 798, §30. Effective date June 12, 1997.

71-5848.01. Certificate of need; period valid; renewal. A new or modified certificate of need shall be valid for a period of one year from the date of issuance and may be renewed at the expiration of such period for up to one year if the holder of the certificate establishes that the holder is meeting the timetable or making a good faith effort to meet it. The department shall give written notice to an applicant for a renewal certificate of its decision within thirty days after receipt of an application. Such decision shall be considered a final decision of the department for purposes of appeal. If the decision is not appealed, it shall be final as of the date issued.

Source: Laws 1979, LB 172, §67; Laws 1982, LB 378, §53; R.S. 1943, (1986), §71-5867; Laws 1989, LB 429, §29; Laws 1997, LB 798, §31. Effective date June 12, 1997.

71-5849. Repealed. Laws 1997, LB 798, §39.

71-5850. Repealed. Laws 1989, LB 429, §43.

71-5851 to 71-5855. Repealed. Laws 1997, LB 798, §39.

71-5856. Repealed. Laws 1982, LB 378, §57.

71-5857. Repealed. Laws 1997, LB 798, §39.

71-5858. Repealed. Laws 1989, LB 429, §43.

71-5859. Department; decision; appeal procedures. The department shall adopt and promulgate rules and regulations establishing procedures in accordance with the Administrative Procedure Act by which the applicant may appeal a decision by the department. The applicant may appeal a final decision of the department to the district court in accordance with the Administrative Procedure Act.

Source: Laws 1979, LB 172, § 59; Laws 1982, LB 378, § 49; Laws 1989, LB 429, § 31; Laws 1997, LB 798, § 32; Laws 2007, LB296, § 636. Operative date July 1, 2007.

71-5859.01 to 71-5859.04. Repealed. Laws 1997, LB 798, §39.

71-5860 to 71-5864. Repealed. Laws 1989, LB 429, §43.

71-5865 Certificate of need; appeal; burden of proof. In an appeal of a decision to deny a certificate of need, the person requesting the appeal shall bear the burden of proving that the project meets the applicable criteria established in sections 71-5829.03 to 71-5829.06.

Source: Laws 1979, LB 172, § 65; Laws 1982, LB 378, § 51; Laws 1989, LB 429, § 36; Laws 1997, LB 798, § 33; Laws 2009, LB195, § 87. Effective Date: August 30, 2009.

71-5866. Repealed. Laws 1997, LB 798, §39.

71-5867. Transferred to section 71-5848.01.

71-5868. Violation; department; maintain action. The department may, in accordance with the laws of the state governing injunctions and other process, maintain an action in the name of the state against any person who is engaging in an activity identified as requiring a certificate of need under the Nebraska Health Care Certificate of Need Act without first having a valid certificate of need or who is engaging in an activity prohibited under the act.

Source: Laws 1979, LB 172, §68; Laws 1982, LB 378, §54; Laws 1989, LB 429, §38; Laws 1997, LB 798, §34. Effective date June 12, 1997.

71-5869. Health care facility; license or permit; denial, revocation, or suspension; grounds. (1) A license or permit which has been issued by the department under the Health Care Facility Licensure Act or any other state statute to a health care facility which engaged in an activity identified as requiring a certificate of need under the Nebraska Health Care Certificate of Need Act without having first obtained a certificate of need or which engaged in an activity prohibited under the act is subject to revocation or suspension. Nothing contained in this section shall limit the rights of appeal of a health care facility from such decision as provided in the Health Care Facility Licensure Act.

(2) No license or permit may be issued or renewed by the department under the Health Care Facility Licensure Act or any other state statute, nor may any type of approval be granted to any health care facility which engaged in an activity identified as requiring a certificate of need under the Nebraska Health Care Certificate of Need Act without having first obtained a certificate of need or which engaged in an activity prohibited under the act.

Source: Laws 1979, LB 172, § 69; Laws 1997, LB 798, § 35; Laws 2000, LB 819, § 121. Operative date January 1, 2001.

71-5870. Violation; penalty. Any person who violates the Nebraska Health Care Certificate of Need Act by engaging in any activity which requires a certificate of need without first obtaining a certificate of need as required by the act or by engaging in an activity prohibited under the act is guilty of a Class IV misdemeanor. Each day of violation constitutes a separate offense. The magnitude of the violation is the primary consideration in establishing the amount of the fine.

Source: Laws 1979, LB 172, §70; Laws 1982, LB 378, §55; Laws 1989, LB 429, §39; Laws 1997, LB 798, §36. Effective date June 12, 1997.

HEALTH CARE FACILITY-PROVIDER COOPERATION

71-7701. Act, how cited. Sections 71-7701 to 71-7711 shall be known and may be cited as the Health Care Facility-Provider Cooperation Act.

Source: Laws 1994, LB 1223, §111.

71-7702. Terms, defined. For purposes of the Health Care Facility-Provider Cooperation Act:

(1) Community planning means a plan which identifies (a) health-care-related resources, facilities, and services within the community, (b) the health care needs of the community, (c) gaps in services, (d) duplication of services, and (e) ways to meet health care needs;

(2) Cooperative agreement means an agreement among two or more health care facilities or other providers for the sharing, allocation, or referral of patients, personnel, instructional programs, equipment, support services and facilities, or medical, diagnostic, or laboratory facilities or procedures or other services traditionally offered or purchased by health care facilities or other providers;

(3) Department means the Department of Health and Human Services;

(4) Health care facility means:

(a) Any facility required to be licensed under the Health Care Facility Licensure Act or, if in another state, licensed in such state; and

(b) Any parent of a health care facility, health care facility subsidiary, or health care facility affiliate that provides medical or medically related diagnostic and laboratory services or engages in ancillary activities supporting those services; and

(5) Provider means any person licensed to provide health care services under the Uniform Credentialing Act and engaged in the practice of medicine and surgery, osteopathic medicine, pharmacy, optometry, podiatry, physical therapy, or nursing.

Source: Laws 1994, LB 1223, § 112; Laws 1996, LB 1044, § 786; Laws 2000, LB 819, § 144; Laws 2007, LB296, § 686; Laws 2007, LB463, § 1301. The changes made by LB 296 became operative July 1, 2007. The changes made by LB 463 became operative December 1, 2008.

71-7703. Certificate of public advantage; governing cooperative agreement; application. Parties to a cooperative

agreement may apply to the department for a certificate of public advantage governing the cooperative agreement. The application shall include an executed letter of intent signed by the parties indicating the parties' intent to proceed with a cooperative agreement if the department issues a certificate of public advantage and shall also include a narrative description of the proposed agreement, the nature and scope of the cooperation in the proposed agreement, and any consideration passing to any party under the proposed agreement. A copy of the application and copies of all additional related materials shall be submitted to the Attorney General and to the department at the same time.

Source: Laws 1994, LB 1223, §113.

71-7704. Certificate of public advantage; notice; review; hearing; rules and regulations. (1) Within five working days after receipt of an application for a certificate of public advantage, the department shall publish notice of the application through public channels and shall notify health care facilities providing similar services in the area affected by the proposal and any person who has requested such notice. The notice shall state that an application has been received, describe the proposal, and state the date by which a person may submit written comments about the application to the department.

(2) The department shall, within fifteen days after the date an application is received, determine if the application is complete for the purposes of review. The department may find that an application is incomplete when a question on the application form has not been answered in whole or in part or has been answered in a manner that does not fairly meet the question addressed or when the application does not include attachments of supporting documents necessary to complete the answer. If the department determines that an application is incomplete, it shall notify the applicant within fifteen days after the date the application was received, stating the reasons for its determination of incompleteness with reference to the particular questions for which a deficiency is noted.

(3) The department may, during the course of its review, hold a public meeting at which any person may introduce testimony and exhibits in connection with an application. The department decision to hold a public meeting shall be made within fifteen days after the department's dissemination of notice pursuant to subsection (1) of this section. The meeting shall be held no later than thirty days after the department's decision to hold a public meeting and upon five days notice, not including days the application is deemed to be incomplete.

(4) The department shall review the application in accordance with the standards set forth in section 71-7706 and may hold a public hearing in accordance with rules and regulations of the department. Persons may intervene if any legal rights, duties, privileges, or other legal interests may be substantially affected by the application. The department may adopt and promulgate rules and regulations for such intervention. The department shall consult with the Attorney General regarding his or her evaluation of any potential reduction in competition resulting from a cooperative agreement.

Source: Laws 1994, LB 1223, §114.

71-7705. Certificate of public advantage; decision; execute cooperative agreement; when; contest of decision; appeal. (1) The department shall grant or deny an application for a certificate of public advantage within ninety days after the date of filing of the application, not including days the application is deemed to be incomplete. The decision shall be in writing and set forth the basis for the decision. The department shall furnish a copy of the decision to the applicants, the Attorney General, and any intervenor.

(2) If the department grants the application, the parties shall have forty-five days after the date of receipt of the department's decision to submit an executed written copy of the cooperative agreement which shall be in accordance with the terms and conditions set out in the letter of intent and the application. The department shall review the executed written copy of the cooperative agreement and, if it is in accordance with the terms and conditions set out in the letter of intent and the application, the department shall issue a certificate of public advantage for the cooperative agreement.

(3) If the applicants desire to contest the denial or the intervenors desire to contest the granting of an application, they shall, within ten days after receipt of the notice of denial or within ten days after the granting of an application, send a written request to the department for a hearing under sections 84-913 and 84-915.

(4) A denial or granting by the department of an application or a termination of a certificate of public advantage under section 71-7707 may be appealed. The appeal shall be in accordance with the Administrative Procedure Act.

Source: Laws 1994, LB 1210, §181; Laws 1994, LB 1223, §115.

71-7706. Certificate of public advantage; issuance; considerations. (1) The department shall issue a certificate of public advantage for a cooperative agreement if it determines that the applicants have demonstrated by clear and convincing evidence that the likely benefits resulting from the agreement outweigh any disadvantages attributable to a reduction in competition that may result from the agreement.

(2) In evaluating the potential benefits of a cooperative agreement, the department shall consider whether one or more of the following benefits may result from the cooperative agreement:

- (a) Enhancement of the quality of health care facility care and provider care provided to Nebraska citizens;
- (b) Preservation of health care facilities, including those in other states, in geographical proximity to the communities traditionally served by such facilities;
- (c) Gains in the cost efficiency of services provided by the health care facilities or providers involved or by other health

care facilities or providers in this state;

- (d) Improvements in the utilization of health care facility resources and equipment;
- (e) Avoidance of duplication of health care facility resources;
- (f) Enhancement, maintenance, or preservation of competition for the services or goods involved; and
- (g) Mitigation of adverse environmental impact or enhancement of positive environmental impact.

(3) The department's evaluation of any disadvantages attributable to any reduction in competition likely to result from the agreement may include, but need not be limited to, the following factors:

(a) The extent of any likely adverse impact on the ability of health maintenance organizations, preferred provider organizations, managed health care service agents, or other health care payors to negotiate advantageous payment and service arrangements with health care facilities or providers;

(b) The extent of any reduction in competition among health care facilities or providers or other persons furnishing goods or services to or in competition with health care facilities that is likely to result directly or indirectly from the cooperative agreement;

(c) The extent of any likely adverse impact on patients in the quality, availability, and price of health care services; and

(d) The availability of arrangements that are less restrictive to competition and achieve the same benefits or a more favorable balance of benefits over disadvantages attributable to any reduction in competition likely to result from the agreement.

Source: Laws 1994, LB 1223, §116.

71-7707. Certificate of public advantage; termination. If the department determines at any time that the likely benefits resulting from a certified cooperative agreement no longer outweigh any disadvantages attributable to any potential reduction in competition resulting from the agreement, the department shall initiate proceedings to terminate the certificate of public advantage in accordance with the Administrative Procedure Act.

Source: Laws 1994, LB 1223, §117.

71-7708. Parties to agreement; report; petition to terminate certificate; adverse job actions prohibited. (1) The department shall require the parties to a cooperative agreement for which a certificate of public advantage has been issued to report annually on the functioning of the cooperative agreement for the preceding year. The report shall be in such form and contain such information as the department in its discretion deems necessary to make the determination required by section 71-7707.

(2) Any interested person may petition the department to determine that the likely benefits resulting from a certified cooperative agreement no longer outweigh any disadvantages attributable to any potential reduction in competition resulting from the agreement. In such case, the department may initiate proceedings to terminate the certificate of public advantage in accordance with the Administrative Procedure Act.

(3) It shall be unlawful for an employer to take any adverse job action against any employee because such employee has petitioned, testified, assisted, or participated in any manner in any investigation, proceeding, or hearing under the Health Care Facility-Provider Cooperation Act.

Source: Laws 1994, LB 1223, §118.

71-7709. Parties and participants; immunity; notice; act, how construed. (1) Any party to a cooperative agreement which has been approved in whole or in part by the department pursuant to the Health Care Facility-Provider Cooperation Act shall be immune from any civil or criminal antitrust action if such action is based upon the cooperative agreement or arises from conduct or activity reasonably necessary and reasonably foreseeable to implement such agreement or any decision or order issued by the department.

(2) Any part to a cooperative agreement that has been filed with the department pursuant to the act shall be immune from any civil or criminal antitrust action if such action is based upon or arises from the negotiation of or entering into the cooperative agreement.

(3) All persons who participate in community planning, discussions, or negotiations intended in good faith to culminate in a cooperative agreement to be filed with the department pursuant to the provisions of the act shall be immune from any civil or criminal antitrust action if such action is based upon or arises from such conduct.

(4) (a) The immunity provided in this section shall apply only to community planning, discussions, and negotiations that occur after notice of such activities has been sent to the department in accordance with the requirements of subdivision (b) of this subsection.

(b) The notice to the department required by subdivision (a) of this subsection shall include a description of the proposed purpose of the agreement, the potential parties, and the potential nature and scope of the cooperation and joint activities contemplated. The persons filing such notice shall also notify the department if negotiations have terminated, or if negotiations are continuing they shall notify the department of progress of negotiation at least once every six months. The department may request additional information from the potential parties and may communicate with and monitor the parties in any manner the department deems necessary but shall not hinder or interfere with negotiations.

(5) The submission of a cooperative agreement for department approval pursuant to the act shall be voluntary, and the failure of the parties to any such agreement to seek approval shall not be admissible in any civil or criminal antitrust action if such action is based upon the cooperative agreement or arises from conduct or activity reasonably necessary and reasonably foreseeable to implement the cooperative agreement.

(6) Nothing in the act shall be construed to limit the application of any other statute concerning the licensure of facilities, services, or professions, and any activities undertaken pursuant to a cooperative agreement shall comply with applicable law.

Source: Laws 1994, LB 1223, §119.

71-7710. Act; how construed. Nothing in the Health Care Facility-Provider Cooperation Act shall be construed to prohibit:

(1) The formation of a cooperative agreement that has been approved in whole or in part in accordance with the act;

(2) Community planning, discussions, or negotiations intended in good faith to cumulate in a cooperative agreement to be filed with the department;

(3) Any conduct or activity reasonably necessary and reasonably foreseeable to implement an approved cooperative agreement or a decision or order issued by the department; or

(4) The negotiation of or entering into a cooperative agreement which is filed with the department. Such agreements, conduct, or activities shall not be held or construed to be illegal combinations or conspiracies in restraint of trade under the act. Directors, trustees, or their representatives of a health care facility or provider who participate in the discussion or negotiation shall be immune from civil actions or criminal prosecutions for a violation of state or federal antitrust laws unless the discussion or negotiation exceeds the scope authorized by the Health Care Facility-Provider Cooperation Act.

Source: Laws 1994, LB 1223, §120.

71-7711. Department; maintain copies of agreements; notice of termination, filing required. The department shall maintain on file a copy of all cooperative agreements for which certificates of public advantage remain in effect. Any party to a cooperative agreement who terminates the agreement shall file a notice of termination with the department within thirty days after termination.

Source: Laws 1994, LB 1223, §121.