

LEGISLATURE OF NEBRASKA
ONE HUNDRED SIXTH LEGISLATURE
SECOND SESSION

LEGISLATIVE BILL 1043

Introduced by Hansen, B., 16.

Read first time January 16, 2020

Committee:

- 1 A BILL FOR AN ACT relating to health care facilities; to amend sections
- 2 71-2085, 71-2086, 71-2087, 71-2092, 71-2093, and 71-2094, Reissue
- 3 Revised Statutes of Nebraska; to change provisions relating to
- 4 receivers and receivership; and to repeal the original sections.
- 5 Be it enacted by the people of the State of Nebraska,

1 Section 1. Section 71-2085, Reissue Revised Statutes of Nebraska, is
2 amended to read:

3 71-2085 The department may petition the district court of Lancaster
4 County or the county where the health care facility is located for
5 appointment of a receiver for a health care facility when any of the
6 following conditions exist:

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

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

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

12 (4) The health care facility is closing, or has informed the
13 department that it intends to close, and adequate arrangements for the
14 relocation of the residents or patients of such health care facility have
15 not been made at least thirty days prior to closure; or

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

20 Sec. 2. Section 71-2086, Reissue Revised Statutes of Nebraska, is
21 amended to read:

22 71-2086 (1) The department shall file the petition for the
23 appointment of a receiver provided for in section 71-2085 in the district
24 court of Lancaster County or the county where the health care facility is
25 located and shall request that a receiver be appointed for the health
26 care facility. Unless otherwise approved by the court, no person shall be
27 appointed as a receiver for more than five health care facilities at the
28 same time.

29 (2) The court shall expeditiously hold a hearing on the petition
30 within seven days after the filing of the petition. The department shall
31 present evidence at the hearing in support of the petition. The licensee,

1 owner, or operator may also present evidence, and both parties may
2 subpoena witnesses. The court may appoint a temporary receiver for the
3 health care facility ex parte if the department, by affidavit, states
4 that an emergency exists which presents an imminent danger of death or
5 physical harm to the residents or patients of the health care facility.
6 If a temporary receiver is appointed, notice of the petition and order
7 shall be served on the licensee, owner, operator, or administrator of the
8 health care facility within seventy-two hours after the entry of the
9 order. The petition and order may be served by any method specified in
10 section 25-505.01 or the court may permit substitute or constructive
11 service as provided in section 25-517.02 when service cannot be made with
12 reasonable diligence by any of the methods specified in section
13 25-505.01. A hearing on the petition and temporary order shall be held
14 within seventy-two hours after notice has been served unless the
15 licensee, owner, or operator consents to a later date. After the hearing
16 the court may terminate, continue, or modify the temporary order. If the
17 court determines that the department did not have probable cause to
18 submit the affidavit in support of the appointment of the temporary
19 receiver, the court shall have the jurisdiction to determine and award
20 compensatory damages against the state to the owner or operator. If the
21 licensee, owner, or operator informs the court at or before the time set
22 for hearing that the licensee, owner, or operator ~~he or she~~ does not
23 object to the petition, the court shall waive the hearing and at once
24 appoint a receiver for the health care facility.

25 (3) The purpose of a receivership created under this section is to
26 safeguard the health, safety, and continuity of care of residents and
27 patients and to protect them from adverse health effects. A receiver
28 shall not take any actions or assume any responsibilities inconsistent
29 with this purpose. No person shall impede the operation of a receivership
30 created under this section. After the appointment of a receiver, there
31 shall be an automatic stay of any action that would interfere with the

1 functioning of the health care facility, including, but not limited to,
2 cancellation of insurance policies executed by the licensee, owner, or
3 operator, termination of utility services, attachments or setoffs of
4 resident trust funds or working capital accounts, and repossession of
5 equipment used in the health care facility. The stay shall not apply to
6 any licensure, certification, or injunctive action taken by the
7 department.

8 Sec. 3. Section 71-2087, Reissue Revised Statutes of Nebraska, is
9 amended to read:

10 71-2087 When a receiver is appointed under section 71-2086, the
11 licensee, owner, or operator shall be divested of possession and control
12 of the health care facility in favor of the receiver. The appointment of
13 the receiver shall not affect the rights of the owner or operator to
14 defend against any claim, suit, or action against such owner or operator
15 or the health care facility, including, but not limited to, any
16 licensure, certification, or injunctive action taken by the department. A
17 receiver shall:

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

23 (2) Apply the current revenue and current assets of the health care
24 facility to current operating expenses and to debts incurred by the
25 licensee, owner, or operator prior to the appointment of the receiver.
26 The receiver may apply to the court for approval for payment of debts
27 incurred prior to appointment if the debts appear extraordinary, of
28 questionable validity, or unrelated to the normal and expected
29 maintenance and operation of the health care facility or if the payment
30 of the debts will interfere with the purposes of the receivership. The
31 receiver shall give priority to expenditures for current, direct resident

1 care, including nursing care, social services, dietary services, and
2 housekeeping;

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

9 (4) Be entitled to and take possession of all property or assets of
10 residents or patients which are in the possession of the licensee, owner,
11 operator, or administrator of the health care facility. The receiver
12 shall preserve all property, assets, and records of residents or patients
13 of which the receiver takes possession and shall provide for the prompt
14 transfer of the property, assets, and necessary and appropriate records
15 to the alternative placement of any transferred or discharged resident;

16 (5) Upon order of the court, provide for the orderly transfer of all
17 residents or patients in the health care facility to other suitable
18 facilities if correction of violations of federal and state laws and
19 regulations is not possible or cannot be completed in a timely manner or
20 there are reasonable grounds to believe the health care facility cannot
21 be operated on a sound financial basis and in compliance with all
22 applicable federal or state laws and regulations or make other provisions
23 for the continued health, safety, and welfare of the residents or
24 patients;

25 (6) Conduct a thorough analysis of the financial records of the
26 health care facility within the first thirty days of the receivership,
27 perform ongoing accountings throughout the remainder of the receivership,
28 and provide monthly reports of the financial status of the health care
29 facility to the court and the department ~~Perform regular accountings;~~ and

30 (7) Make monthly ~~periodic~~ reports to the court and the department
31 related to plans for continued operation or sale of the health care

1 facility.

2 Sec. 4. Section 71-2092, Reissue Revised Statutes of Nebraska, is
3 amended to read:

4 71-2092 (1) A receivership established under section 71-2086 may be
5 terminated by the district court which established it after a hearing
6 upon an application for termination. The application may be filed:

7 (a) Jointly by the receiver and the current licensee of the health
8 care facility which is in receivership, stating that the deficiencies in
9 the operation, maintenance, or other circumstances which were the grounds
10 for establishment of the receivership have been corrected and that there
11 are reasonable grounds to believe that the health care facility will be
12 operated in compliance with all applicable statutes and the rules and
13 regulations adopted and promulgated pursuant thereto;

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

18 (c) By the receiver, stating that all residents or patients of the
19 health care facility have been relocated elsewhere and that there are
20 reasonable grounds to believe it will not be feasible to again operate
21 the health care facility on a sound financial basis and in compliance
22 with federal and state laws and regulations and asking that the court
23 approve the surrender of the license of the health care facility to the
24 department and the subsequent return of the control of the premises of
25 the health care facility to the owner of the premises; or

26 (d) By the department (i) stating that the deficiencies in the
27 operation, maintenance, or other circumstances which were the grounds for
28 establishment of the receivership have been corrected and that there are
29 reasonable grounds to believe that the health care facility will be
30 operated in compliance with all applicable statutes and the rules and
31 regulations adopted and promulgated pursuant thereto or (ii) stating that

1 there are reasonable grounds to believe that the health care facility
2 cannot be operated in compliance with federal or state law and
3 regulations and asking that the court order the removal of the residents
4 or patients to appropriate alternative placements, the closure of the
5 facility, and the license, if any, surrendered to the department or that
6 the health care facility be sold under reasonable terms approved by the
7 court to a new owner meeting the requirements ~~approved~~ for licensure by
8 the department.

9 (2) If the receivership has not been terminated within ~~six~~ twelve
10 months after the appointment of the receiver, the court shall, after
11 hearing, order either that the health care facility be closed after an
12 orderly transfer of the residents or patients to appropriate alternative
13 placements or that the health care facility be sold under reasonable
14 terms approved by the court to a new owner meeting the requirements
15 ~~approved~~ for licensure by the department. The closure or sale shall occur
16 within sixty days after the court order, unless ordered otherwise,
17 ~~receivership period may be extended as necessary~~ to protect the health,
18 safety, and welfare of the residents or patients.

19 Sec. 5. Section 71-2093, Reissue Revised Statutes of Nebraska, is
20 amended to read:

21 71-2093 The health care facility for which a receiver is appointed
22 shall be responsible for payment of the expenses of a receivership
23 established under section 71-2086 unless the court directs otherwise. The
24 expenses include, but are not limited to:

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

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

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

31 (4) Expenses incurred by the health care facility in the ordinary

1 course of business, such as employees' salaries and accounts payable.

2 Sec. 6. Section 71-2094, Reissue Revised Statutes of Nebraska, is
3 amended to read:

4 71-2094 (1) No person shall bring an action against a receiver
5 appointed under section 71-2086 without first securing leave of the
6 court. The receiver and the members and officers of the receiver are
7 liable in their individual is liable in his or her personal capacity for
8 intentional wrongdoing or gross negligence.

9 (2) In all other cases, the receiver is liable in the receiver's his
10 or her official capacity only, and any judgment rendered shall be
11 satisfied out of the receivership assets. The receiver is not personally
12 liable in the receiver's individual capacity for the expenses of the
13 health care facility during the receivership. The receiver is an employee
14 of the state only for the purpose of defending a claim filed against the
15 receiver in the receiver's official capacity. If an action is brought
16 against a receiver in the receiver's official capacity, the receiver may
17 file a written request for counsel with the Attorney General asserting
18 that such civil action is based in fact upon an alleged act or omission
19 in the course and scope of the receiver's duties. The Attorney General
20 shall thereupon appear and defend the receiver unless after investigation
21 the Attorney General finds that the claim or demand does not arise out of
22 an alleged act or omission occurring in the course and scope of the
23 receiver's duties or the act or omission complained of amounted to
24 intentional wrongdoing or gross negligence, in which case the Attorney
25 General shall give the receiver written notice that defense of the claim
26 or representation before the court has been rejected The Attorney General
27 shall defend or arrange for the defense of all suits filed against the
28 receiver personally.

29 (3) A receiver against whom a claim is made, which is not rejected
30 by the Attorney General pursuant to subsection (2) of this section, shall
31 cooperate fully with the Attorney General in the defense of such claim.

1 If the Attorney General determines that such receiver has not cooperated
2 or has otherwise acted to prejudice the defense of the claim or the
3 appearance, the Attorney General may at any time reject the defense of
4 the claim before the court.

5 (4) If the Attorney General rejects the defense of a claim pursuant
6 to subsection (2) of this section or if it is established by the
7 judgement ultimately rendered on the claim that the act or omission
8 complained of was not in the course or scope of the receiver's duties or
9 amounted to intentional wrongdoing or gross negligence, no public money
10 shall be paid in settlement of such claim or in payment of any judgment
11 against such receiver. Such action by the Attorney General shall not
12 prejudice the right of the receiver to assert and establish as a defense
13 that the claim arose out of an alleged act or omission occurring in the
14 course and scope of the receiver's duties or that the act or omission
15 complained of did not amount to intentional wrongdoing or gross
16 negligence. If the receiver is successful in asserting such defense, the
17 receiver shall be indemnified for the reasonable costs of defending the
18 claim.

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

24 Sec. 7. Original sections 71-2085, 71-2086, 71-2087, 71-2092,
25 71-2093, and 71-2094, Reissue Revised Statutes of Nebraska, are repealed.