

LEGISLATURE OF NEBRASKA

ONE HUNDRED FIRST LEGISLATURE

SECOND SESSION

LEGISLATIVE BILL 849

Introduced by Gay, 14.

Read first time January 11, 2010

Committee: Health and Human Services

A BILL

1 FOR AN ACT relating to public health and welfare; to amend
2 sections 68-906, 68-1017, 68-1017.01, 68-1070, 77-27,165,
3 83-1220, 83-1221, 83-1222, 83-1223, and 83-1224, Reissue
4 Revised Statutes of Nebraska, and section 83-1217,
5 Revised Statutes Supplement, 2009; to adopt federal law
6 for purposes of the Medical Assistance Act and the
7 Supplemental Nutrition Assistance Program; to remove and
8 change references to Supplemental Nutrition Assistance
9 Program coupons and benefits; to change notification
10 requirements for child support claims against income tax
11 refunds; to change requirements for specialized programs
12 providing developmental disability services; to change
13 provisions relating to hearing officers of the Division
14 of Developmental Disabilities; to harmonize provisions;

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1 to provide operative dates; to repeal the original

2 sections; and to declare an emergency.

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

1 Section 1. Section 68-906, Reissue Revised Statutes of
2 Nebraska, is amended to read:

3 68-906 For purposes of paying medical assistance under
4 the Medical Assistance Act and sections 68-1002 and 68-1006, the
5 State of Nebraska accepts and assents to all applicable provisions
6 of Title XIX and Title XXI of the federal Social Security Act.
7 Any reference in the Medical Assistance Act to the federal Social
8 Security Act or other acts or sections of federal law shall be to
9 such federal acts or sections as they existed on January 1, ~~2009~~
10 2010.

11 Sec. 2. Section 68-1017, Reissue Revised Statutes of
12 Nebraska, is amended to read:

13 68-1017 (1) Any person, including vendors and providers
14 of medical assistance and social services, who, by means of a
15 willfully false statement or representation, or by impersonation
16 or other device, obtains or attempts to obtain, or aids or abets
17 any person to obtain or to attempt to obtain ~~(1)~~ (a) an assistance
18 certificate of award to which he or she is not entitled, ~~(2)~~
19 (b) any commodity, any foodstuff, any food ~~coupon~~, instrument,
20 any Supplemental Nutrition Assistance Program ~~coupon~~, electronic
21 benefit, or electronic benefit card, or any payment to which
22 such individual is not entitled or a larger payment than that
23 to which he or she is entitled, ~~(3)~~ (c) any payment made on
24 behalf of a recipient of medical assistance or social services,
25 or ~~(4)~~ (d) any other benefit administered by the Department of

1 Health and Human Services, or who violates any statutory provision
2 relating to assistance to the aged, blind, or disabled, aid to
3 dependent children, social services, or medical assistance, commits
4 an offense, ~~and~~

5 (2) Any person who commits an offense under subsection
6 (1) of this section shall upon conviction be punished as follows:

- 7 (a) If the aggregate value of all funds or other benefits obtained
8 or attempted to be obtained is less than five hundred dollars, the
9 person so convicted shall be guilty of a Class III misdemeanor; or
10 (b) if the aggregate value of all funds and other benefits obtained
11 or attempted to be obtained is five hundred dollars or more, the
12 person so convicted shall be guilty of a Class IV felony.

13 Sec. 3. Section 68-1017.01, Reissue Revised Statutes of
14 Nebraska, is amended to read:

15 68-1017.01 (1) A person commits an offense if he
16 or she knowingly uses, alters, or transfers any Supplemental
17 Nutrition Assistance Program ~~coupons, electronic benefits,~~ or
18 electronic benefit cards or any authorizations to participate
19 in the Supplemental Nutrition Assistance Program in any manner not
20 authorized by law. An offense under this subsection shall be a
21 Class III misdemeanor if the value of the Supplemental Nutrition
22 Assistance Program ~~coupons, electronic benefits,~~ electronic benefit
23 cards, or authorizations is less than five hundred dollars and
24 shall be a Class IV felony if the value is five hundred dollars or
25 more.

1 (2) A person commits an offense if he or she knowingly
2 (a) possesses any Supplemental Nutrition Assistance Program
3 ~~coupons~~, ~~electronic~~ benefits, or electronic benefit cards or
4 any authorizations to participate in the Supplemental Nutrition
5 Assistance Program when such individual is not authorized by law to
6 possess them, (b) redeems Supplemental Nutrition Assistance Program
7 ~~coupons~~, ~~electronic~~ benefits, or electronic benefit cards when he
8 or she is not authorized by law to redeem them, or (c) redeems
9 Supplemental Nutrition Assistance Program ~~coupons~~, ~~electronic~~
10 benefits, or electronic benefit cards for purposes not authorized
11 by law. An offense under this subsection shall be a Class III
12 misdemeanor if the value of the Supplemental Nutrition Assistance
13 Program ~~coupons~~, ~~electronic~~ benefits, electronic benefit cards, or
14 authorizations is less than five hundred dollars and shall be a
15 Class IV felony if the value is five hundred dollars or more.

16 (3) A person commits an offense if he or she knowingly
17 possesses blank authorizations to participate in the Supplemental
18 Nutrition Assistance Program when such possession is not authorized
19 by law. An offense under this subsection shall be a Class IV
20 felony.

21 (4) When any Supplemental Nutrition Assistance Program
22 ~~coupons~~, ~~electronic~~ benefits, or electronic benefit cards or
23 any authorizations to participate in the Supplemental Nutrition
24 Assistance Program of various values are obtained in violation of
25 this section pursuant to one scheme or a continuing course of

1 conduct, whether from the same or several sources, such conduct
2 may be considered as one offense, and the values aggregated in
3 determining the grade of the offense.

4 Sec. 4. Section 68-1070, Reissue Revised Statutes of
5 Nebraska, is amended to read:

6 68-1070 (1) If the following non-United-States citizens
7 meet the income and other requirements for participation in the
8 medical assistance program established pursuant to the Medical
9 Assistance Act, in the program for financial assistance pursuant
10 to section 43-512, in the Supplemental Nutrition Assistance Program
11 administered by the State of Nebraska pursuant to the federal
12 Food and Nutrition Act of 2008 as the act existed on January 1,
13 ~~2009~~, 2010, or in the program for assistance to the aged, blind,
14 and disabled, such persons shall be eligible for such program or
15 benefits:

16 (a) Non-United-States citizens lawfully admitted,
17 regardless of the date entry was granted, into the United States
18 for permanent residence;

19 (b) Refugees admitted under section 207 of the federal
20 Immigration and Naturalization Act, non-United-States citizens
21 granted asylum under section 208 of such federal act, and
22 non-United-States citizens whose deportation is withheld under
23 section 243(h) of such federal act, regardless of the date of entry
24 into the United States; and

25 (c) Individuals for whom coverage is mandated under

1 federal law.

2 (2) Individuals eligible for the Supplemental Nutrition
3 Assistance Program under this section shall receive any
4 Supplemental Nutrition Assistance Program ~~coupons or electronic~~
5 benefits or a state voucher which can be used only for food
6 products authorized under the federal Food and Nutrition Act of
7 2008 as the act existed on January 1, ~~2009~~, 2010, in the amount
8 of the Supplemental Nutrition Assistance Program benefit for which
9 this individual was otherwise eligible but for the citizenship
10 provisions of Public Law 104-193, 110 Stat. 2105 (1996).

11 (3) The income and resources of any individual who
12 assists a non-United-States citizen to enter the United States
13 by signing an affidavit of support shall be deemed available
14 in determining the non-United-States citizen's eligibility for
15 assistance until the non-United-States citizen becomes a United
16 States citizen.

17 Sec. 5. Section 77-27,165, Reissue Revised Statutes of
18 Nebraska, is amended to read:

19 ~~77-27,165 Prior to December 1 of each year, the~~ The
20 Department of Health and Human Services shall send notification
21 to the debtor of the assertion of the department's rights, or of
22 the rights of an individual not eligible as a public assistance
23 recipient, to all or a portion of the debtor's income tax refund.
24 The notice shall contain the procedures available to the debtor
25 for protesting the offset, the debtor's opportunity to give written

1 notice of intent to contest the validity of the claim before the
2 department within thirty days of the date of mailing the notice,
3 and the defenses the debtor may raise. The debt shall be certified
4 by the department through a preoffset review.

5 Sec. 6. Section 83-1217, Revised Statutes Supplement,
6 2009, is amended to read:

7 83-1217 The department shall contract for specialized
8 services and shall only contract with specialized programs
9 which meet certification and accreditation requirements. Assisted
10 services provided under this section through community-based
11 developmental disability programs shall be reimbursed on a daily
12 rate basis, including such services provided to eligible recipients
13 under the medical assistance program established in section 68-903
14 upon approval for such reimbursement from the federal Centers for
15 Medicare and Medicaid Services. The department shall apply to the
16 federal Centers for Medicare and Medicaid Services for approval
17 of any necessary waiver amendments to permit such reimbursement
18 ~~no later than September 1, 2009,~~ and shall begin reimbursing such
19 services on a daily rate basis no later than ninety days after such
20 approval. In order to be certified, each specialized program shall:

- 21 (1) Have an internal quality assurance process;
- 22 (2) Have a program evaluation component;
- 23 (3) Have a complaint mechanism for persons with
24 developmental disabilities and their families;
- 25 (4) Have a process to ensure direct and open

1 communication with the department;

2 (5) Develop, implement, and regularly evaluate a plan to
3 ensure retention of quality employees and prevent staff turnover;

4 (6) Have measures to enhance staff training and
5 development;

6 (7) Be governed by a local governing board or have an
7 advisory committee, the membership of which consists of (a) ~~county~~
8 ~~commissioners or other locally elected officials,~~ ~~(b) persons with~~
9 ~~developmental disabilities or members of their families,~~ and ~~(c)~~
10 ~~persons who are not elected officials,~~ persons with developmental
11 disabilities, ~~or~~ (b) family members or legal guardians of persons
12 with developmental disabilities, ~~or~~ (c) persons who are interested
13 community members. At least one-third of the membership shall
14 be persons with developmental disabilities. ~~or members of their~~
15 ~~families. No more than one-third of the membership shall be~~
16 ~~elected officials,~~ and no more than one-third of the membership
17 shall be persons who are not elected officials, persons with
18 developmental disabilities, ~~or~~ One-third of the membership shall
19 be family members or legal guardians of persons with developmental
20 disabilities. One-third of the membership shall be interested
21 community members;

22 (8) Meet accreditation standards developed by the
23 department;

24 (9) Require a criminal history record information check
25 of all employees hired on or after September 13, 1997, who work

1 directly with clients receiving services and who are not licensed
2 or certified as members of their profession; and

3 (10) Meet any other certification requirements developed
4 by the department to further the purposes of the Developmental
5 Disabilities Services Act.

6 Sec. 7. Section 83-1220, Reissue Revised Statutes of
7 Nebraska, is amended to read:

8 83-1220 The department shall conduct hearings initiated
9 under section 83-1219 using hearing officers. The department may
10 employ, retain, or approve such qualified hearing officers as are
11 necessary to conduct the hearings. The hearing officers shall not
12 be persons who are employees or officers of a local agency which
13 is involved in providing services to the person with developmental
14 disabilities. A person who otherwise qualifies to conduct a hearing
15 shall not be considered an employee of the agency solely because
16 the person is paid by the agency to serve as a hearing officer.
17 No hearing officer shall participate in any way in any hearing
18 or matter in which the hearing officer may have a conflict of
19 interest. ~~Hearing officers appointed and assigned by the~~ The
20 department shall have exclusive original jurisdiction over cases
21 arising under sections 83-1219 to 83-1224, and in no event shall
22 juvenile courts have jurisdiction over such matters.

23 Sec. 8. Section 83-1221, Reissue Revised Statutes of
24 Nebraska, is amended to read:

25 83-1221 Upon the receipt of a petition pursuant to

1 section 83-1219, the department shall assign it to a hearing
2 officer. The hearing officer shall receive all subsequent pleadings
3 and shall conduct the hearing. At the hearing the parties shall
4 present evidence on the issues raised in the pleadings. At the
5 completion of the proceedings, the hearing officer shall prepare a
6 report based on the evidence presented containing recommendations
7 for the director to make findings of fact and conclusions of
8 law. Within forty-five days after the receipt of a request for
9 a hearing, the ~~hearing officer~~ director shall prepare a final
10 decision and order directing such action as may be necessary. At
11 the request of either party for good cause shown, the hearing
12 officer may grant specific extensions of time beyond this period.
13 The report and the final decision and order shall be delivered to
14 each party or attorney of record by certified mail, ~~and to the~~
15 ~~director.~~

16 Sec. 9. Section 83-1222, Reissue Revised Statutes of
17 Nebraska, is amended to read:

18 83-1222 Any party at a hearing conducted pursuant to
19 section 83-1219 shall have the right to:

20 (1) Be accompanied and advised by counsel and by
21 individuals with special knowledge or training with respect to
22 the needs of persons with developmental disabilities;

23 (2) Present evidence and confront, cross-examine, and
24 compel the attendance of witnesses;

25 (3) Prohibit the introduction of any evidence at the

1 hearing that has not been disclosed to that party at least five
2 days before the hearing;

3 (4) Obtain a written or electronic verbatim record of the
4 hearing; and

5 (5) Obtain written findings of fact and decisions from
6 the director.

7 The hearing officer may also produce evidence on his or
8 her own motion.

9 Sec. 10. Section 83-1223, Reissue Revised Statutes of
10 Nebraska, is amended to read:

11 83-1223 The hearing officer shall have the power by
12 subpoena to compel the appearance of witnesses and the production
13 of any relevant evidence. Any witness compelled to attend or
14 produce evidence shall be entitled to the fees and expenses allowed
15 in district court. Any failure to respond to such subpoena shall be
16 certified by the ~~hearing officer~~ director to the district court of
17 Lancaster County for enforcement or for punishment for contempt of
18 the district court.

19 Sec. 11. Section 83-1224, Reissue Revised Statutes of
20 Nebraska, is amended to read:

21 83-1224 (1) Any party aggrieved by the findings,
22 conclusions, or final decision and order of the ~~hearing officer~~
23 director shall be entitled to judicial review under this section.
24 Any party of record also may seek enforcement of the final decision
25 and order of the ~~hearing officer~~ director pursuant to this section.

1 (2) Proceedings for judicial review shall be instituted
2 by filing a petition in the district court of Lancaster County
3 within thirty days after service of the final decision and order
4 on the party seeking such review. All parties of record shall be
5 made parties to the proceedings. The court, in its discretion, may
6 permit other interested parties to intervene.

7 (3) The filing of a petition for judicial review to such
8 district court shall operate to stay the enforcement of the final
9 decision and order of the ~~hearing officer~~, director. While judicial
10 proceedings are pending in district court and unless the parties
11 otherwise agree, the person with developmental disabilities shall
12 remain in his or her current placement. If the health or safety
13 of the person with developmental disabilities or of other persons
14 would be endangered by delaying a change in placement, the service
15 provider may make such change without prejudice to the rights of
16 any party.

17 (4) Within thirty days after receiving notification that
18 a petition for judicial review has been filed or, if good cause
19 is shown, within such further time as the court may allow, the
20 department shall prepare and transmit to the court a certified
21 transcript of the proceedings before the hearing officer.

22 (5) Judicial review shall be heard de novo on the
23 record. The court shall receive the records of the administrative
24 proceedings, base its decision on the preponderance of the
25 evidence, and grant such relief as the court determines is

1 appropriate. The district court may affirm, reverse, or modify
2 the decision of the ~~hearing officer,~~ director, or remand the case
3 to the ~~hearing officer~~ director for further proceedings, including
4 the receipt of additional evidence, for good cause shown.

5 (6) An aggrieved party may secure a review of any final
6 judgment of the district court under this section by appeal to the
7 Court of Appeals. Such appeal shall be taken in the manner provided
8 by law for appeals in civil cases and shall be heard de novo on the
9 record.

10 (7) When no petition for judicial review or other civil
11 action is filed within thirty days after service of the final
12 decision and order on all of the parties, the ~~hearing officer's~~
13 director's final decision and order shall become effective.
14 Proceedings for enforcement of a ~~hearing officer's~~ director's final
15 decision and order shall be instituted by filing a petition for
16 appropriate relief in the district court of Lancaster County within
17 one year after the date of the ~~hearing officer's~~ director's final
18 decision and order.

19 Sec. 12. Sections 1, 2, 3, 4, 6, 7, 8, 9, 10, 11, and
20 14 of this act become operative three calendar months after the
21 adjournment of this legislative session. The other sections of this
22 act become operative on their effective date.

23 Sec. 13. Original section 77-27,165, Reissue Revised
24 Statutes of Nebraska, is repealed.

25 Sec. 14. Original sections 68-906, 68-1017, 68-1017.01,

1 68-1070, 83-1220, 83-1221, 83-1222, 83-1223, and 83-1224, Reissue
2 Revised Statutes of Nebraska, and section 83-1217, Revised Statutes
3 Supplement, 2009, are repealed.

4 Sec. 15. Since an emergency exists, this act takes effect
5 when passed and approved according to law.