

LEGISLATURE OF NEBRASKA

ONE HUNDRED FIRST LEGISLATURE

FIRST SESSION

**LEGISLATIVE BILL 341**

Introduced by Cook, 13.

Read first time January 15, 2009

Committee: Health and Human Services

A BILL

1 FOR AN ACT relating to tuberculosis detection and prevention; to  
2 amend sections 38-2315, 38-2850, and 71-3604, Reissue  
3 Revised Statutes of Nebraska, and sections 71-3601,  
4 71-3602, and 71-3614, Revised Statutes Cumulative  
5 Supplement, 2008; to change provisions relating to  
6 distribution of medications through public health  
7 agencies; to define a term; to change provisions relating  
8 to orders, violations, hearings, and payment of costs;  
9 to harmonize provisions; and to repeal the original  
10 sections.

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

1           Section 1. Section 38-2315, Reissue Revised Statutes of  
2 Nebraska, is amended to read:

3           38-2315 (1) A nurse practitioner may provide health  
4 care services within specialty areas. A nurse practitioner shall  
5 function by establishing collaborative, consultative, and referral  
6 networks as appropriate with other health care professionals.  
7 Patients who require care beyond the scope of practice of a  
8 nurse practitioner shall be referred to an appropriate health care  
9 provider.

10           (2) Nurse practitioner practice means health promotion,  
11 health supervision, illness prevention and diagnosis, treatment,  
12 and management of common health problems and chronic conditions,  
13 including:

14           (a) Assessing patients, ordering diagnostic tests and  
15 therapeutic treatments, synthesizing and analyzing data, and  
16 applying advanced nursing principles;

17           (b) Dispensing, incident to practice only, sample  
18 medications which are provided by the manufacturer and are provided  
19 at no charge to the patient and drugs which are provided through  
20 public health agencies and are dispensed at no charge to the  
21 patient; and

22           (c) Prescribing therapeutic measures and medications  
23 relating to health conditions within the scope of practice. Any  
24 limitation on the prescribing authority of the nurse practitioner  
25 for controlled substances listed in Schedule II of section 28-405

1 shall be recorded in the integrated practice agreement established  
2 pursuant to section 38-2310.

3 (3) A nurse practitioner who has proof of a current  
4 certification from an approved certification program in a  
5 psychiatric or mental health specialty may manage the care of  
6 patients committed under the Nebraska Mental Health Commitment  
7 Act. Patients who require care beyond the scope of practice of a  
8 nurse practitioner who has proof of a current certification from an  
9 approved certification program in a psychiatric or mental health  
10 specialty shall be referred to an appropriate health care provider.

11 Sec. 2. Section 38-2850, Reissue Revised Statutes of  
12 Nebraska, is amended to read:

13 38-2850 As authorized by the Uniform Credentialing Act,  
14 the practice of pharmacy may be engaged in by a pharmacist, a  
15 pharmacist intern, or a practitioner with a pharmacy license. The  
16 practice of pharmacy shall not be construed to include:

17 (1) Persons who sell, offer, or expose for sale  
18 completely denatured alcohol or concentrated lye, insecticides, and  
19 fungicides in original packages;

20 (2) Practitioners, other than veterinarians, certified  
21 nurse midwives, certified registered nurse anesthetists, and nurse  
22 practitioners, who dispense drugs or devices as an incident to  
23 the practice of their profession, except that if such practitioner  
24 regularly engages in dispensing such drugs or devices to his or  
25 her patients for which such patients are charged, such practitioner

1 shall obtain a pharmacy license;

2 (3) Persons who sell, offer, or expose for sale  
3 nonprescription drugs or proprietary medicines, the sale of which  
4 is not in itself a violation of the Nebraska Liquor Control Act;

5 (4) Medical representatives, detail persons, or persons  
6 known by some name of like import, but only to the extent of  
7 permitting the relating of pharmaceutical information to health  
8 care professionals;

9 (5) Licensed veterinarians practicing within the scope of  
10 their profession;

11 (6) Certified nurse midwives, certified registered nurse  
12 anesthetists, and nurse practitioners who dispense (a) sample  
13 medications which are provided by the manufacturer and are  
14 dispensed at no charge to the patient or (b) drugs which are  
15 provided through public health agencies and are dispensed at no  
16 charge to the patient;

17 (7) Hospitals engaged in the compounding and dispensing  
18 of drugs and devices pursuant to chart orders for persons  
19 registered as patients and within the confines of the hospital,  
20 except that if a hospital engages in such compounding and  
21 dispensing for persons not registered as patients and within  
22 the confines of the hospital, such hospital shall obtain a pharmacy  
23 license or delegated dispensing permit;

24 (8) Optometrists who prescribe or dispense eyeglasses or  
25 contact lenses to their own patients;

1           (9) Registered nurses employed by a hospital who  
2 administer pursuant to a chart order, or procure for such  
3 purpose, single doses of drugs or devices from original drug or  
4 device containers or properly labeled prepackaged drug or device  
5 containers to persons registered as patients and within the  
6 confines of the hospital;

7           (10) Persons employed by a facility where dispensed drugs  
8 and devices are delivered from a pharmacy for pickup by a patient  
9 or caregiver and no dispensing or storage of drugs or devices  
10 occurs; and

11           (11) Persons who sell or purchase medical products,  
12 compounds, vaccines, or serums used in the prevention or cure of  
13 animal diseases and maintenance of animal health if such medical  
14 products, compounds, vaccines, or serums are not sold or purchased  
15 under a direct, specific, written medical order of a licensed  
16 veterinarian.

17           Sec. 3. Section 71-3601, Revised Statutes Cumulative  
18 Supplement, 2008, is amended to read:

19           71-3601 For purposes of the Tuberculosis Detection and  
20 Prevention Act:

21           (1) Communicable tuberculosis means tuberculosis  
22 manifested by a laboratory report of sputum or other body fluid  
23 or excretion found to contain tubercle bacilli or by chest X-ray  
24 findings interpreted as active tuberculosis by competent medical  
25 authority;

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

3                   (3) Directed health measure means any measure, whether  
4 prophylactic or remedial, intended and directed to prevent, treat,  
5 or limit the spread of tuberculosis;

6                   ~~(3)~~ (4) Facility means a structure in which suitable  
7 isolation for tuberculosis can be given and which is approved  
8 by the department for the detention of recalcitrant ~~tuberculosis~~  
9 tuberculous persons;

10                   ~~(4)~~ (5) Local health officer means (a) the health  
11 director of a local public health department as defined in section  
12 71-1626 or (b) the medical advisor to the board of health of a  
13 county, city, or village;

14                   ~~(5)~~ (6) Recalcitrant tuberculous person means a person  
15 affected with tuberculosis in an active stage who by his or her  
16 conduct or mode of living endangers the health and well-being of  
17 other persons, by exposing them to tuberculosis, and who refuses to  
18 accept adequate treatment; and

19                   ~~(6)~~ (7) State health officer means the chief medical  
20 officer as described in section 81-3115.

21                   Sec. 4. Section 71-3602, Revised Statutes Cumulative  
22 Supplement, 2008, is amended to read:

23                   71-3602 (1) ~~When a person with communicable tuberculosis~~  
24 ~~violates the rules, regulations, or orders adopted and promulgated~~  
25 ~~by the department and is thereby conducting himself or herself~~

1 in such a way as to expose others to danger of infection, after  
2 having been ordered by the state health officer or a local health  
3 officer to ~~comply~~, there are reasonable grounds to believe that  
4 a person has communicable tuberculosis and the person refuses to  
5 submit to the examination necessary to determine the existence of  
6 communicable tuberculosis, the state health officer or local health  
7 officer may order such person to submit to such examination. If  
8 such person refuses to comply with such order, the state health  
9 officer or a local health officer shall institute proceedings  
10 for commitment, returnable to the county court of the county in  
11 which the person resides or, if the person is a nonresident or  
12 has no permanent residence, in the county in which the person  
13 is found. Strictness of pleading is not required, and a general  
14 allegation that the public health requires commitment of the person  
15 is sufficient.

16 (2) When a person with communicable tuberculosis conducts  
17 himself or herself in such a way as to expose another person  
18 to the danger of infection, the state health officer or local  
19 health officer may order such person to submit to directed health  
20 measures necessary for the treatment of the person and to prevent  
21 the transmission of the disease. If such person refuses to comply  
22 with such order, the state health officer or a local health  
23 officer shall institute proceedings for commitment, returnable to  
24 the county court of the county in which the person resides or, if  
25 the person is a nonresident or has no permanent residence, in the

1 county in which the person is found. Strictness of pleading is not  
2 required, and a general allegation that the public health requires  
3 commitment of the person is sufficient.

4           Sec. 5. Section 71-3604, Reissue Revised Statutes of  
5 Nebraska, is amended to read:

6           71-3604 Upon the hearing set in the order, the person  
7 named in the order shall have a right to be represented by counsel,  
8 to confront and cross-examine witnesses against him or her, and to  
9 have compulsory process for the securing of witnesses and evidence  
10 in his or her own behalf.

11           Upon a consideration of the petition and evidence: ~~if~~

12           (1) If the court finds that there are reasonable grounds  
13 to believe that the person named in the petition has communicable  
14 tuberculosis and has refused to submit to an examination to  
15 determine the existence of communicable tuberculosis, the court  
16 shall order such person to submit to such examination. If after  
17 such examination is completed it is determined that the person has  
18 communicable tuberculosis, the court shall order directed health  
19 measures necessary for the treatment of the person and to prevent  
20 the transmission of the disease; or

21           (2) If the court finds that the person named in the  
22 petition has communicable tuberculosis and conducts himself or  
23 herself in such a way as to be a danger to the public health, an  
24 order shall be issued committing the person named to a facility  
25 and directing the sheriff to take him or her into custody and

1 deliver him or her to the facility or to submit to directed health  
2 measures necessary for the treatment of the person and to prevent  
3 the transmission of the disease.

4 If the court does not so find, the petition shall be  
5 dismissed. The cost of transporting such person to the facility  
6 shall be paid from county general funds.

7 Sec. 6. Section 71-3614, Revised Statutes Cumulative  
8 Supplement, 2008, is amended to read:

9 71-3614 (1) When any person who has communicable ~~e~~  
10 ~~contagious~~ tuberculosis and who has relatives, friends, or a  
11 private or public agency or organization willing to undertake the  
12 obligation to support him or her or to aid in supporting him or her  
13 in any other state or country, the department may furnish him or  
14 her with the cost of transportation to such other state or country  
15 if it finds that the interest of the State of Nebraska and the  
16 welfare of such person will be promoted thereby. The expense of  
17 such transportation shall be paid by the department out of funds  
18 appropriated to it for the purpose of carrying out the Tuberculosis  
19 Detection and Prevention Act.

20 (2) No funds appropriated to the department for the  
21 purpose of carrying out the act shall be used for meeting the  
22 cost of the care, maintenance, or treatment of any person who has  
23 communicable ~~e~~ ~~contagious~~ tuberculosis in a health care facility  
24 on either an inpatient or an outpatient basis, or otherwise, for  
25 directed health measures, or for transportation to another state

1 or country, to the extent that such cost is covered by an insurer  
2 or other third-party payor or any other entity under obligation to  
3 such person by contract, policy, certificate, or any other means  
4 whatsoever. The department in no case shall expend any such funds  
5 to the extent that any such person is able to bear the cost of  
6 such care, maintenance, treatment, or transportation. To protect  
7 the health and safety of the public, the department may pay, in  
8 part or in whole, the cost of drugs and medical care used to  
9 treat any person for or to prevent the spread of communicable  
10 tuberculosis and for evaluation and diagnosis of persons who  
11 have been identified as contacts of a person with communicable  
12 tuberculosis. The department shall determine the ability of a  
13 person to pay by consideration of the following factors: (a) The  
14 person's age, (b) the number of his or her dependents and their  
15 ages and physical condition, (c) the person's length of care,  
16 maintenance, or treatment, (d) his or her liabilities, and (e) the  
17 extent that such cost is covered by an insurer or other third-party  
18 payor, and (f) his or her assets. Pursuant to the Administrative  
19 Procedure Act, the department shall adopt and promulgate rules  
20 and regulations for making the determinations required by this  
21 subsection.

22 Rules, regulations, and orders in effect under this  
23 section prior to July 16, 2004, shall continue to be effective  
24 until revised, amended, repealed, or nullified pursuant to law.

25 Sec. 7. Original sections 38-2315, 38-2850, and 71-3604,

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1 Reissue Revised Statutes of Nebraska, and sections 71-3601,  
2 71-3602, and 71-3614, Revised Statutes Cumulative Supplement, 2008,  
3 are repealed.