

LEGISLATURE OF NEBRASKA
ONE HUNDRED SECOND LEGISLATURE
FIRST SESSION
LEGISLATIVE BILL 431
Final Reading

Introduced by Hadley, 37.

Read first time January 14, 2011

Committee: Health and Human Services

A BILL

1 FOR AN ACT relating to health care; to amend sections 28-435.01,
2 38-1,126, 38-1,127, 71-6736, and 71-7460.02, Reissue
3 Revised Statutes of Nebraska; to adopt the Health Care
4 Quality Improvement Act; to eliminate provisions relating
5 to peer review committees; to harmonize provisions; to
6 repeal the original sections; to outright repeal sections
7 71-2046, 71-2047, 71-2048, 71-7901, 71-7902, and 71-7903,
8 Reissue Revised Statutes of Nebraska; and to declare an
9 emergency.

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

1 Section 1. Sections 1 to 10 of this act shall be known
2 and may be cited as the Health Care Quality Improvement Act.

3 Sec. 2. The purposes of the Health Care Quality
4 Improvement Act are to provide protection for those individuals who
5 participate in peer review activities which evaluate the quality and
6 efficiency of health care providers and to protect the
7 confidentiality of peer review records.

8 Sec. 3. For purposes of the Health Care Quality
9 Improvement Act, the definitions found in sections 4 to 7 of this act
10 apply.

11 Sec. 4. Health care provider means:

12 (1) A facility licensed under the Health Care Facility
13 Licensure Act;

14 (2) A health care professional licensed under the Uniform
15 Credentialing Act; and

16 (3) An organization or association of health care
17 professionals licensed under the Uniform Credentialing Act.

18 Sec. 5. Incident report or risk management report means a
19 report of an incident involving injury or potential injury to a
20 patient as a result of patient care provided by a health care
21 provider, including both an individual who provides health care and
22 an entity that provides health care, that is created specifically for
23 and collected and maintained for exclusive use by a peer review
24 committee of a health care entity and that is within the scope of the
25 functions of that committee.

1 Sec. 6. Peer review means the procedure by which health
2 care providers evaluate the quality and efficiency of services
3 ordered or performed by other health care providers, including
4 practice analysis, inpatient hospital and extended care facility
5 utilization review, medical audit, ambulatory care review, root cause
6 analysis, claims review, underwriting assistance, and the compliance
7 of a hospital, nursing home, or other health care facility operated
8 by a health care provider with the standards set by an association of
9 health care providers and with applicable laws, rules, and
10 regulations.

11 Sec. 7. Peer review committee means a utilization review
12 committee, quality assessment committee, performance improvement
13 committee, tissue committee, credentialing committee, or other
14 committee established by the governing board of a facility which is a
15 health care provider that does either of the following:

16 (1) Conducts professional credentialing or quality review
17 activities involving the competence of, professional conduct of, or
18 quality of care provided by a health care provider, including both an
19 individual who provides health care and an entity that provides
20 health care; or

21 (2) Conducts any other attendant hearing process
22 initiated as a result of a peer review committee's recommendations or
23 actions.

24 Sec. 8. (1) A health care provider or an individual (a)
25 serving as a member or employee of a peer review committee, working

1 on behalf of a peer review committee, furnishing counsel or services
2 to a peer review committee, or participating in a peer review
3 activity as an officer, director, employee, or member of the
4 governing board of a facility which is a health care provider and (b)
5 acting without malice shall not be held liable in damages to any
6 person for any acts, omissions, decisions, or other conduct within
7 the scope of the functions of a peer review committee.

8 (2) A person who makes a report or provides information
9 to a peer review committee shall not be subject to suit as a result
10 of providing such information if such person acts without malice.

11 Sec. 9. (1) The proceedings, records, minutes, and
12 reports of a peer review committee shall be held in confidence and
13 shall not be subject to discovery or introduction into evidence in
14 any civil action. No person who attends a meeting of a peer review
15 committee, works for or on behalf of a peer review committee,
16 provides information to a peer review committee, or participates in a
17 peer review activity as an officer, director, employee, or member of
18 the governing board of a facility which is a health care provider
19 shall be permitted or required to testify in any such civil action as
20 to any evidence or other matters produced or presented during the
21 proceedings or activities of the peer review committee or as to any
22 findings, recommendations, evaluations, opinions, or other actions of
23 the peer review committee or any members thereof.

24 (2) Nothing in this section shall be construed to prevent
25 discovery or use in any civil action of medical records, documents,

1 or information otherwise available from original sources and kept
2 with respect to any patient in the ordinary course of business, but
3 the records, documents, or information shall be available only from
4 the original sources and cannot be obtained from the peer review
5 committee's proceedings or records.

6 Sec. 10. An incident report or risk management report and
7 the contents of an incident report or risk management report are not
8 subject to discovery in, and are not admissible in evidence in the
9 trial of, a civil action for damages for injury, death, or loss to a
10 patient of a health care provider. A person who prepares or has
11 knowledge of the contents of an incident report or risk management
12 report shall not testify and shall not be required to testify in any
13 civil action as to the contents of the report.

14 Sec. 11. Section 28-435.01, Reissue Revised Statutes of
15 Nebraska, is amended to read:

16 28-435.01 (1) A health care facility licensed under the
17 Health Care Facility Licensure Act or a peer review organization or
18 professional association relating to a profession regulated under the
19 Uniform Controlled Substances Act shall report to the department, on
20 a form and in the manner specified by the department, any facts known
21 to the facility, organization, or association, including, but not
22 limited to, the identity of the credential holder and consumer, when
23 the facility, organization, or association:

24 (a) Has made payment due to adverse judgment, settlement,
25 or award of a professional liability claim against it or a licensee,

1 including settlements made prior to suit, arising out of the acts or
2 omissions of the licensee; or

3 (b) Takes action adversely affecting the privileges or
4 membership of a licensee in such facility, organization, or
5 association due to alleged incompetence, professional negligence,
6 unprofessional conduct, or physical, mental, or chemical impairment.

7 The report shall be made within thirty days after the
8 date of the action or event.

9 (2) A report made to the department under this section
10 shall be confidential. The facility, organization, association, or
11 person making such report shall be completely immune from criminal or
12 civil liability of any nature, whether direct or derivative, for
13 filing a report or for disclosure of documents, records, or other
14 information to the department under this section. Nothing in this
15 subsection shall be construed to require production of records
16 protected by the Health Care Quality Improvement Act or section
17 25-12,123, 71-2048, or 71-7903 or patient safety work product under
18 the Patient Safety Improvement Act except as otherwise provided in
19 any of such sections or such act. either of such acts or such
20 section.

21 (3) Any health care facility, peer review organization,
22 or professional association that fails or neglects to make a report
23 or provide information as required under this section is subject to a
24 civil penalty of five hundred dollars for the first offense and a
25 civil penalty of up to one thousand dollars for a subsequent offense.

1 Any civil penalty collected under this subsection shall be remitted
2 to the State Treasurer to be disposed of in accordance with Article
3 VII, section 5, of the Constitution of Nebraska.

4 (4) For purposes of this section, the department shall
5 accept reports made to it under the Nebraska Hospital-Medical
6 Liability Act or in accordance with national practitioner data bank
7 requirements of the federal Health Care Quality Improvement Act of
8 1986, as the act existed on January 1, 2007, and may require a
9 supplemental report to the extent such reports do not contain the
10 information required by the department.

11 Sec. 12. Section 38-1,126, Reissue Revised Statutes of
12 Nebraska, is amended to read:

13 38-1,126 (1) A report made to the department under
14 section 38-1,124 or 38-1,125 shall be confidential.

15 (2) Any person making such a report to the department,
16 except a person who is self-reporting, shall be completely immune
17 from criminal or civil liability of any nature, whether direct or
18 derivative, for filing a report or for disclosure of documents,
19 records, or other information to the department under section
20 38-1,124 or 38-1,125.

21 (3) Persons who are members of committees established
22 under the Health Care Quality Improvement Act, the Patient Safety
23 Improvement Act, or ~~sections section 25-12,123, 71-2046 to 71-2048,~~
24 ~~and 71-7901 to 71-7903~~ or witnesses before such committees shall not
25 be required to report under section 38-1,124 or 38-1,125. Any person

1 who is a witness before such a committee shall not be excused from
2 reporting matters of first-hand knowledge that would otherwise be
3 reportable under section 38-1,124 or 38-1,125 only because he or she
4 attended or testified before such committee.

5 (4) Documents from original sources shall not be
6 construed as immune from discovery or use in actions under section
7 38-1,125.

8 Sec. 13. Section 38-1,127, Reissue Revised Statutes of
9 Nebraska, is amended to read:

10 38-1,127 (1) A health care facility licensed under the
11 Health Care Facility Licensure Act or a peer review organization or
12 professional association of a profession regulated under the Uniform
13 Credentialing Act shall report to the department, on a form and in
14 the manner specified by the department, any facts known to the
15 facility, organization, or association, including, but not limited
16 to, the identity of the credential holder and consumer, when the
17 facility, organization, or association:

18 (a) Has made payment due to adverse judgment, settlement,
19 or award of a professional liability claim against it or a credential
20 holder, including settlements made prior to suit, arising out of the
21 acts or omissions of the credential holder; or

22 (b) Takes action adversely affecting the privileges or
23 membership of a credential holder in such facility, organization, or
24 association due to alleged incompetence, professional negligence,
25 unprofessional conduct, or physical, mental, or chemical impairment.

1 The report shall be made within thirty days after the
2 date of the action or event.

3 (2) A report made to the department under this section
4 shall be confidential. The facility, organization, association, or
5 person making such report shall be completely immune from criminal or
6 civil liability of any nature, whether direct or derivative, for
7 filing a report or for disclosure of documents, records, or other
8 information to the department under this section. Nothing in this
9 subsection shall be construed to require production of records
10 protected by the Health Care Quality Improvement Act or section
11 25-12,123, ~~71-2048, or 71-7903~~ or patient safety work product under
12 the Patient Safety Improvement Act except as otherwise provided in
13 ~~any of such sections or such act.~~ either of such acts or such
14 section.

15 (3) Any health care facility, peer review organization,
16 or professional association that fails or neglects to make a report
17 or provide information as required under this section is subject to a
18 civil penalty of five hundred dollars for the first offense and a
19 civil penalty of up to one thousand dollars for a subsequent offense.
20 Any civil penalty collected under this subsection shall be remitted
21 to the State Treasurer to be disposed of in accordance with Article
22 VII, section 5, of the Constitution of Nebraska.

23 (4) For purposes of this section, the department shall
24 accept reports made to it under the Nebraska Hospital-Medical
25 Liability Act or in accordance with national practitioner data bank

1 requirements of the federal Health Care Quality Improvement Act of
2 1986, as the act existed on January 1, 2007, and may require a
3 supplemental report to the extent such reports do not contain the
4 information required by the department.

5 Sec. 14. Section 71-6736, Reissue Revised Statutes of
6 Nebraska, is amended to read:

7 71-6736 (1) Any facility or person using the services of
8 a medication aide shall report to the department, in the manner
9 specified by the department by rule and regulation, any facts known
10 to him, her, or it, including, but not limited to, the identity of
11 the medication aide and the recipient, when it takes action adversely
12 affecting a medication aide due to alleged incompetence. The report
13 shall be made within thirty days after the date of the action or
14 event.

15 (2) Any person may report to the department any facts
16 known to him or her concerning any alleged incompetence of a
17 medication aide.

18 (3) A report made to the department under this section
19 shall be confidential. The facility, organization, association, or
20 person making such report shall be immune from criminal or civil
21 liability of any nature, whether direct or derivative, for filing a
22 report or for disclosure of documents, records, or other information
23 to the department under this section. The reports and information
24 shall be subject to the investigatory and enforcement provisions of
25 the regulatory provisions listed in the Medication Aide Act. This

1 subsection does not require production of records protected by the
2 Health Care Quality Improvement Act or section 25-12,123 or 71-2048
3 or patient safety work product under the Patient Safety Improvement
4 Act except as otherwise provided in either of such ~~sections or such~~
5 ~~act.~~ acts or such section.

6 Sec. 15. Section 71-7460.02, Reissue Revised Statutes of
7 Nebraska, is amended to read:

8 71-7460.02 (1) A health care facility licensed under the
9 Health Care Facility Licensure Act or a peer review organization or
10 professional association relating to a profession regulated under the
11 Wholesale Drug Distributor Licensing Act shall report to the
12 department, on a form and in the manner specified by the department,
13 any facts known to the facility, organization, or association,
14 including, but not limited to, the identity of the credential holder
15 and consumer, when the facility, organization, or association:

16 (a) Has made payment due to adverse judgment, settlement,
17 or award of a professional liability claim against it or a licensee,
18 including settlements made prior to suit, arising out of the acts or
19 omissions of the licensee; or

20 (b) Takes action adversely affecting the privileges or
21 membership of a licensee in such facility, organization, or
22 association due to alleged incompetence, professional negligence,
23 unprofessional conduct, or physical, mental, or chemical impairment.

24 The report shall be made within thirty days after the
25 date of the action or event.

1 (2) A report made to the department under this section
2 shall be confidential. The facility, organization, association, or
3 person making such report shall be completely immune from criminal or
4 civil liability of any nature, whether direct or derivative, for
5 filing a report or for disclosure of documents, records, or other
6 information to the department under this section. Nothing in this
7 subsection shall be construed to require production of records
8 protected by the Health Care Quality Improvement Act or section
9 ~~25-12,123, 71-2048, or 71-7903~~ or patient safety work product under
10 the Patient Safety Improvement Act except as otherwise provided in
11 ~~any of such sections or such act.~~ either of such acts or such
12 section.

13 (3) Any health care facility, peer review organization,
14 or professional association that fails or neglects to make a report
15 or provide information as required under this section is subject to a
16 civil penalty of five hundred dollars for the first offense and a
17 civil penalty of up to one thousand dollars for a subsequent offense.
18 Any civil penalty collected under this subsection shall be remitted
19 to the State Treasurer to be disposed of in accordance with Article
20 VII, section 5, of the Constitution of Nebraska.

21 (4) For purposes of this section, the department shall
22 accept reports made to it under the Nebraska Hospital-Medical
23 Liability Act or in accordance with national practitioner data bank
24 requirements of the federal Health Care Quality Improvement Act of
25 1986, as the act existed on January 1, 2007, and may require a

1 supplemental report to the extent such reports do not contain the
2 information required by the department.

3 Sec. 16. Original sections 28-435.01, 38-1,126, 38-1,127,
4 71-6736, and 71-7460.02, Reissue Revised Statutes of Nebraska, are
5 repealed.

6 Sec. 17. The following sections are outright repealed:
7 Sections 71-2046, 71-2047, 71-2048, 71-7901, 71-7902, and 71-7903,
8 Reissue Revised Statutes of Nebraska.

9 Sec. 18. Since an emergency exists, this act takes effect
10 when passed and approved according to law.