

LEGISLATURE OF NEBRASKA
 ONE HUNDRED SECOND LEGISLATURE
 FIRST SESSION
LEGISLATIVE BILL 591

Final Reading

Introduced by Gloor, 35.

Read first time January 19, 2011

Committee: Health and Human Services

A BILL

1 FOR AN ACT relating to health and human services; to amend sections
 2 38-178, 38-182, 71-448, 71-529, 71-539, 71-540, 71-541,
 3 71-542, 71-543, and 71-544, Reissue Revised Statutes of
 4 Nebraska; to provide for syndromic surveillance reporting
 5 by health care providers as prescribed; to require the
 6 Department of Health and Human Services to develop a
 7 syndromic surveillance program; to provide grounds for
 8 discipline of credentials for failure to report; to
 9 change provisions relating to the exchange of
 10 immunization information; to harmonize provisions; and to
 11 repeal the original sections.

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

1 Section 1. (1) For purposes of protecting the public
2 health and tracking the impact of disease prevention strategies
3 intended to lower the cost of health care, the Department of Health
4 and Human Services shall develop a syndromic surveillance program
5 that respects patient privacy and benefits from advances in both
6 electronic health records and electronic health information exchange.
7 The syndromic surveillance program shall include the monitoring,
8 detection, and investigation of public health threats from (a)
9 intentional or accidental use or misuse of chemical, biological,
10 radiological, or nuclear agents, (b) clusters or outbreaks of
11 infectious or communicable diseases, and (c) noninfectious causes of
12 illness.

13 (2) The department shall adopt and promulgate rules and
14 regulations setting standards for syndromic surveillance reporting by
15 hospitals. The standards shall specify (a) the syndromic surveillance
16 data elements required to be reported for all encounters, which shall
17 include at a minimum the date of the encounter and the patient's
18 gender, date of birth, chief complaint or reason for encounter, home
19 zip code, unique record identifier, and discharge diagnoses and (b)
20 the manner of reporting.

21 (3) The department may require, by rule and regulation,
22 syndromic surveillance reporting by other health care facilities or
23 any person issued a credential by the department.

24 (4) The department shall establish, by rule and
25 regulation, a schedule for the implementation of full electronic

1 reporting of all syndromic surveillance data elements. The schedule
2 shall take into consideration the number of data elements already
3 reported by the facility or person, the capacity of the facility or
4 person to electronically report the remaining elements, the funding
5 available for implementation, and other relevant factors, including
6 improved efficiencies and resulting benefits to the reporting
7 facility or person.

8 (5) The use, confidentiality, and immunity provisions of
9 section 71-503.01 apply to syndromic surveillance data reports.

10 (6) Failure to provide a report under this section or the
11 rules and regulations is grounds for discipline of a credential
12 issued by the department.

13 Sec. 2. Section 38-178, Reissue Revised Statutes of
14 Nebraska, is amended to read:

15 38-178 Except as otherwise provided in sections 38-1,119
16 to 38-1,123, a credential to practice a profession may be denied,
17 refused renewal, or have other disciplinary measures taken against it
18 in accordance with section 38-185 or 38-186 on any of the following
19 grounds:

20 (1) Misrepresentation of material facts in procuring or
21 attempting to procure a credential;

22 (2) Immoral or dishonorable conduct evidencing unfitness
23 to practice the profession in this state;

24 (3) Abuse of, dependence on, or active addiction to
25 alcohol, any controlled substance, or any mind-altering substance;

1 (4) Failure to comply with a treatment program or an
2 aftercare program, including, but not limited to, a program entered
3 into under the Licensee Assistance Program established pursuant to
4 section 38-175;

5 (5) Conviction of (a) a misdemeanor or felony under
6 Nebraska law or federal law, or (b) a crime in any jurisdiction
7 which, if committed within this state, would have constituted a
8 misdemeanor or felony under Nebraska law and which has a rational
9 connection with the fitness or capacity of the applicant or
10 credential holder to practice the profession;

11 (6) Practice of the profession (a) fraudulently, (b)
12 beyond its authorized scope, (c) with gross incompetence or gross
13 negligence, or (d) in a pattern of incompetent or negligent conduct;

14 (7) Practice of the profession while the ability to
15 practice is impaired by alcohol, controlled substances, drugs, mind-
16 altering substances, physical disability, mental disability, or
17 emotional disability;

18 (8) Physical or mental incapacity to practice the
19 profession as evidenced by a legal judgment or a determination by
20 other lawful means;

21 (9) Illness, deterioration, or disability that impairs
22 the ability to practice the profession;

23 (10) Permitting, aiding, or abetting the practice of a
24 profession or the performance of activities requiring a credential by
25 a person not credentialed to do so;

1 (11) Having had his or her credential denied, refused
2 renewal, limited, suspended, revoked, or disciplined in any manner
3 similar to section 38-196 by another state or jurisdiction based upon
4 acts by the applicant or credential holder similar to acts described
5 in this section;

6 (12) Use of untruthful, deceptive, or misleading
7 statements in advertisements;

8 (13) Conviction of fraudulent or misleading advertising
9 or conviction of a violation of the Uniform Deceptive Trade Practices
10 Act;

11 (14) Distribution of intoxicating liquors, controlled
12 substances, or drugs for any other than lawful purposes;

13 (15) Violations of the Uniform Credentialing Act or the
14 rules and regulations relating to the particular profession;

15 (16) Unlawful invasion of the field of practice of any
16 profession regulated by the Uniform Credentialing Act which the
17 credential holder is not credentialed to practice;

18 (17) Violation of the Uniform Controlled Substances Act
19 or any rules and regulations adopted pursuant to the act;

20 (18) Failure to file a report required by section
21 38-1,124 or 38-1,125 or section 1 of this act;

22 (19) Failure to maintain the requirements necessary to
23 obtain a credential;

24 (20) Violation of an order issued by the department;

25 (21) Violation of an assurance of compliance entered into

1 under section 38-1,108;

2 (22) Failure to pay an administrative penalty;

3 (23) Unprofessional conduct as defined in section 38-179;

4 or

5 (24) Violation of the Automated Medication Systems Act.

6 Sec. 3. Section 38-182, Reissue Revised Statutes of
7 Nebraska, is amended to read:

8 38-182 A credential to operate a business may be denied,
9 refused renewal, or have disciplinary measures taken against it in
10 accordance with section 38-196 on any of the following grounds:

11 (1) Violation of the Uniform Credentialing Act or the
12 rules and regulations adopted and promulgated under such act relating
13 to the applicable business;

14 (2) Committing or permitting, aiding, or abetting the
15 commission of any unlawful act;

16 (3) Conduct or practices detrimental to the health or
17 safety of an individual served or employed by the business;

18 (4) Failure to allow an agent or employee of the
19 department access to the business for the purposes of inspection,
20 investigation, or other information collection activities necessary
21 to carry out the duties of the department; ~~or~~

22 (5) Discrimination or retaliation against an individual
23 served or employed by the business who has submitted a complaint or
24 information to the department or is perceived to have submitted a
25 complaint or information to the department; or -

1 (6) Failure to file a report required by section 1 of
2 this act.

3 Sec. 4. Section 71-448, Reissue Revised Statutes of
4 Nebraska, is amended to read:

5 71-448 The Division of Public Health of the Department of
6 Health and Human Services may take disciplinary action against a
7 license issued under the Health Care Facility Licensure Act on any of
8 the following grounds:

9 (1) Violation of any of the provisions of the Assisted-
10 Living Facility Act, the Health Care Facility Licensure Act, the
11 Nebraska Nursing Home Act, or the rules and regulations adopted and
12 promulgated under such acts;

13 (2) Committing or permitting, aiding, or abetting the
14 commission of any unlawful act;

15 (3) Conduct or practices detrimental to the health or
16 safety of a person residing in, served by, or employed at the health
17 care facility or health care service;

18 (4) A report from an accreditation body or public agency
19 sanctioning, modifying, terminating, or withdrawing the accreditation
20 or certification of the health care facility or health care service;

21 (5) Failure to allow an agent or employee of the
22 Department of Health and Human Services access to the health care
23 facility or health care service for the purposes of inspection,
24 investigation, or other information collection activities necessary
25 to carry out the duties of the Department of Health and Human

1 Services;

2 (6) Discrimination or retaliation against a person
3 residing in, served by, or employed at the health care facility or
4 health care service who has submitted a complaint or information to
5 the Department of Health and Human Services;

6 (7) Discrimination or retaliation against a person
7 residing in, served by, or employed at the health care facility or
8 health care service who has presented a grievance or information to
9 the office of the state long-term care ombudsman;

10 (8) Failure to allow a state long-term care ombudsman or
11 an ombudsman advocate access to the health care facility or health
12 care service for the purposes of investigation necessary to carry out
13 the duties of the office of the state long-term care ombudsman as
14 specified in the rules and regulations adopted and promulgated by the
15 Department of Health and Human Services;

16 (9) Violation of the Emergency Box Drug Act;

17 (10) Failure to file a report required by section
18 38-1,127 or section 1 of this act;

19 (11) Violation of the Medication Aide Act;

20 (12) Failure to file a report of suspected abuse or
21 neglect as required by sections 28-372 and 28-711; or

22 (13) Violation of the Automated Medication Systems Act.

23 Sec. 5. Section 71-529, Reissue Revised Statutes of
24 Nebraska, is amended to read:

25 71-529 The Department of Health and Human Services may

1 participate in the national efforts described in sections 71-527 and
2 71-528 and may develop a statewide immunization action plan which is
3 comprehensive in scope and reflects contributions from a broad base
4 of providers and consumers. In order to implement the statewide
5 immunization action plan, the department may:

6 (1) Actively seek the participation and commitment of the
7 public, health care professionals and facilities, the educational
8 community, and community organizations in a comprehensive program to
9 ensure that the state's children are appropriately immunized;

10 (2) Apply for and receive public and private awards to
11 purchase vaccines and to administer a statewide comprehensive
12 program;

13 (3) Provide immunization information and education to the
14 public, parents, health care providers, and educators to establish
15 and maintain a high level of awareness and demand for immunization by
16 parents;

17 (4) Assist parents, health care providers, and
18 communities in developing systems, including demonstration and pilot
19 projects, which emphasize well-child care and the use of private
20 practitioners and which improve the availability of immunization and
21 improve management of immunization delivery so as to ensure the
22 adequacy of the vaccine delivery system;

23 (5) Evaluate the effectiveness of these statewide
24 efforts, conduct ongoing measurement of children's immunization
25 status, identify children at special risk for deficiencies in

1 immunization, and report on the activities of the statewide
2 immunization program annually to the Legislature and the citizens of
3 Nebraska;

4 (6) Recognize persons who volunteer their efforts towards
5 achieving the goal of providing immunization of the children of
6 Nebraska and in meeting the Healthy People 2000 objective of series-
7 complete immunization coverage for ninety percent or more of United
8 States children by their second birthday;

9 (7) Establish a statewide program to immunize Nebraska
10 children from birth up to six years of age against measles, mumps,
11 rubella, poliomyelitis, diphtheria, pertussis, tetanus, hepatitis B,
12 and haemophilus influenzae type B. The program shall serve children
13 who are not otherwise eligible for childhood immunization coverage
14 with medicaid or other federal funds or are not covered by private
15 third-party payment; and

16 (8) Contract to provide vaccine under the statewide
17 program authorized under subdivision (7) of this section without cost
18 to health care providers subject to the following conditions:

19 (a) In order to receive vaccine without cost, health care
20 providers shall not charge for the cost of the vaccine. Health care
21 providers may charge a fee for the administration of the vaccine but
22 may not deny service because of the parent's or guardian's inability
23 to pay such fee. Fees for administration of the vaccine shall be
24 negotiated between the department and the health care provider, shall
25 be uniform among participating providers, and shall be no more than

1 the cost ceiling for the region in which Nebraska is included as set
2 by the Secretary of the United States Department of Health and Human
3 Services for the Vaccines for Children Program authorized by the
4 Omnibus Budget Reconciliation Act of 1993;

5 (b) Health care providers shall administer vaccines
6 according to the schedule recommended by the Advisory Committee on
7 Immunization Practices of the Centers for Disease Control and
8 Prevention or by the American Academy of Pediatrics unless in the
9 provider's medical judgment, subject to accepted medical practice,
10 such compliance is medically inappropriate; and

11 (c) Health care providers shall maintain records on
12 immunizations as prescribed by this section for inspection and audit
13 by the Department of Health and Human Services or the Auditor of
14 Public Accounts, including responses by parents or guardians to
15 simple screening questions related to payment coverage by public or
16 private third-party payors, identification of the administration fee
17 as separate from any other cost charged for other services provided
18 at the same time the vaccination service is provided, and other
19 information as determined by the department to be necessary to comply
20 with subdivision (5) of this section. Such immunization records may
21 also be used for information exchange as provided in sections 71-539
22 to 71-544 and section 7 of this act.

23 Sec. 6. Section 71-539, Reissue Revised Statutes of
24 Nebraska, is amended to read:

25 71-539 It is the intent of the Legislature that sections

1 71-539 to 71-544 and section 7 of this act provide for the exchange
2 of immunization information between professionals, facilities, and
3 departments health care professionals, health care facilities, health
4 care services, schools, postsecondary educational institutions,
5 licensed child care facilities, electronic health-record systems,
6 public health departments, health departments of other states, Indian
7 health services, and tribes for the purpose of protecting the public
8 health by facilitating age-appropriate immunizations which will
9 minimize the risk of outbreak of childhood vaccine-preventable
10 diseases.

11 Sec. 7. The Department of Health and Human Services shall
12 establish an immunization information system for the purpose of
13 providing a central data base of immunization information which can
14 be accessed pursuant to rules and regulations of the department by
15 any person or entity listed in section 71-539, by a patient, and by a
16 patient's parent or legal guardian if the patient is a minor or under
17 guardianship. In order to facilitate operation of the immunization
18 information system, the department shall provide the system with
19 access to all records of the department, including, but not limited
20 to, vital records.

21 Sec. 8. Section 71-540, Reissue Revised Statutes of
22 Nebraska, is amended to read:

23 71-540 All immunization information may be shared with
24 the Department of Health and Human Services and entered into the
25 central data base created pursuant to section 7 of this act. A

1 patient or, if the patient is a minor, the patient's parent or legal
2 guardian may deny access under sections 71-539 to 71-544 and section
3 7 of this act to the patient's immunization information by signing a
4 nondisclosure form with the professional or entity which provided the
5 immunization and with the department. The nondisclosure form shall be
6 kept with the immunization information of the patient, and such
7 immunization information is considered restricted immunization
8 information.

9 Sec. 9. Section 71-541, Reissue Revised Statutes of
10 Nebraska, is amended to read:

11 71-541 ~~A physician, an advanced practice registered nurse~~
12 ~~practicing under and in accordance with his or her applicable~~
13 ~~certification act, a physician assistant, a pharmacist, a licensed~~
14 ~~health care facility, a public immunization clinic, a local or~~
15 ~~district health department, and the Department of Health and Human~~
16 ~~Services may share immunization information which is not restricted~~
17 ~~under section 71-540. Any person or entity authorized under section 7~~
18 ~~of this act to access immunization information in the immunization~~
19 ~~information system established pursuant to section 7 of this act may~~
20 ~~access such information pursuant to rules and regulations of the~~
21 ~~Department of Health and Human Services for purposes of direct~~
22 ~~patient care, public health activities, or enrollment in school or~~
23 ~~child care services.~~ The unrestricted immunization information shared
24 may include, but is not limited to, the patient's name, and date of
25 birth, the dates and vaccine types administered, and any immunization

1 information obtained from other sources. A person or entity listed in
2 section 71-539 which provides immunization information to a licensed
3 child care program, a school, or a postsecondary educational
4 institution may charge a reasonable fee to recover the cost of
5 providing such immunization information.

6 Sec. 10. Section 71-542, Reissue Revised Statutes of
7 Nebraska, is amended to read:

8 71-542 (1) ~~Immunization information which is not~~
9 ~~restricted under section 71-540 concerning children enrolled in a~~
10 ~~child care program licensed pursuant to the Child Care Licensing Act,~~
11 ~~a school, or a postsecondary educational institution may be accessed~~
12 ~~by the program, school, or institution from any of the persons or~~
13 ~~entities described in section 71-541, subject to security provisions~~
14 ~~to be set by rule and regulation as provided in section 71-543. Such~~
15 ~~immunization information is limited to the child's name, date of~~
16 ~~birth, immunization provider, and all dates of immunization by~~
17 ~~vaccine type documented in the immunization information. The access~~
18 ~~to immunization information by such a licensed program, school, or~~
19 ~~institution under this section does not change a parent's or legal~~
20 ~~guardian's right to access medical information about his or her child~~
21 ~~or ward.~~

22 (2) ~~Immunization information received under this section~~
23 in the immunization information system established pursuant to
24 section 7 of this act is confidential, except that a child's
25 immunization information received under this section and unrestricted

1 ~~immunization information may only be disclosed to the child's parents~~
2 ~~or legal guardian. accessed pursuant to rules and regulations of the~~
3 ~~Department of Health and Human Services. Unauthorized public~~
4 disclosure of such confidential information by an individual or an
5 officer or employee of a child care program licensed pursuant to the
6 Child Care Licensing Act, a school, or a postsecondary educational
7 institution is a Class III misdemeanor.

8 ~~(3) The person or entity described in section 71-541~~
9 ~~which provides immunization information to a licensed child care~~
10 ~~program, a school, or a postsecondary educational institution in~~
11 ~~accordance with this section may charge a reasonable fee to recover~~
12 ~~the cost of providing such immunization information.~~

13 Sec. 11. Section 71-543, Reissue Revised Statutes of
14 Nebraska, is amended to read:

15 71-543 The Department of Health and Human Services may
16 adopt and promulgate rules and regulations to implement sections
17 71-539 to 71-544 and section 7 of this act, including procedures and
18 methods for and limitations on access to and security and
19 confidentiality of the immunization information.

20 Sec. 12. Section 71-544, Reissue Revised Statutes of
21 Nebraska, is amended to read:

22 71-544 Any person who receives or releases immunization
23 information in the form and manner prescribed in sections 71-539 to
24 71-544 and section 7 of this act and any rules and regulations which
25 may be adopted and promulgated pursuant to sections 71-539 to 71-544

1 and section 7 of this act is not civilly or criminally liable for
2 such receipt or release.

3 Sec. 13. Original sections 38-178, 38-182, 71-448,
4 71-529, 71-539, 71-540, 71-541, 71-542, 71-543, and 71-544, Reissue
5 Revised Statutes of Nebraska, are repealed.