

LEGISLATIVE BILL 591

Approved by the Governor May 18, 2011

Introduced by Gloor, 35.

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

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

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

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

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

(4) The department shall establish, by rule and regulation, a schedule for the implementation of full electronic reporting of all syndromic surveillance data elements. The schedule shall take into consideration the number of data elements already reported by the facility or person, the capacity of the facility or person to electronically report the remaining elements, the funding available for implementation, and other relevant factors, including improved efficiencies and resulting benefits to the reporting facility or person.

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

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

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

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

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

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

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

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

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

(6) Practice of the profession (a) fraudulently, (b) beyond its authorized scope, (c) with gross incompetence or gross negligence, or (d) in a

pattern of incompetent or negligent conduct;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(21) Violation of an assurance of compliance entered into under section 38-1,108;

(22) Failure to pay an administrative penalty;

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

(24) Violation of the Automated Medication Systems Act.

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

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

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

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

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

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

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

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

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

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

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

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

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

health care service;

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

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

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

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

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

(9) Violation of the Emergency Box Drug Act;

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

(11) Violation of the Medication Aide Act;

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

(13) Violation of the Automated Medication Systems Act.

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

71-529 The Department of Health and Human Services may participate in the national efforts described in sections 71-527 and 71-528 and may develop a statewide immunization action plan which is comprehensive in scope and reflects contributions from a broad base of providers and consumers. In order to implement the statewide immunization action plan, the department may:

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

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

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

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

(5) Evaluate the effectiveness of these statewide efforts, conduct ongoing measurement of children's immunization status, identify children at special risk for deficiencies in immunization, and report on the activities of the statewide immunization program annually to the Legislature and the citizens of Nebraska;

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

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

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

(a) In order to receive vaccine without cost, health care providers shall not charge for the cost of the vaccine. Health care providers may

charge a fee for the administration of the vaccine but may not deny service because of the parent's or guardian's inability to pay such fee. Fees for administration of the vaccine shall be negotiated between the department and the health care provider, shall be uniform among participating providers, and shall be no more than the cost ceiling for the region in which Nebraska is included as set by the Secretary of the United States Department of Health and Human Services for the Vaccines for Children Program authorized by the Omnibus Budget Reconciliation Act of 1993;

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

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

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

71-539 It is the intent of the Legislature that sections 71-539 to 71-544 and section 7 of this act provide for the exchange of immunization information between ~~professionals, facilities, and departments~~ health care professionals, health care facilities, health care services, schools, postsecondary educational institutions, licensed child care facilities, electronic health-record systems, public health departments, health departments of other states, Indian health services, and tribes for the purpose of protecting the public health by facilitating age-appropriate immunizations which will minimize the risk of outbreak of childhood vaccine-preventable diseases.

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

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

71-540 All immunization information may be shared with the Department of Health and Human Services and entered into the central data base created pursuant to section 7 of this act. A patient or, if the patient is a minor, the patient's parent or legal guardian may deny access under sections 71-539 to 71-544 and section 7 of this act to the patient's immunization information by signing a nondisclosure form with the professional or entity which provided the immunization and with the department. The nondisclosure form shall be kept with the immunization information of the patient, and such immunization information is considered restricted immunization information.

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

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

entity listed in section 71-539 which provides immunization information to a licensed child care program, a school, or a postsecondary educational institution may charge a reasonable fee to recover the cost of providing such immunization information.

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

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

(2) Immunization information received under this section in the immunization information system established pursuant to section 7 of this act is confidential, except that a child's immunization information received under this section and unrestricted immunization information may only be disclosed to the child's parents or legal guardian, accessed pursuant to rules and regulations of the Department of Health and Human Services. Unauthorized public disclosure of such confidential information by an individual or an officer or employee of a child care program licensed pursuant to the Child Care Licensing Act, a school, or a postsecondary educational institution is a Class III misdemeanor.

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

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

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

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

71-544 Any person who receives or releases immunization information in the form and manner prescribed in sections 71-539 to 71-544 and section 7 of this act and any rules and regulations which may be adopted and promulgated pursuant to sections 71-539 to 71-544 and section 7 of this act is not civilly or criminally liable for such receipt or release.

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