

LEGISLATIVE BILL 361

Approved by the Governor May 7, 2013

Introduced by Howard, 9; Conrad, 46.

FOR AN ACT relating to public health and welfare; to amend sections 71-3404, 71-3405, 71-3406, 71-3408, 71-3409, 71-3410, and 71-3411, Reissue Revised Statutes of Nebraska, and section 71-3407, Revised Statutes Cumulative Supplement, 2012; to name the Child and Maternal Death Review Act; to state intent; to define terms; to provide for review of maternal deaths; to change review procedures for child deaths; to rename and change membership of the review team; to change and provide powers and duties; to provide for a team coordinator; to change provisions relating to information and records; to harmonize provisions; and to repeal the original sections.

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

Section 1. Section 71-3404, Reissue Revised Statutes of Nebraska, is amended to read:

71-3404 (1) Sections 71-3404 to 71-3411 shall be known and may be cited as the Child and Maternal Death Review Act.

(2) The Legislature finds and declares that it is in the best interests of the state, its citizens, residents, and especially the children of this state that the number and causes of death of children in this state be examined. There is a need for a comprehensive integrated review of all child deaths in Nebraska and a system for statewide retrospective review of existing records relating to each child death.

(3) The Legislature further finds and declares that it is in the best interests of the state and its residents that the number and causes of maternal death in this state be examined. There is a need for a comprehensive integrated review of all maternal deaths in Nebraska and a system for statewide retrospective review of existing records relating to each maternal death.

(4) It is the intent of the Legislature, by enactment of Laws 1993, LB 431, creation of the Child and Maternal Death Review Act, to: (1)

(a) Identify trends from the review of past records to prevent future child and maternal deaths from similar causes when applicable; (2) recommend

(b) Recommend systematic changes for the creation of a cohesive method for responding to certain child and maternal deaths; and (3) when

(c) When appropriate, cause referral to be made to those agencies as required in section 28-711 or as otherwise required by state law.

Sec. 2. Section 71-3405, Reissue Revised Statutes of Nebraska, is amended to read:

71-3405 For purposes of sections 71-3404 to 71-3411, the Child and Maternal Death Review Act:

(1) Child shall mean means a person from birth to eighteen years of age;

(2) Investigation shall mean of child death means a review of existing records and other information regarding the child from relevant agencies, professionals, and providers of medical, dental, prenatal, and mental health care. The records to be reviewed may include, but not be limited to, medical records, coroner's reports, autopsy reports, social services records, educational records, emergency and paramedic records, and law enforcement reports;

(3) Investigation of maternal death means a review of existing records and other information regarding the woman from relevant agencies, professionals, and providers of medical, dental, prenatal, and mental health care. The records to be reviewed may include, but not be limited to, medical records, coroner's reports, autopsy reports, social services records, educational records, emergency and paramedic records, and law enforcement reports;

(4) Maternal death means the death of a woman during pregnancy or the death of a postpartum woman;

(5) Postpartum woman means a woman during the period of time beginning when the woman ceases to be pregnant and ending one year after the woman ceases to be pregnant;

(6) Preventable child or maternal death shall mean means the death of any child or pregnant or postpartum woman which reasonable medical, social, legal, psychological, or educational intervention may have prevented. Preventable child or maternal death shall include, but not be includes, but

is not limited to, the death of a child or pregnant or postpartum woman from (a) intentional and unintentional injuries, (b) medical misadventures, including untoward results, malpractice, and foreseeable complications, (c) lack of access to medical care, (d) neglect and reckless conduct, including failure to supervise and failure to seek medical care for various reasons, and (e) preventable premature birth;

~~(4)~~ (7) Reasonable shall mean means taking into consideration the condition, circumstances, and resources available; and

~~(5)~~ (8) Team shall mean means the State Child and Maternal Death Review Team.

Sec. 3. Section 71-3406, Reissue Revised Statutes of Nebraska, is amended to read:

71-3406 (1) The chief executive officer of the Department of Health and Human Services shall appoint a minimum of ~~eight~~ twelve and a maximum of ~~twelve~~ fifteen members to the State Child and Maternal Death Review Team. The core members shall be (a) a physician employed by the department, who shall be a permanent member and shall serve as the chairperson of the team, (b) a senior staff member with child protective services of the department, (c) a forensic pathologist, (d) a law enforcement representative, and (e) an attorney. The remaining members appointed may be, but shall not be limited to, the following: A county attorney; a Federal Bureau of Investigation agent responsible for investigations on Native American reservations; a social worker; and members of organizations which represent hospitals or physicians. The department shall be responsible for the general administration of the activities of the team and shall employ or contract with a team coordinator to provide administrative support for the team.

(2) Members shall serve four-year terms with the exception of the chairperson. In the absence of the chairperson, the chief executive officer may appoint another member of the core team to serve as chairperson.

(3) The team shall not be considered a public body for purposes of the Open Meetings Act. The team shall meet a minimum of four times a year. Members of the team shall be reimbursed for their actual and necessary expenses as provided in sections 81-1174 to 81-1177.

Sec. 4. Section 71-3407, Revised Statutes Cumulative Supplement, 2012, is amended to read:

71-3407 (1) The purposes of the team shall be to (a) develop an understanding of the causes and incidence of child or maternal deaths in this state, (b) develop recommendations for changes within relevant agencies and organizations which may serve to prevent child or maternal deaths, and (c) advise the Governor, the Legislature, and the public on changes to law, policy, and practice which will prevent child or maternal deaths.

(2) The team shall:

(a) Undertake annual statistical studies of the causes and incidence of child or maternal deaths in this state. The studies shall include, but not be limited to, an analysis of the records of community, public, and private agency involvement with the children, the pregnant or postpartum women, and their families prior to and subsequent to the child or maternal deaths;

(b) Develop a protocol for retrospective investigation of child or maternal deaths by the team;

(c) Develop a protocol for collection of data regarding child or maternal deaths by the team;

(d) Consider training needs, including cross-agency training, and service gaps;

(e) Include in its annual report recommended changes to any law, rule, regulation, or policy needed to decrease the incidence of preventable child or maternal deaths;

(f) Educate the public regarding the incidence and causes of child or maternal deaths, the public role in preventing child or maternal deaths, and specific steps the public can undertake to prevent child or maternal deaths. The team may enlist the support of civic, philanthropic, and public service organizations in the performance of its educational duties;

(g) Provide the Governor, the Legislature, and the public with annual reports which shall include the team's findings and recommendations for each of its duties. For ~~2012,~~ 2013, and 2014, the team shall also provide the report to the Health and Human Services Committee of the Legislature on or before September 15. The reports submitted to the Legislature shall be submitted electronically; and

(h) When appropriate, make referrals to those agencies as required in section 28-711 or as otherwise required by state law.

(3) The team may enter into consultation agreements with relevant experts to evaluate the information and records collected by the team. All of the confidentiality provisions of section 71-3411 shall apply to the

activities of a consulting expert.

(4) The team may enter into agreements with a local public health department as defined in section 71-1626 to act as the agent of the team in conducting all information gathering and investigation necessary for the purposes of the Child and Maternal Death Review Act. All of the confidentiality provisions of section 71-3411 shall apply to the activities of the agent.

Sec. 5. Section 71-3408, Reissue Revised Statutes of Nebraska, is amended to read:

71-3408 (1) The chairperson of the team shall:

~~(1) Have the necessary information from investigative reports, medical records, coroner's reports, autopsy reports, and other relevant items made available to the team;~~

~~(2) Ensure timely notification of the team members of an upcoming meeting;~~

~~(3) (a) Chair meetings of the team; and~~

~~(4) Ensure that all team reporting and data-collection requirements are met;~~

~~(5) (b) Ensure identification of strategies to prevent child or maternal deaths.~~

~~(6) Oversee adherence to the review process established by sections 71-3404 to 71-3411; and~~

~~(7) Perform such other duties as the team deems appropriate.~~

(2) The team coordinator provided under subsection (1) of section 71-3406 shall:

(a) Have the necessary information from investigative reports, medical records, coroner's reports, autopsy reports, educational records, and other relevant items made available to the team;

(b) Ensure timely notification of the team members of an upcoming meeting;

(c) Ensure that all team reporting and data-collection requirements are met;

(d) Oversee adherence to the review process established by the Child and Maternal Death Review Act; and

(e) Perform such other duties as the team deems appropriate.

Sec. 6. Section 71-3409, Reissue Revised Statutes of Nebraska, is amended to read:

71-3409 (1)(a) The team shall review all child deaths occurring on or after January 1, 1993, and before January 1, 2014, - The review process shall be conducted in three phases as provided in this subsection.

~~(2) (b) Phase one shall be conducted by the core members. The core members shall review the death certificate, birth certificate, coroner's report or autopsy report if done, and indicators of child or family involvement with the Department of Health and Human Services. The core members shall classify the nature of the death, whether accidental, homicide, suicide, undetermined, or natural causes, determine the completeness of the death certificate, and identify discrepancies and inconsistencies. The core members may select cases from phase one for review in phase two.~~

~~(3) (c) Phase two shall be completed by the core members and shall not be conducted on any child death under active investigation by a law enforcement agency or under criminal prosecution. The core members may seek additional records described in section 71-3410. The core members shall identify the preventability of death, the possibility of child abuse or neglect, the medical care issues of access and adequacy, and the nature and extent of interagency communication. The core members may select cases from phase two for review by the team in phase three.~~

~~(4) (d) Phase three shall be a review by the team of those cases selected by the core members for further discussion, review, and analysis.~~

(2)(a) The team shall review all child deaths occurring on or after January 1, 2014, in the manner provided in this subsection.

(b) The members shall review the death certificate, birth certificate, coroner's report or autopsy report if done, and indicators of child or family involvement with the department. The members shall classify the nature of the death, whether accidental, homicide, suicide, undetermined, or natural causes, determine the completeness of the death certificate, and identify discrepancies and inconsistencies.

(c) A review shall not be conducted on any child death under active investigation by a law enforcement agency or under criminal prosecution. The members may seek records described in section 71-3410. The members shall identify the preventability of death, the possibility of child abuse or neglect, the medical care issues of access and adequacy, and the nature and extent of interagency communication.

(3) (a) The team shall review all maternal deaths occurring on or after January 1, 2014, in the manner provided in this subsection.

(b) The members shall review the death certificate, coroner's report or autopsy report if done, and indicators of the woman's involvement with the department. The members shall classify the nature of the death, whether accidental, homicide, suicide, undetermined, or natural causes, determine the completeness of the death certificate, and identify discrepancies and inconsistencies.

(c) A review shall not be conducted on any maternal death under active investigation by a law enforcement agency or under criminal prosecution. The members may seek records described in section 71-3410. The members shall identify the preventability of death, the possibility of domestic abuse, the medical care issues of access and adequacy, and the nature and extent of interagency communication.

Sec. 7. Section 71-3410, Reissue Revised Statutes of Nebraska, is amended to read:

71-3410 (1) Upon request, the team shall be immediately provided:

~~(1) (a) Information and records maintained by a provider of medical, dental, prenatal, and mental health care, including medical reports, autopsy reports, and emergency and paramedic records; and~~

~~(2) (b) All information and records maintained by any agency of state, county, or local government, any other political subdivision, any school district, or any public or private educational institution, agency, including, but not limited to, birth and death certificates, law enforcement investigative data and reports, coroner investigative data and reports, educational records, parole and probation information and records, and information and records of any social services agency that provided services to the child, the pregnant or postpartum woman, or the child's family of the child or woman.~~

(2) The Department of Health and Human Services shall have the authority to issue subpoenas to compel production of any of the records and information specified in subdivisions ~~(1) and (2)~~ (1) (a) and (b) of this section, except records and information on any child or maternal death under active investigation by a law enforcement agency or which is at the time the subject of a criminal prosecution, and shall provide such records and information to the team.

Sec. 8. Section 71-3411, Reissue Revised Statutes of Nebraska, is amended to read:

71-3411 (1) (a) All information and records acquired by the team in the exercise of its purposes and duties pursuant to ~~sections 71-3404 to 71-3411~~ the Child and Maternal Death Review Act shall be confidential and exempt from disclosure and may only be disclosed as necessary to carry out the team's purposes and duties, provided in this section and as provided in section 71-3407. Statistical compilations of data made by the team which do not contain any information that would permit the identification of any person to be ascertained shall be public records.

(b) De-identified information and records obtained by the team may be released to a researcher, upon proof of identity and qualifications of the researcher, if the researcher is employed by a research organization, university, institution, or government agency and is conducting scientific, medical, or public health research and if there is no publication or disclosure of any name or facts that could lead to the identity of any person included in the information or records. Such release shall provide for a written agreement with the Department of Health and Human Services providing protection of the security of the content of the information, including access limitations, storage of the information, destruction of the information, and use of the information. The release of such information pursuant to this subdivision shall not make otherwise confidential information a public record.

(c) De-identified information and records obtained by the team may be released to the United States Public Health Service or its successor, a government health agency, or a local public health department as defined in section 71-1626 if there is no publication or disclosure of any name or facts that could lead to the identity of any person included in the information or records. Such release shall provide for protection of the security of the content of the information, including access limitations, storage of the information, destruction of the information, and use of the information. The release of such information pursuant to this subdivision shall not make otherwise confidential information a public record.

(2) Except as necessary to carry out a team's purposes and duties, members of a team and persons attending a team meeting may not disclose what transpired at a meeting and shall not disclose any information the disclosure of which is prohibited by this section.

(3) Members of a team and persons attending a team meeting shall not testify in any civil, administrative, licensure, or criminal proceeding, including depositions, regarding information reviewed in or opinions formed as a result of a team meeting. This subsection shall not be construed to prevent a person from testifying to information obtained independently of the team or which is public information.

(4) Information, documents, and records of the team shall not be subject to subpoena, discovery, or introduction into evidence in any civil or criminal proceeding, except that information, documents, and records otherwise available from other sources shall not be immune from subpoena, discovery, or introduction into evidence through those sources solely because they were presented during proceedings of the team or are maintained by the team.

Sec. 9. Original sections 71-3404, 71-3405, 71-3406, 71-3408, 71-3409, 71-3410, and 71-3411, Reissue Revised Statutes of Nebraska, and section 71-3407, Revised Statutes Cumulative Supplement, 2012, are repealed.