

LEGISLATURE OF NEBRASKA
ONE HUNDRED FOURTH LEGISLATURE
SECOND SESSION

LEGISLATIVE BILL 698

Introduced by Mello, 5; Bolz, 29; Campbell, 25; Cook, 13; Davis, 43.

Read first time January 06, 2016

Committee: Health and Human Services

- 1 A BILL FOR AN ACT relating to health; to adopt the Home Care Consumer
- 2 Bill of Rights Act; and to provide a penalty.
- 3 Be it enacted by the people of the State of Nebraska,

1 Section 1. Sections 1 to 10 of this act shall be known and may
2 cited as the Home Care Consumer Bill of Rights Act.

3 Sec. 2. For purposes of the Home Care Consumer Bill of Rights Act:

4 (1) Home care consumer means any person who receives home care
5 services and who is (a) sixty years of age or older or (b) a person with
6 disabilities and is younger than sixty years of age; and

7 (2) Home care services means home and community-based services the
8 purposes of which are to promote independence and reduce the necessity
9 for residence in a long-term care facility, including, but not limited
10 to, personal care services designed to assist an individual in the
11 activities of daily living such as bathing, exercising, personal
12 grooming, and getting in and out of bed, and which are provided under the
13 medicare program under Title XVIII of the federal Social Security Act, as
14 amended, the medicaid program under Title XIX of the federal Social
15 Security Act, as amended, or any other public or private program
16 providing home care services.

17 Sec. 3. A provider of home care services shall:

18 (1) Maintain the confidentiality of all personal, financial, and
19 medical information of the home care consumer to whom the provider
20 provides services, except that a home care consumer or, in the case of a
21 home care consumer who is a minor child, his or her parent or guardian,
22 has the right of access to his or her own records and written information
23 from those records;

24 (2) Disclose to the home care consumer or, in the case of a home
25 care consumer who is a minor child, his or her parent or guardian, in
26 writing and in plain language (a) whether the provider of home care
27 services is an employer, a joint employer, an employee leasing company,
28 or a contractor, as applicable, and (b) that the home care consumer or,
29 in the case of a home care consumer who is a minor child, his or her
30 parent or guardian, (i) may be considered an employer under law and, if
31 so, may be held responsible for the payment of federal and state taxes,

1 including, but not limited to, federal and state income taxes, taxes
2 under the Federal Insurance Contributions Act for purposes of social
3 security and medicare, contributions under the Federal Unemployment Tax
4 Act and the Employment Security Law, payment of overtime pay and minimum
5 wage, workers' compensation insurance, and any other applicable payments
6 required under state or federal law and (ii) should consult a tax
7 professional if the consumer or, in the case of a home care consumer who
8 is a minor child, his or her parent or guardian, is uncertain about his
9 or her responsibility for such payments; and

10 (3) Provide each home care consumer or, in the case of a home care
11 consumer who is a minor child, his or her parent or guardian, with a copy
12 of the rights guaranteed by the Home Care Consumer Bill of Rights Act in
13 the format accessible to the consumer or, in the case of a minor child,
14 the consumer's parent or guardian, which format may include paper,
15 electronic, audio, large print, or braille.

16 Sec. 4. In addition to any other rights recognized under state or
17 federal law, a home care consumer has the rights set out in sections 5 to
18 10 of this act.

19 Sec. 5. A home care consumer or, in the case of a home care
20 consumer who is a minor child, his or her parent or guardian, has the
21 right to be informed of the following by a provider of home care services
22 before the home care consumer begins to receive home care services:

23 (1) The home care consumer's rights under the Home Care Consumer
24 Bill of Rights Act; and

25 (2) The contact information for the entities the home care consumer
26 or, in the case of a home care consumer who is a minor child, his or her
27 parent or guardian, may contact if the home care consumer's rights are
28 violated, including the Consumer Protection Division of the office of the
29 Attorney General, the State Unit on Aging of the Division of Medicaid and
30 Long-Term Care of the Department of Health and Human Services, the state
31 long-term care ombudsman, the protection and advocacy system in Nebraska

1 designated under 42 U.S.C. 15041 to 15045, as such sections existed on
2 January 1, 2016, and other state and local agencies responsible for or
3 interested in the rights of home care consumers, in order to have
4 grievances addressed in an appropriate and timely manner and without
5 retaliation.

6 Sec. 6. (1) A home care consumer or, in the case of a home care
7 consumer who is a minor child, his or her parent or guardian, has the
8 right to participate in the planning of the home care consumer's home
9 care services, including, but not limited to, the right to make choices
10 about aspects of the home care consumer's home care services that are
11 important to him or her, choosing providers and schedules to the extent
12 practicable, receiving reasonable accommodation of his or her needs and
13 preferences, and involving anyone he or she chooses to participate with
14 him or her in that planning.

15 (2) A home care consumer or, in the case of a home care consumer who
16 is a minor child, his or her parent or guardian, has the right to
17 sufficient information to make informed decisions, to be fully informed
18 in advance about any proposed changes in home care services, and to be
19 involved in the decisionmaking process regarding those changes.

20 (3) A home care consumer or, in the case of a home care consumer who
21 is a minor child, his or her parent or guardian, has the right to refuse
22 home care services.

23 Sec. 7. A home care consumer or, in the case of a home care
24 consumer who is a minor child, his or her parent or guardian, has the
25 right to be informed of the cost of home care services prior to receiving
26 those services, whether the cost of home care services is covered under
27 health insurance, long-term care insurance, or other private or public
28 programs, and any charges the consumer or, in the case of a home care
29 consumer who is a minor child, his or her parent or guardian, will be
30 expected to pay for such home care services. A home care consumer or, in
31 the case of a home care consumer who is a minor child, his or her parent

1 or guardian, has the right to thirty days' advance notice of any changes
2 to such costs or services.

3 Sec. 8. (1) A home care consumer has the right to receive care and
4 services provided in a way that promotes his or her dignity and
5 individuality.

6 (2) A home care consumer or, in the case of a home care consumer who
7 is a minor child, his or her parent or guardian, has the right to (a)
8 express grievances about the quality of the home care consumer's home
9 care services, the number of hours of home care services, and any
10 violations of the home care consumer's rights under the Home Care
11 Consumer Bill of Rights Act, (b) receive prompt responses from the entity
12 with which the complaint was filed with regard to those concerns, and (c)
13 assert the home care consumer's rights under the act without retaliation.

14 Sec. 9. A home care consumer who is a minor child shall be
15 represented by his or her parent or guardian. Such parent or guardian
16 shall act on behalf of the minor child in securing the minor child's
17 rights under the Home Care Consumer Bill of Rights Act. A home care
18 consumer who is not a minor child has the right to the assistance of an
19 agent, an attorney, a guardian, an individual designated pursuant to a
20 power of attorney, or an individual otherwise designated in writing by
21 the home care consumer to act on behalf of the home care consumer in
22 securing his or her rights under the act.

23 Sec. 10. Any individual violating section 3 of this act is subject
24 to a civil penalty of one hundred dollars for each violation, up to a
25 maximum of one thousand dollars. Any civil penalty assessed and unpaid
26 shall constitute a debt to the State of Nebraska which may be collected
27 in the manner of a lien foreclosure or sued for and recovered in a proper
28 form of action in the name of the state in the district court of the
29 county in which the violator resides or owns property. The state may also
30 collect in such action attorney's fees and costs incurred in the
31 collection of the civil penalty. Any collected civil penalty shall be

1 remitted to the State Treasurer to be disposed of in accordance with
2 Article VII, section 5, of the Constitution of Nebraska.