

LEGISLATURE OF NEBRASKA
ONE HUNDRED EIGHTH LEGISLATURE
FIRST SESSION

LEGISLATIVE BILL 488

Introduced by Hunt, 8.

Read first time January 17, 2023

Committee: Health and Human Services

- 1 A BILL FOR AN ACT relating to sexual assault; to adopt the Sexual Assault
- 2 Emergency Care Act; and to provide severability.
- 3 Be it enacted by the people of the State of Nebraska,

1 Section 1. Sections 1 to 4 of this act shall be known and may be
2 cited as the Sexual Assault Emergency Care Act.

3 Sec. 2. For purposes of the Sexual Assault Emergency Care Act:

4 (1) Department means the Department of Health and Human Services;

5 (2) Director means the Director of Public Health of the Division of
6 Public Health or the director's designee;

7 (3) Emergency care for a sexual assault survivor means a medical
8 examination, procedure, or service provided by a hospital to a sexual
9 assault survivor following a sexual assault;

10 (4) Emergency contraception means a federal Food and Drug
11 Administration-approved drug administered after sexual intercourse that
12 prevents pregnancy but which does not disrupt an existing pregnancy;

13 (5) Hospital means a hospital licensed under the Health Care
14 Facility Licensure Act;

15 (6) Medically and factually accurate and objective means verified or
16 supported by the weight of research conducted in compliance with accepted
17 scientific methods and standards, the currently accepted professional
18 standards of care and established protocols for medical care following
19 sexual assault as established in section 29-4311, and recognized as
20 accurate and objective by leading professional organizations and agencies
21 with relevant expertise in the field of obstetrics and gynecology;

22 (7) Sexual assault means any sexual assault that involves sexual
23 penetration as defined in section 28-318 or substantially similar
24 conduct; and

25 (8) Sexual assault survivor means an individual who is a victim of
26 sexual assault and who reports such sexual assault to a hospital,
27 including anonymous reporting pursuant to section 28-902.

28 Sec. 3. (1) A hospital which provides emergency care for a sexual
29 assault survivor shall:

30 (a) Provide the sexual assault survivor with medically and factually
31 accurate and objective written and oral information about emergency

1 contraception;

2 (b) Provide the sexual assault survivor with written and oral
3 information in a language the sexual assault survivor understands about
4 the option to receive emergency contraception at the hospital; and

5 (c) Dispense a complete course of emergency contraception, in
6 accordance with the currently accepted professional standards of care and
7 established protocols for sexual assault forensic medical examinations,
8 to the sexual assault survivor, unless refused by the survivor.

9 (2) A hospital which provides emergency care for a sexual assault
10 survivor shall provide training for all personnel involved in such care
11 regarding the provision of medically and factually accurate and objective
12 information about emergency contraception.

13 (3) A hospital which provides emergency care for a sexual assault
14 survivor shall ensure compliance with the Sexual Assault Emergency Care
15 Act and shall develop policies and procedures, as necessary, to ensure
16 compliance with the act in the case of moral or religious objections by
17 individual health care providers.

18 Sec. 4. (1) Any complaint regarding compliance with the Sexual
19 Assault Emergency Care Act may be filed with the department.

20 (2)(a) The department shall review complaints received regarding
21 failure of a hospital to provide services in compliance with the Sexual
22 Assault Emergency Care Act to determine the action to be taken to satisfy
23 the complaint. In making a determination as to whether or not to conduct
24 an investigation, the department may consider factors such as:

25 (i) Whether the complaint pertains to a matter within the authority
26 of the department to enforce;

27 (ii) Whether the circumstances indicate that a complaint is made in
28 good faith and is not malicious, frivolous, or vexatious;

29 (iii) Whether the complaint is timely or has been delayed too long
30 to justify present evaluation of its merit;

31 (iv) Whether the complainant may be a necessary witness if action is

1 taken and is willing to identify himself or herself and come forward to
2 testify if action is taken; or

3 (v) Whether the information provided or within the knowledge of the
4 complainant is sufficient to provide a reasonable basis to believe that a
5 violation has occurred or to secure necessary evidence from other
6 sources.

7 (b) A complaint submitted to the department shall be confidential. A
8 person submitting a complaint shall be immune from criminal or civil
9 liability of any nature, whether direct or derivative, for submitting a
10 complaint or for disclosure of documents, records, or other information
11 to the department pursuant to this section.

12 (3) The department shall retain all complaints it receives regarding
13 failure of a hospital to provide services in compliance with the Sexual
14 Assault Emergency Care Act. The department shall provide a report
15 electronically to the Clerk of the Legislature by December 1 of every
16 even-numbered year that includes, but is not limited to, the annual
17 number of complaints, the nature of each complaint, and the hospitals for
18 which those complaints were made. The report shall also include the
19 determination of the department's investigation and any disciplinary
20 action or penalties applied. The report shall not include any personal
21 health or identifying information.

22 (4)(a) If the department determines after investigation of a
23 complaint that a hospital has failed to provide services in compliance
24 with the Sexual Assault Emergency Care Act, the department shall send to
25 the hospital, by certified mail to the last address shown on the records
26 of the department, a notice setting forth the determination, the
27 particular reasons for the determination, including a specific
28 description of the nature of the violation and the provision of law
29 violated, and the type of disciplinary action which is pending, which may
30 include the penalties described in subsection (5) of this section. Within
31 fifteen days after service of the notice, the hospital shall notify the

1 department in writing that the hospital (i) desires to contest the notice
2 and requests an informal conference with a representative of the
3 department in person or by other means at the request of the hospital,
4 (ii) desires to contest the notice and requests an informal conference
5 with a representative of a peer review organization with which the
6 department has contracted, (iii) desires to contest the notice and
7 requests a hearing, or (iv) does not contest the notice. If the
8 department does not receive such notification within such fifteen-day
9 period, the action of the department shall be final.

10 (b) If an informal conference is requested pursuant to subdivision
11 (4)(a)(i) or (ii) of this section, the director shall assign to conduct
12 the informal conference, respectively, a representative of the department
13 other than the individual who did the investigation upon which the notice
14 is based or a representative of the peer review organization. The
15 representative shall hold an informal conference with the hospital within
16 thirty days after the department's receipt of such request. Within twenty
17 working days after the conclusion of the conference, the representative
18 shall report in writing to the department the representative's conclusion
19 regarding whether to affirm, modify, or dismiss the notice and the
20 specific reasons for the conclusion and shall provide a copy of the
21 report to the director and the hospital.

22 (c) Within ten working days after receiving a report under
23 subdivision (4)(b) of this section, the department shall consider such
24 report and affirm, modify, or dismiss the notice and shall state the
25 specific reasons for such decision, including, if applicable, the
26 specific reasons for not adopting the conclusion of the representative as
27 contained in such report. The department shall provide the hospital with
28 a copy of such decision by certified mail to the last address shown in
29 the records of the department. If the hospital desires to contest an
30 affirmed or modified notice, the hospital shall notify the director in
31 writing within five working days after receiving such decision that the

1 hospital requests a hearing.

2 (d) If a hospital successfully demonstrates during an informal
3 conference or a hearing that the deficiencies should not have been cited
4 in the notice, (i) the deficiencies shall be removed from the notice and
5 the deficiency statement and (ii) any sanction imposed solely as a result
6 of those cited deficiencies shall be rescinded.

7 (e)(i) If the hospital requests a hearing under subdivision (4)(a)
8 (iii) of this section, the department shall hold a hearing and give the
9 hospital the right to present such evidence as may be proper. On the
10 basis of such evidence, the director shall affirm, modify, or set aside
11 the determination. A copy of such decision setting forth the findings of
12 facts and the particular reasons upon which the decision is based shall
13 be sent by either registered or certified mail to the hospital. The
14 decision shall become final thirty days after the copy is mailed unless
15 the hospital, within such thirty-day period, appeals the decision under
16 subdivision (4)(f) of this section.

17 (ii) The procedure governing hearings authorized by this section
18 shall be in accordance with rules and regulations adopted and promulgated
19 by the department. A full and complete record shall be kept of all
20 proceedings. Witnesses may be subpoenaed by either party and shall be
21 allowed fees at a rate prescribed by rule and regulation.

22 (f) Any party to a decision of the department under the Sexual
23 Assault Emergency Care Act may appeal such decision. The appeal shall be
24 in accordance with the Administrative Procedure Act.

25 (5) The department shall:

26 (a) For the first substantiated complaint:

27 (i) Issue a written warning to the hospital stating that it has
28 failed to provide services in compliance with the Sexual Assault
29 Emergency Care Act; and

30 (ii) Require the hospital to correct the deficiency that led to the
31 complaint; and

1 (b) For the second and subsequent substantiated complaints, impose a
2 fine of one thousand dollars on the hospital:

3 (i) Per sexual assault survivor who the department finds to have
4 been denied medically and factually accurate and objective written and
5 oral information about emergency contraception or who the department
6 finds was not offered emergency contraception in violation of subsection
7 (1) of section 3 of this act; or

8 (ii) Per month from the date of the complaint alleging noncompliance
9 until the hospital provides training in compliance with subsection (2) of
10 section 3 of this act.

11 Sec. 5. If any section in this act or any part of any section is
12 declared invalid or unconstitutional, the declaration shall not affect
13 the validity or constitutionality of the remaining portions.