

LEGISLATURE OF NEBRASKA
ONE HUNDRED SIXTH LEGISLATURE
FIRST SESSION

LEGISLATIVE BILL 555

Introduced by Hunt, 8; Cavanaugh, 6; Howard, 9; Morfeld, 46; Wishart, 27.

Read first time January 22, 2019

Committee: Health and Human Services

- 1 A BILL FOR AN ACT relating to hospitals; to amend section 71-448, Reissue
- 2 Revised Statutes of Nebraska; to adopt the Sexual Assault Emergency
- 3 Care Act; to provide for disciplinary action against a hospital's
- 4 license; to provide severability; and to repeal the original
- 5 section.
- 6 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) Emergency care for a sexual assault survivor means a medical
6 examination, procedure, or service provided by a hospital to a sexual
7 assault survivor following a reported sexual assault;

8 (3) Emergency contraception means a drug approved by the federal
9 Food and Drug Administration that prevents pregnancy after sexual
10 intercourse;

11 (4) Hospital means a hospital licensed under the Health Care
12 Facility Licensure Act;

13 (5) Medically and factually accurate and objective means verified or
14 supported by the weight of research conducted in compliance with accepted
15 scientific methods and standards, published in peer-reviewed journals,
16 and recognized as accurate and objective by leading professional
17 organizations and agencies with relevant expertise in the field of
18 obstetrics and gynecology, including, but not limited to, the American
19 College of Obstetricians and Gynecologists;

20 (6) Sexual assault has the same meaning as in section 28-319; and

21 (7) Sexual assault survivor means an individual who is a victim of
22 sexual assault and who reports such sexual assault to a hospital,
23 including anonymous reporting pursuant to section 28-902.

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

26 (a) Provide the sexual assault survivor with medically and factually
27 accurate and objective written and oral information about emergency
28 contraception;

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

1 (c) Dispense a complete course of emergency contraception, in
2 accordance with best practices and established protocols for sexual
3 assault forensic medical examinations, to the sexual assault survivor who
4 accepts or requests it.

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

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

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

16 (2) The department shall immediately investigate every complaint it
17 receives regarding failure of a hospital to provide services in
18 compliance with the Sexual Assault Emergency Care Act to determine the
19 action to be taken to satisfy the complaint.

20 (3) The department shall compile all complaints it receives
21 regarding failure of a hospital to provide services in compliance with
22 the Sexual Assault Emergency Care Act, shall retain the complaints for
23 ten years in order to provide for analysis for patterns of failure to
24 comply, and shall provide the compilation electronically to the
25 Legislature.

26 (4) If the department determines after investigation of a complaint
27 that a hospital has failed to provide services in compliance with the
28 Sexual Assault Emergency Care Act, the department shall send to the
29 hospital, by certified mail to the last address shown on the records of
30 the department, a notice setting forth the determination, the particular
31 reasons for the determination, including a specific description of the

1 nature of the violation and the statute violated, and the type of
2 disciplinary action which is pending, which may include the penalties
3 described in subsection (5) of this section. The disciplinary action
4 shall become final fifteen days after the mailing of the notice unless
5 the applicant or licensee, within such fifteen-day period, makes a
6 written request for an informal conference or a hearing. Within fifteen
7 days after service of the notice, the hospital shall notify the
8 department in writing that the hospital (a) desires to contest the notice
9 and request an informal conference with a representative of the
10 department in person or by other means at the request of the hospital,
11 (b) desires to contest the notice and request an informal conference with
12 a representative peer review organization with which the department has
13 contracted, (c) desires to contest the notice and request a hearing, or
14 (d) does not contest the notice. If the department does not receive such
15 notification within such fifteen-day period, the action of the department
16 shall be final.

17 (5) For a failure to comply with the act, the department shall:

18 (a) For the first complaint:

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

22 (ii) Require the hospital to correct the deficiency that led to the
23 complaint;

24 (b) For the second through the fifth complaint, impose a fine of one
25 thousand dollars on the hospital:

26 (i) Per sexual assault survivor who the department finds to have
27 been denied medically and factually accurate and objective written and
28 oral information about emergency contraception or who the department
29 finds has not been offered emergency contraception in violation of
30 subsection (1) of section 3 of this act; or

31 (ii) Per month from the date of the complaint alleging noncompliance

1 until the hospital provides training in compliance with such subsection;
2 and

3 (c) For the sixth and subsequent complaints, the department shall
4 revoke or suspend the license of the hospital pursuant to the Health Care
5 Facility Licensure Act.

6 Sec. 5. Section 71-448, Reissue Revised Statutes of Nebraska, is
7 amended to read:

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

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

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

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

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

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

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

1 and Human Services;

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

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

12 (9) Violation of the Emergency Box Drug Act or the Pharmacy Practice
13 Act;

14 (10) Failure to file a report required by section 38-1,127 or
15 71-552;

16 (11) Violation of the Medication Aide Act;

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

19 (13) Violation of the Automated Medication Systems Act;~~or~~

20 (14) Violation of the Dialysis Patient Care Technician Registration
21 Act; or -

22 (15) Violation of the Sexual Assault Emergency Care Act.

23 Sec. 6. If any section in this act or any part of any section is
24 declared invalid or unconstitutional, the declaration shall not affect
25 the validity or constitutionality of the remaining portions.

26 Sec. 7. Original section 71-448, Reissue Revised Statutes of
27 Nebraska, is repealed.