

LEGISLATURE OF NEBRASKA
ONE HUNDRED SEVENTH LEGISLATURE
FIRST SESSION

LEGISLATIVE BILL 183

Introduced by Hunt, 8; Cavanaugh, M., 6; Day, 49; McKinney, 11; Pansing
Brooks, 28.

Read first time January 08, 2021

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 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, best practices and established
16 protocols for medical care following sexual assault as established in
17 section 29-4311, and recognized as accurate and objective by leading
18 professional organizations and agencies with relevant expertise in the
19 field of obstetrics and gynecology;

20 (6) Sexual assault means any sexual assault that involves sexual
21 penetration or the attempt thereof as set forth in section 28-318 or
22 substantially similar conduct; and

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

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

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

31 (b) Provide the sexual assault survivor with written and oral

1 information in a language the sexual assault survivor understands about
2 the option to receive emergency contraception at the hospital; and

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

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

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

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

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

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

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

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

29 (iv) Whether the complainant may be a necessary witness if action is
30 taken and is willing to identify himself or herself and come forward to
31 testify if action is taken; or

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

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

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

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

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

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

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

31 (d) If a hospital successfully demonstrates during an informal

1 conference or a hearing that the deficiencies should not have been cited
2 in the notice, (i) the deficiencies shall be removed from the notice and
3 the deficiency statement and (ii) any sanction imposed solely as a result
4 of those cited deficiencies shall be rescinded.

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

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

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

23 (5) The department shall:

24 (a) For the first substantiated complaint:

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

28 (ii) Require the hospital to correct the deficiency that led to the
29 complaint; and

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

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

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

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

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

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

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

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

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

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

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

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

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

15 (9) Violation of the Emergency Box Drug Act or the Pharmacy Practice
16 Act;

17 (10) Failure to file a report required by section 38-1,127 or
18 71-552;

19 (11) Violation of the Medication Aide Act;

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

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

23 (14) Violation of the Dialysis Patient Care Technician Registration
24 Act; or -

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

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

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