

LEGISLATIVE BILL 1012

Approved by the Governor April 6, 1988

Introduced by Health & Human Services Committee, Wesely, 26, Chairperson; Beyer, 3; Lynch, 13; Schellpeper, 18; Bernard-Stevens, 42; Morehead, 30; Chambers, 11

AN ACT relating to diseases; to amend sections 71-502, 71-503.01, 71-505, 71-506, 71-1101, 71-1102, 71-1116, 71-1117, 71-1121, and 71-2512, Reissue Revised Statutes of Nebraska, 1943; to state intent; to provide for a statewide acquired immunodeficiency syndrome program; to change provisions related to sexually transmitted and other communicable diseases; to provide powers and duties for the Department of Health; to provide penalty and enforcement provisions; to provide duties for state agencies as prescribed; to eliminate penalties; to repeal the Prophylactic Control Act; to harmonize provisions; to repeal the original sections, and also sections 71-1103 to 71-1106, 71-1108 to 71-1110, 71-1112, 71-1114, 71-1115, and 71-1118, Reissue Revised Statutes of Nebraska, 1943, and sections 71-1107 and 71-1111, Revised Statutes Supplement, 1987; and to declare an emergency.

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

Section 1. The Legislature recognizes that acquired immunodeficiency syndrome, AIDS, is an incurable life-threatening illness which is epidemic in the United States. Persons who suffer from acquired immunodeficiency syndrome and its related diseases and conditions must receive appropriate and humane care. All members of the general public must have accurate and complete information concerning the characteristics of the disease and the avoidance of infection. The public must be motivated to protect themselves and others against the spread of the disease. The successful containment of the epidemic calls for strong commitment and support from all segments of our society. It is the intent of the Legislature to authorize a program of services to protect the public health.

Sec. 2. The Department of Health may establish and administer a statewide acquired

immunodeficiency syndrome program for the purpose of providing education, prevention, detection, and counseling services to protect the public health. In order to implement the program, the department may:

(1) Apply for, receive, and administer federal and other public and private funds and contract for services, equipment, and property as necessary to use such funds for the purposes specified in section 1 of this act and this section;

(2) Provide education and training regarding acquired immunodeficiency syndrome and its related diseases and conditions to the general public and to health care providers. The department may charge fees based on administrative costs for such services. Any fees collected shall be deposited in the state treasury and shall be credited to the Department of Health Cash Fund;

(3) Provide resource referrals for medical care and social services to persons affected by acquired immunodeficiency syndrome and its related diseases and conditions;

(4) Contract for voluntary, confidential screening, testing, and counseling services. Such services shall be provided to the public without charge;

(5) Cooperate with the Centers for Disease Control of the Public Health Service of the United States Department of Health and Human Services or its successor for the purposes of research into and investigation of acquired immunodeficiency syndrome and its related diseases and conditions; and

(6) Adopt and promulgate rules and regulations which prescribe standards for determining the eligibility of an individual to receive federal or state funds for medical or institutional care if such funds are disbursed by the department, for determining the eligibility of researchers to have access to epidemiologic data of the department, for laboratories for acquired immunodeficiency syndrome tests and test methods and techniques, and for the operation of counseling and testing sites.

Sec. 3. That section 71-502, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

71-502. The Department of Health shall have supervision and control of all matters relating to necessary communicable disease control and shall ~~formulate~~, adopt, and promulgate such proper and reasonable general rules and regulations as will best serve to promote communicable disease control throughout

the state and prevent the introduction or spread of disease. In addition to such general and standing rules and regulations, (1) in cases of emergency wherein in which the health of the people of the entire state or any locality therein shall be in the state is menaced by or exposed to any contagious, infectious, or epidemic disease or illness, or poisoning, (2) when a local board of health having jurisdiction of a particular locality shall fail or refuse fails or refuses to act with sufficient promptitude and efficiency in any such emergency, or (3) in localities wherein in which no local board of health shall have has been established, as provided by law, the department shall adopt, promulgate, and enforce special communicable disease control rules and regulations such as the occasion and proper protection of the public health may require. All necessary expenses incurred in the enforcement of such rules and regulations shall be paid by the city, village, or county, for and within which the same shall have been incurred. All officers and other persons shall obey and enforce such communicable disease control rules and regulations as may be adopted and promulgated by the department. Any person who shall fail, neglect, or refuse to obey or enforce such rules or regulations shall be guilty of a Class V misdemeanor.

Sec. 4. That section 71-1101, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

71-1101- Syphilis, gonorrhea, and chancreid, hereinafter designated as venereal diseases, Sexually transmitted diseases are declared to be contagious, infectious, communicable, and dangerous to the public health. Sexually transmitted diseases shall include, but not be limited to, syphilis, gonorrhea, chancroid, and such other sexually transmitted diseases as the Department of Health may from time to time specify.

Sec. 5. That section 71-1102, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

71-1102- The Department of Health shall make adopt and promulgate such rules and regulations as shall, in its judgment, be necessary to control and suppress venereal diseases sexually transmitted diseases.

Sec. 6. That section 71-1116, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

71-1116- Every physician, or other person authorized by law to practice obstetrics, who will be is

attending a pregnant ~~women~~ woman in the state for conditions relating to ~~their~~ her pregnancy during the period of gestation or at delivery shall, in the case of every woman so attended, take or cause to be taken a sample of the blood of such woman at the time of the first examination and shall submit such sample to an approved laboratory for a standard serological test for syphilis. Every other person permitted by law to attend pregnant women in the state, but not permitted by law to take blood samples, shall cause such a sample of the blood of such pregnant women to be taken by a physician, duly licensed to practice either medicine and surgery or obstetrics, or other person authorized by law to take such sample of blood and have such sample submitted to an approved laboratory for a standard serological test for syphilis. The results of all such laboratory tests shall be reported to the Director of Health on standard forms prescribed and furnished by the Department of Health. For the purpose of this section, a standard serological test shall be a test for syphilis approved by the Director of Health and shall be made at a laboratory approved to make such tests by the Director of Health. Such laboratory tests, as are required by this section, shall be made on request at the Department of Health laboratory. A fee may be established by rule and regulation by the department to defray no more than the actual cost of such tests. Such fee shall be deposited in the state treasury and credited to the Department of Health Cash Fund. In reporting every birth and stillbirth, physicians and others required to make such reports shall state on the portion of the certificate entitled For Medical and Health Use Only whether a blood test for syphilis has been made upon a specimen of blood taken from the woman who bore the child for which a birth or stillbirth certificate is filed and the approximate date when the specimen was taken. No birth certificate shall show the result of such test. If no test was made, the reason shall be stated. The department shall provide the necessary clerical, printing, and other expenses in carrying out this section.

Sec. 7. That section 71-1117, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

~~71-1117-~~ Any person who is in charge of a clinical laboratory in which a laboratory examination of any specimen derived from the human body yields microscopical, cultural, immunological, serological, or other evidence of ~~diphtheria, gonorrhoea, syphilis,~~

typhoid or any other communicable disease, illness, or poisoning as the Department of Health may from time to time specify shall promptly notify the health officer of the Department of Health of such findings. For purposes of this section, disease, illness, or poisoning shall not be interpreted to include human immunodeficiency virus antibody or antigen testing results, except that such person shall report statistical summaries of total human immunodeficiency virus tests conducted and the results of such tests. The department shall adopt and promulgate rules and regulations setting the methods, manner, and procedure for such reporting.

Each notification shall give the date and result of the test performed, the name, and, when available, the age of the person from whom the specimen was obtained, and the name and address of the physician for whom such examination or test was performed. A legible copy of the laboratory report will satisfy the provisions of this section shall be deemed satisfactory notification.

All laboratory notifications required by the provisions of this section shall be confidential and shall not be open to public inspection, except ; ~~PROVIDED~~, that the Director of Health or some person appointed by him or her may discuss the notification with the attending physician.

Sec. 8. That section 71-503.01, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

71-503.01. Whenever any statute of the state, any ordinance or resolution of a municipal corporation or political subdivision enacted pursuant to statute, or any rule or regulation of an administrative agency adopted and promulgated pursuant to statute requires medical practitioners or other persons to report cases of communicable diseases, including sexually transmitted diseases and other reportable diseases, illnesses, or ~~poisoning~~ poisonings, or to give notification of positive laboratory findings to the Department of Health, or any county or city board of health, local health department established pursuant to sections 71-1626 to 71-1636, city health department, local health agency, or any state or local public official exercising the duties and responsibilities of any board of health or health department, such reports or notifications shall be confidential, shall not be subject to subpoena, and shall be inadmissible in evidence in any legal proceeding of any kind or character. In order to further the protection of public health, such reports

and notifications may be disclosed by the Department of Health, the official local health department, and the person making such reports or notifications to the Centers for Disease Control of the Public Health Service of the United States Department of Health and Human Services or its successor in such a manner as to assure that the identity of any individual cannot be ascertained. Any medical practitioner or other person making such reports or notifications shall be immune from suit for slander or libel or breach of privileged communication based on any statements contained in such ~~report~~ reports and notifications. The appropriate board, health department, agency, or official may: (1) Publish analyses of such reports and information for scientific and public health purposes in such a manner as to assure that the identity of any individual concerned cannot be ascertained; (2) discuss the report or notification with the attending physician; and (3) make such investigation as deemed necessary.

Sec. 9. That section 71-1121, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

~~71-1121.~~ The state or local director of health, if a physician, or his or her agent, or any physician, upon consultation by any person as a patient, shall, with the consent of such person who is hereby granted the right of giving such consent, make or cause to be made a diagnostic examination for ~~venereal disease sexually transmitted diseases~~ and prescribe for and treat such person for ~~venereal disease sexually transmitted diseases~~ including prophylactic treatment for exposure to ~~venereal disease sexually transmitted diseases~~ whenever such person is suspected of having a ~~venereal sexually transmitted disease~~ or contact with anyone having a ~~venereal sexually transmitted disease~~. All such examinations and treatment may be performed without the consent of, or notification to, the parent, parents, guardian, or any other person having custody of such person. In any such case, the state or local director of health, if a physician, or his or her agent, or the physician shall incur no civil or criminal liability by reason of having made such diagnostic examination or rendered such treatment, but such immunity shall not apply to any negligent acts or omissions. The state or local director of health, if a physician, or his or her agent, or the physician shall incur no civil or criminal liability by reason of any adverse reaction to medication administered; ~~PROVIDED,~~ if reasonable care is taken to elicit from any such

person who is under twenty years of age any history of sensitivity or previous adverse reaction to medication. Parents shall be liable for expenses of such treatment to minors under their custody. In the event such person is affected with a ~~venereal~~ sexually transmitted disease, the state or local director of health may cause an interview of the person by a ~~venereal~~ sexually transmitted disease investigator to secure the names of sexual contacts so that appropriate investigation can be made in an effort to locate and eliminate sources of infection.

Sec. 10. That section 71-505, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

71-505. (1) It shall be the duty of the Department of Health, in addition to other duties provided by law, to secure and maintain in all parts of the state an official record and notification of reportable diseases, illnesses, or poisonings, ; to provide popular literature upon the different branches of public health and distribute the same free throughout the state in a manner best calculated to promote that interest, ; to prepare and exhibit in the different communities of the state public health demonstrations accompanied by lectures and audio-visual aids, ; to provide preventive services to protect the public, and in all other effective ways to prevent the origin and spread of disease and promote the ~~general~~ public health.

(2) The Department of Health may provide technical services to and on behalf of health care providers and may charge fees for such services in an amount sufficient to recover the administrative costs of such services. Such fees shall be paid into the state treasury and credited to the Department of Health Cash Fund.

Sec. 11. That section 71-506, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

71-506. Any person violating any of the provisions of sections 71-501 to 71-505, and sections 4 to 7 and 9 of this act or any lawful rule or regulation of the Department of Health, shall be guilty of a Class V misdemeanor for each offense. The Attorney General or the county attorney may, in accordance with the laws of the state governing injunctions and other process, maintain an action in the name of the state against any person or any private or public entity for violating sections 71-501 to 71-505 and sections 4 to 7 and 9 of this act and the rules and regulations adopted and

promulgated under such sections.

Sec. 12. That section 71-2512, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

71-2512. Any person violating any of the provisions of sections ~~71-162, 71-1109,~~ 71-2401 to 71-2405, and 71-2501 to 71-2511, except as specific penalties are ~~herein~~ otherwise imposed, shall be guilty of a Class III misdemeanor. Any person, for a second violation of any of the provisions of ~~said such~~ sections, ~~wherein~~ when another specific penalty is not expressly imposed, shall be guilty of a Class II misdemeanor.

Sec. 13. It is the intent of the Legislature that no person should be discriminated against on the basis of having taken a human immunodeficiency virus antibody or antigen test.

Each agency of state government shall examine policies and practices within its jurisdiction that may intentionally or unintentionally result in discrimination against a person who has taken a human immunodeficiency virus antibody or antigen test or who has been diagnosed as having acquired immunodeficiency syndrome or acquired immunodeficiency syndrome related complex to ascertain the extent and types of discrimination that may exist. Each agency shall identify proposed changes in statutes or agency rules and regulations to remedy discrimination. Each agency shall report its findings to the Legislature on or before December 1, 1988.

Sec. 14. That original sections 71-502, 71-503.01, 71-505, 71-506, 71-1101, 71-1102, 71-1116, 71-1117, 71-1121, and 71-2512, Reissue Revised Statutes of Nebraska, 1943, and also sections 71-1103 to 71-1106, 71-1108 to 71-1110, 71-1112, 71-1114, 71-1115, and 71-1118, Reissue Revised Statutes of Nebraska, 1943, and sections 71-1107 and 71-1111, Revised Statutes Supplement, 1987, are repealed.

Sec. 15. Since an emergency exists, this act shall be in full force and take effect, from and after its passage and approval, according to law.