

## LEGISLATIVE BILL 697

Approved by the Governor February 3, 1988

Introduced by Pirsch, 10

AN ACT relating to records; to amend section 83-109, Reissue Revised Statutes of Nebraska, 1943; to state intent; to define terms; to provide access to certain records of persons with developmental disabilities and mentally ill individuals as prescribed; to provide for disclosure as prescribed; to require the exhaustion of administrative remedies as prescribed; and to repeal the original section.

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

Section 1. The purpose of sections 1 to 6 of this act is to protect the legal and human rights of persons with developmental disabilities or mentally ill individuals by providing access to certain records of a person with developmental disabilities or of a mentally ill individual by the officially designated protection and advocacy system for the developmentally disabled and mentally ill in this state.

Sec. 2. For purposes of sections 1 to 6 of this act, unless the context otherwise requires:

(1) Complaint shall mean any oral or written allegation by a person with a developmental disability or a mentally ill individual, the parent or guardian of such persons, a state agency, or any other responsible named individual or entity to the effect that the person with developmental disabilities or the mentally ill individual is being subjected to injury or deprivation with regard to his or her health, safety, welfare, rights, or level of care;

(2) Developmental disability shall mean a severe chronic mental or physical disability as defined in the Developmental Disabilities Assistance and Bill of Rights Act, 42 U.S.C. 6000 et seq., as amended;

(3) Facility for mentally ill individuals shall mean any place within Nebraska where a mentally ill individual is an inpatient or a resident and that is organized to provide treatment, shelter, food, care, or supervision including, but not limited to, those facilities described in Chapter 71, articles 19 and 20, and sections 83-107.01 and 83-108;

(4) Facility for persons with developmental disabilities shall mean a facility or a specified portion of a facility designed primarily for the delivery of one or more services to persons with one or more developmental disabilities including, but not limited to, those facilities described in Chapter 71, articles 19 and 20, and sections 83-107.01 and 83-108 whenever a person with a developmental disability is residing in such facility;

(5) Mentally ill individual shall mean an individual who has a significant mental illness or emotional impairment as determined by a mental health professional qualified under the laws, rules, and regulations of this state and who is an inpatient or resident in a facility for mentally ill individuals;

(6) Protection and advocacy system shall mean the entity designated pursuant to the Developmental Disabilities Assistance and Bill of Rights Act, 42 U.S.C. 6000 et seq., as amended;

(7) Records shall mean all information and data obtained, collected, or maintained by a facility for persons with developmental disabilities or a facility for mentally ill individuals in the course of providing services to such persons which are reasonably related to the complaint to be investigated; and

(8) Services for persons with developmental disabilities shall mean services as defined in the Developmental Disabilities Assistance and Bill of Rights Act, 42 U.S.C. 6000 et seq., as amended.

Sec. 3. For the purpose of protecting the human and legal rights of a person with developmental disabilities, the protection and advocacy system shall be granted access to the records, by any person or entity having possession or control of such records, of a person with developmental disabilities who resides in a facility for persons with developmental disabilities if (1) a complaint has been received by the protection and advocacy system from the legal guardian of such person or (2) a complaint has been received by the protection and advocacy system from or on behalf of such person and such person does not have a legal guardian or the state or the designee of the state is the legal guardian of such person.

Sec. 4. (1) For the purpose of protecting the human and legal rights of a mentally ill individual or with respect to matters which occur within ninety days after the date of the discharge of such individual from a facility for mentally ill individuals, the protection and advocacy system shall be granted access to the

records, by any person or entity having possession or control of such records, of:

(a) Any mentally ill individual who is a client of the protection and advocacy system if such individual or the legal guardian, conservator, or other legal representative of such individual has authorized the protection and advocacy system to have such access; and

(b) Any mentally ill individual:

(i) Who by reason of the mental or physical condition of such individual is unable to authorize the protection and advocacy system to have such access;

(ii) Who does not have a legal guardian, conservator, or other legal representative or for whom the legal guardian is this state; and

(iii) With respect to whom a complaint has been received by the protection and advocacy system or with respect to whom there is probable cause to believe that such individual has been subject to injury or deprivation with regard to his or her health, safety, welfare, rights, or level of care.

(2) The protection and advocacy system may not disclose information from such records to the mentally ill individual who is the subject of the information if disclosure of such information to such individual would be detrimental to such individual's health or if a court pursuant to section 83-1068 orders that the records not be disclosed.

Sec. 5. No record nor the contents of any record which identify or can be readily associated with the identity of the subject of the record shall be redisclosed by the protection and advocacy system without the specific written authorization of the subject or the subject's legally authorized representative. The protection and advocacy system shall provide seven days' advance written notice to the facility from which the records were received of its intent to redisclose such records, during which time the facility may seek to judicially enjoin such disclosure on the grounds that such disclosure is contrary to the interests of the subject of the record. Seven days' advance written notice to the facility shall not be required if redisclosure of such records is to an entity with legal authority to act to protect the legal and human rights of the subject of such records.

Sec. 6. (1) Prior to instituting any legal action in a federal or state court on behalf of a mentally ill individual or a person with developmental disabilities, the protection and advocacy system shall

exhaust in a timely manner all administrative remedies when appropriate. If, in pursuing administrative remedies, the system determines that any matter with respect to such individual will not be resolved within a reasonable time, the system may pursue alternative remedies, including the initiation of legal action.

(2) Subsection (1) of this section shall not apply to any legal action instituted to prevent or eliminate imminent serious harm to a mentally ill individual or a person with developmental disabilities.

Sec. 7. That section 83-109, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

83-109. The Department of Public Institutions shall have general control over the admission of patients and residents to all institutions over which it has jurisdiction. Each individual shall be assigned to the institution best adapted to care for him or her. A record of every patient or resident of every institution shall be kept complete from the date of his or her entrance to the date of his or her discharge or death, such records to be accessible only (1) to the department, a legislative committee, the Governor, any federal agency requiring medical records to adjudicate claims for federal benefits, and any public or private agency under contract to provide facilities, programs, and patient services, ~~or~~ (2) upon order of a judge or court, or (3) in accordance with sections 1 to 6 of this act. In addition, a patient or resident, or his or her legally authorized representative, may authorize the specific release of his or her records, or portions thereof, by filing with the department a signed written consent. Transfers of patients or residents from one institution to another shall be within the exclusive jurisdiction of the department and shall be recorded in the office of the department, with the reasons for such transfers. When the department is unable to assign a patient to a regional center or commit him or her to any other institution at the time of application, a record thereof shall be kept, and the patient accepted at the earliest practicable date. The superintendents of the regional centers and Beatrice State Developmental Center shall notify the department immediately whenever there is any question regarding the propriety of the commitment, detention, transfer, or placement of any person admitted to a state institution. The department shall then investigate the matter and take such action as shall be proper. Any interested party who is not satisfied with such action may appeal his or her case to

the district court in the district where such party resides. The department shall have full authority on its own suggestion, or upon the application of any interested person, to investigate the physical and mental status of any patient or resident of any regional center or the Beatrice State Developmental Center. If upon such investigation the department shall consider such patient or resident fit to be released from the regional center or Beatrice State Developmental Center, it shall cause such patient or resident to be discharged or released on convalescent leave.

Sec. 8. That original section 83-109, Reissue Revised Statutes of Nebraska, 1943, is repealed.