

LEGISLATIVE BILL 157

Approved by the Governor April 10, 1989

Introduced by Chizek, 31

AN ACT relating to public health and welfare; to amend section 71-506, Revised Statutes Supplement, 1988; to define terms; to provide for notifications and testing related to infectious diseases and conditions; to require confidentiality of information as prescribed; to provide powers and duties; to limit liability; to provide a penalty; to provide severability; and to repeal the original section.

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

Section 1. For purposes of sections 1 to 7 of this act:

(1) Department shall mean the Department of Health;

(2) Designated physician shall mean the physician representing the emergency medical services provider as identified by name, address, and telephone number on the significant exposure report form;

(3) Emergency medical services provider shall mean a person certified to provide emergency medical services pursuant to sections 71-5101 to 71-5123, a person certified to provide emergency medical care pursuant to the Emergency Medical Technician-Paramedic Act, a sheriff, a deputy sheriff, a police officer, a state highway patrol officer, and a firefighter;

(4) Health care facility shall have the meaning found in subdivisions (2), (10), and (11) of section 71-2017.01;

(5) Infectious disease or condition shall mean hepatitis B, meningococcal meningitis, active pulmonary tuberculosis, human immunodeficiency virus, and such other diseases as the department may from time to time specify;

(6) Patient shall mean an individual who is sick, injured, wounded, or otherwise helpless or incapacitated;

(7) Patient's attending physician shall mean the physician having the primary responsibility for the patient as indicated on the records of the health care facility;

(8) Provider agency shall mean any law enforcement agency, fire department, ambulance service, or other entity which is in the business of providing emergency response services;

(9) Significant exposure shall mean a situation in which the body fluids, such as blood, saliva, urine, or feces, of a patient have entered the body of an emergency medical services provider through a body opening such as the mouth or nose, a mucous membrane, or a break in skin from cuts or abrasions, from a contaminated needlestick or scalpel, from intimate respiratory contact, or through any other situation when the patient's body fluids may have entered the emergency medical services provider's body; and

(10) Significant exposure report form shall mean the form used by the emergency medical services provider to document information necessary for notification of significant exposure to an infectious disease or condition.

Sec. 2. The department shall prescribe a form for use by the emergency medical services provider to notify the health care facility and the designated physician that the provider has had a significant exposure to an infectious disease or condition. The form shall include identifying information for the emergency medical services provider, the provider agency, the designated physician, the patient, the patient's attending physician, and the receiving health care facility, a description of the exposure, a description of the protective measures and equipment used by the provider to minimize exposure hazard, and such other information as is necessary to protect the public health and safety and to implement sections 1 to 7 of this act.

Sec. 3. (1) Whenever an emergency services provider has a significant exposure in the process of caring for a patient, he or she may complete a significant exposure report form. A copy of the completed form shall be given by the emergency medical services provider to the health care facility and to the designated physician.

(2) Upon receipt of the significant exposure form, if a patient has been diagnosed during the normal course of treatment as having an infectious disease, the health care facility shall notify the designated physician pursuant to subsection (4) of this section. If the patient has not been diagnosed as having an infectious disease or condition and upon the request of

the designated physician, the health care facility where the patient is hospitalized shall request the patient's attending physician to order the necessary diagnostic testing of the patient to determine the presence of an infectious disease or condition. Upon such request, the patient's attending physician shall order the necessary diagnostic testing. Each health care facility shall develop a policy or protocol to administer such testing and assure confidentiality of such testing.

(3) Results of tests conducted under this section and section 4 of this act shall be reported by the health care facility that conducted the test to the designated physician and to the patient's attending physician.

(4) Notification of the patient's diagnosis of infectious disease or condition, including the results of any tests, shall be made orally to the designated physician within forty-eight hours of confirmed diagnosis. A written report shall be forwarded to the designated physician within seventy-two hours of confirmed diagnosis.

(5) Upon receipt of notification under subsection (4) of this section, the designated physician shall notify the emergency medical services provider of the exposure to infectious disease or condition and the results of any tests conducted under this section and section 4 of this act.

(6) The notification to the emergency medical services provider shall include the name of the infectious disease or condition diagnosed but shall not contain the patient's name or any other identifying information. Any person receiving such notification shall treat the information received as confidential and shall not disclose the information except as provided in sections 1 to 7 of this act.

(7) The provider agency shall be responsible for the costs of diagnostic testing required under this section and section 4 of this act.

(8) The patient's attending physician shall inform the patient of test results for all tests conducted under such sections.

Sec. 4. (1) The patient shall be informed that he or she has the right to consent to the test for presence of an infectious disease or condition and that if the patient refuses the test, such refusal will be communicated to the emergency medical services provider.

(2) If the patient is unconscious or incapable of signing an informed consent form, the consent may be obtained from the patient's next of kin or legal

guardian.

(3) If an emergency medical services provider has a significant exposure which, in the opinion of the designated physician, could involve the transmission of hepatitis B or human immunodeficiency virus, the patient's attending physician shall initiate the necessary diagnostic blood tests of the patient. If the patient or patient's representative refuses to grant consent for such test and a sample of the patient's blood is available, the blood shall be tested for hepatitis B or human immunodeficiency virus. If the patient or patient's guardian refuses to grant consent and a sample of the patient's blood is not available, the patient's refusal shall be communicated to the designated physician who shall inform the emergency medical services provider. The emergency medical services provider may petition the district court for an order mandating that the test be performed.

(4) If a patient dies without the opportunity to consent to blood testing, testing for hepatitis B or human immunodeficiency virus shall be conducted.

Sec. 5. (1) Information concerning any patient or test results obtained under sections 1 to 7 of this act shall be maintained as confidential by the health care facility that received or tested the patient, the designated physician, the patient's attending physician, the emergency medical service provider, and the provider agency except as provided by such sections and sections 71-503.01 and 71-2017 and the rules and regulations adopted and promulgated pursuant to such sections. Such information shall not be made public upon subpoena, search warrant, discovery proceedings, or otherwise except as provided by such sections.

(2) The information described in subsection (1) of this section may be released with the written consent of the patient or, if the patient is deceased or incapable of giving informed consent, with the written consent of his or her next of kin, legal guardian, or personal representative of his or her estate.

Sec. 6. All health care facilities and provider agencies subject to sections 1 to 7 of this act shall adopt written procedures regarding infectious diseases or conditions which address pre-exposure safeguards and postexposure risk-reduction methods.

Sec. 7. Any health care facility, provider agency, or agent, employee, administrator, physician, or other representative of such health care facility or provider agency who in good faith provides or fails to

provide notification, testing, or other action as required by sections 1 to 7 of this act shall have immunity from any liability, either criminal or civil, that might result by reason of such action or inaction.

Sec. 8. That section 71-506, Revised Statutes Supplement, 1988, be amended to read as follows:

71-506. Any person violating any of the provisions of sections 71-501 to 71-505 or sections 1 to 7 of this act 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~~ such sections and the rules and regulations adopted and promulgated under such sections.

Sec. 9. If any section in this act or any part of any section shall be declared invalid or unconstitutional, such declaration shall not affect the validity or constitutionality of the remaining portions thereof.

Sec. 10. That original section 71-506, Revised Statutes Supplement, 1988, is repealed.