

LEGISLATURE OF NEBRASKA

ONE HUNDRED SECOND LEGISLATURE

FIRST SESSION

LEGISLATIVE BILL 431

Introduced by Hadley, 37.

Read first time January 14, 2011

Committee: Health and Human Services

A BILL

1 FOR AN ACT relating to health care; to amend sections 28-435.01,
2 38-1,126, 38-1,127, 71-6736, and 71-7460.02, Reissue
3 Revised Statutes of Nebraska; to adopt the Health Care
4 Quality Improvement Act; to eliminate provisions relating
5 to peer review committees; to harmonize provisions; to
6 repeal the original sections; and to outright repeal
7 sections 71-2046, 71-2047, 71-2048, 71-7901, 71-7902, and
8 71-7903, Reissue Revised Statutes of Nebraska.
9 Be it enacted by the people of the State of Nebraska,

1 Section 1. Sections 1 to 10 of this act shall be known
2 and may be cited as the Health Care Quality Improvement Act.

3 Sec. 2. The purposes of the Health Care Quality
4 Improvement Act are to provide protection for those individuals who
5 participate in peer review activities which evaluate the quality and
6 efficiency of health care providers and to protect the
7 confidentiality of peer review records.

8 Sec. 3. For purposes of the Health Care Quality
9 Improvement Act, the definitions found in sections 4 to 7 of this act
10 apply.

11 Sec. 4. Health care provider means:

12 (1) A facility licensed under the Health Care Facility
13 Licensure Act;

14 (2) A health care professional licensed under the Uniform
15 Credentialing Act; and

16 (3) An organization or association of health care
17 professionals licensed under the Uniform Credentialing Act.

18 Sec. 5. Incident report or risk management report means a
19 report of an incident involving injury or potential injury to a
20 patient as a result of patient care provided by a health care
21 provider, including both an individual who provides health care and
22 an entity that provides health care, that is prepared by or for the
23 use of a peer review committee of a health care entity and that is
24 within the scope of the functions of that committee.

25 Sec. 6. Peer review means the procedure by which health

1 care providers evaluate the quality and efficiency of services
2 ordered or performed by other health care providers, including
3 practice analysis, inpatient hospital and extended care facility
4 utilization review, medical audit, ambulatory care review, root cause
5 analysis, claims review, underwriting assistance, and the compliance
6 of a hospital, nursing home, or other health care facility operated
7 by a health care provider with the standards set by an association of
8 health care providers and with applicable laws, rules, and
9 regulations.

10 Sec. 7. Peer review committee means a utilization review
11 committee, quality assessment committee, performance improvement
12 committee, tissue committee, credentialing committee, or other
13 committee established by a health care provider that does either of
14 the following:

15 (1) Conducts professional credentialing or quality review
16 activities involving the competence of, professional conduct of, or
17 quality of care provided by a health care provider, including both an
18 individual who provides health care and an entity that provides
19 health care; or

20 (2) Conducts any other attendant hearing process
21 initiated as a result of a peer review committee's recommendations or
22 actions.

23 Sec. 8. (1) No health care provider nor any individual
24 who serves as a member or employee of a peer review committee, works
25 on behalf of a peer review committee, or furnishes counsel or

1 services to a peer review committee shall be held liable in damages
2 to any person for any acts, omissions, decisions, or other conduct
3 within the scope of the functions of a peer review committee.

4 (2) No person who makes a report or provides information
5 to a peer review committee shall be subject to suit as a result of
6 providing such information.

7 Sec. 9. (1) The proceedings, records, minutes, and
8 reports of a peer review committee shall be held in confidence and
9 shall not be subject to discovery or introduction into evidence in
10 any civil action. No person who attends a meeting of a peer review
11 committee, works for or on behalf of a peer review committee, or
12 provides information to a peer review committee shall be permitted or
13 required to testify in any such civil action as to any evidence or
14 other matters produced or presented during the proceedings or
15 activities of the peer review committee or as to any findings,
16 recommendations, evaluations, opinions, or other actions of the peer
17 review committee or any members thereof.

18 (2) Nothing in this section shall be construed to prevent
19 discovery or use in any civil action of medical records, documents,
20 or information otherwise available from original sources and kept
21 with respect to any patient in the ordinary course of business, but
22 the records, documents, or information shall be available only from
23 the original sources and cannot be obtained from the peer review
24 committee's proceedings or records.

25 Sec. 10. An incident report or risk management report and

1 the contents of an incident report or risk management report are not
2 subject to discovery in, and are not admissible in evidence in the
3 trial of, a civil action for damages for injury, death, or loss to a
4 patient of a health care provider. A person who prepares or has
5 knowledge of the contents of an incident report or risk management
6 report shall not testify and shall not be required to testify in any
7 civil action as to the contents of the report.

8 Sec. 11. Section 28-435.01, Reissue Revised Statutes of
9 Nebraska, is amended to read:

10 28-435.01 (1) A health care facility licensed under the
11 Health Care Facility Licensure Act or a peer review organization or
12 professional association relating to a profession regulated under the
13 Uniform Controlled Substances Act shall report to the department, on
14 a form and in the manner specified by the department, any facts known
15 to the facility, organization, or association, including, but not
16 limited to, the identity of the credential holder and consumer, when
17 the facility, organization, or association:

18 (a) Has made payment due to adverse judgment, settlement,
19 or award of a professional liability claim against it or a licensee,
20 including settlements made prior to suit, arising out of the acts or
21 omissions of the licensee; or

22 (b) Takes action adversely affecting the privileges or
23 membership of a licensee in such facility, organization, or
24 association due to alleged incompetence, professional negligence,
25 unprofessional conduct, or physical, mental, or chemical impairment.

1 The report shall be made within thirty days after the
2 date of the action or event.

3 (2) A report made to the department under this section
4 shall be confidential. The facility, organization, association, or
5 person making such report shall be completely immune from criminal or
6 civil liability of any nature, whether direct or derivative, for
7 filing a report or for disclosure of documents, records, or other
8 information to the department under this section. Nothing in this
9 subsection shall be construed to require production of records
10 protected by the Health Care Quality Improvement Act or section
11 ~~25-12,123, 71-2048, or 71-7903~~ or patient safety work product under
12 the Patient Safety Improvement Act except as otherwise provided in
13 ~~any of such sections or such act.~~ either of such acts or such
14 section.

15 (3) Any health care facility, peer review organization,
16 or professional association that fails or neglects to make a report
17 or provide information as required under this section is subject to a
18 civil penalty of five hundred dollars for the first offense and a
19 civil penalty of up to one thousand dollars for a subsequent offense.
20 Any civil penalty collected under this subsection shall be remitted
21 to the State Treasurer to be disposed of in accordance with Article
22 VII, section 5, of the Constitution of Nebraska.

23 (4) For purposes of this section, the department shall
24 accept reports made to it under the Nebraska Hospital-Medical
25 Liability Act or in accordance with national practitioner data bank

1 requirements of the federal Health Care Quality Improvement Act of
2 1986, as the act existed on January 1, 2007, and may require a
3 supplemental report to the extent such reports do not contain the
4 information required by the department.

5 Sec. 12. Section 38-1,126, Reissue Revised Statutes of
6 Nebraska, is amended to read:

7 38-1,126 (1) A report made to the department under
8 section 38-1,124 or 38-1,125 shall be confidential.

9 (2) Any person making such a report to the department,
10 except a person who is self-reporting, shall be completely immune
11 from criminal or civil liability of any nature, whether direct or
12 derivative, for filing a report or for disclosure of documents,
13 records, or other information to the department under section
14 38-1,124 or 38-1,125.

15 (3) Persons who are members of committees established
16 under the Health Care Quality Improvement Act, the Patient Safety
17 Improvement Act, or ~~sections section 25-12,123, 71-2046 to 71-2048,~~
18 ~~and 71-7901 to 71-7903~~ or witnesses before such committees shall not
19 be required to report under section 38-1,124 or 38-1,125. Any person
20 who is a witness before such a committee shall not be excused from
21 reporting matters of first-hand knowledge that would otherwise be
22 reportable under section 38-1,124 or 38-1,125 only because he or she
23 attended or testified before such committee.

24 (4) Documents from original sources shall not be
25 construed as immune from discovery or use in actions under section

1 38-1,125.

2 Sec. 13. Section 38-1,127, Reissue Revised Statutes of
3 Nebraska, is amended to read:

4 38-1,127 (1) A health care facility licensed under the
5 Health Care Facility Licensure Act or a peer review organization or
6 professional association of a profession regulated under the Uniform
7 Credentialing Act shall report to the department, on a form and in
8 the manner specified by the department, any facts known to the
9 facility, organization, or association, including, but not limited
10 to, the identity of the credential holder and consumer, when the
11 facility, organization, or association:

12 (a) Has made payment due to adverse judgment, settlement,
13 or award of a professional liability claim against it or a credential
14 holder, including settlements made prior to suit, arising out of the
15 acts or omissions of the credential holder; or

16 (b) Takes action adversely affecting the privileges or
17 membership of a credential holder in such facility, organization, or
18 association due to alleged incompetence, professional negligence,
19 unprofessional conduct, or physical, mental, or chemical impairment.

20 The report shall be made within thirty days after the
21 date of the action or event.

22 (2) A report made to the department under this section
23 shall be confidential. The facility, organization, association, or
24 person making such report shall be completely immune from criminal or
25 civil liability of any nature, whether direct or derivative, for

1 filing a report or for disclosure of documents, records, or other
2 information to the department under this section. Nothing in this
3 subsection shall be construed to require production of records
4 protected by the Health Care Quality Improvement Act or section
5 25-12,123, ~~71-2048, or 71-7903~~ or patient safety work product under
6 the Patient Safety Improvement Act except as otherwise provided in
7 ~~any of such sections or such act.~~ either of such acts or such
8 section.

9 (3) Any health care facility, peer review organization,
10 or professional association that fails or neglects to make a report
11 or provide information as required under this section is subject to a
12 civil penalty of five hundred dollars for the first offense and a
13 civil penalty of up to one thousand dollars for a subsequent offense.
14 Any civil penalty collected under this subsection shall be remitted
15 to the State Treasurer to be disposed of in accordance with Article
16 VII, section 5, of the Constitution of Nebraska.

17 (4) For purposes of this section, the department shall
18 accept reports made to it under the Nebraska Hospital-Medical
19 Liability Act or in accordance with national practitioner data bank
20 requirements of the federal Health Care Quality Improvement Act of
21 1986, as the act existed on January 1, 2007, and may require a
22 supplemental report to the extent such reports do not contain the
23 information required by the department.

24 Sec. 14. Section 71-6736, Reissue Revised Statutes of
25 Nebraska, is amended to read:

1 71-6736 (1) Any facility or person using the services of
2 a medication aide shall report to the department, in the manner
3 specified by the department by rule and regulation, any facts known
4 to him, her, or it, including, but not limited to, the identity of
5 the medication aide and the recipient, when it takes action adversely
6 affecting a medication aide due to alleged incompetence. The report
7 shall be made within thirty days after the date of the action or
8 event.

9 (2) Any person may report to the department any facts
10 known to him or her concerning any alleged incompetence of a
11 medication aide.

12 (3) A report made to the department under this section
13 shall be confidential. The facility, organization, association, or
14 person making such report shall be immune from criminal or civil
15 liability of any nature, whether direct or derivative, for filing a
16 report or for disclosure of documents, records, or other information
17 to the department under this section. The reports and information
18 shall be subject to the investigatory and enforcement provisions of
19 the regulatory provisions listed in the Medication Aide Act. This
20 subsection does not require production of records protected by the
21 Health Care Quality Improvement Act or section 25-12,123 or 71-2048
22 or patient safety work product under the Patient Safety Improvement
23 Act except as otherwise provided in either of such ~~sections or such~~
24 ~~act.~~ acts or such section.

25 Sec. 15. Section 71-7460.02, Reissue Revised Statutes of

1 Nebraska, is amended to read:

2 71-7460.02 (1) A health care facility licensed under the
3 Health Care Facility Licensure Act or a peer review organization or
4 professional association relating to a profession regulated under the
5 Wholesale Drug Distributor Licensing Act shall report to the
6 department, on a form and in the manner specified by the department,
7 any facts known to the facility, organization, or association,
8 including, but not limited to, the identity of the credential holder
9 and consumer, when the facility, organization, or association:

10 (a) Has made payment due to adverse judgment, settlement,
11 or award of a professional liability claim against it or a licensee,
12 including settlements made prior to suit, arising out of the acts or
13 omissions of the licensee; or

14 (b) Takes action adversely affecting the privileges or
15 membership of a licensee in such facility, organization, or
16 association due to alleged incompetence, professional negligence,
17 unprofessional conduct, or physical, mental, or chemical impairment.

18 The report shall be made within thirty days after the
19 date of the action or event.

20 (2) A report made to the department under this section
21 shall be confidential. The facility, organization, association, or
22 person making such report shall be completely immune from criminal or
23 civil liability of any nature, whether direct or derivative, for
24 filing a report or for disclosure of documents, records, or other
25 information to the department under this section. Nothing in this

1 subsection shall be construed to require production of records
2 protected by the Health Care Quality Improvement Act or section
3 ~~25-12,123, 71-2048, or 71-7903~~ or patient safety work product under
4 the Patient Safety Improvement Act except as otherwise provided in
5 ~~any of such sections or such act.~~ either of such acts or such
6 section.

7 (3) Any health care facility, peer review organization,
8 or professional association that fails or neglects to make a report
9 or provide information as required under this section is subject to a
10 civil penalty of five hundred dollars for the first offense and a
11 civil penalty of up to one thousand dollars for a subsequent offense.
12 Any civil penalty collected under this subsection shall be remitted
13 to the State Treasurer to be disposed of in accordance with Article
14 VII, section 5, of the Constitution of Nebraska.

15 (4) For purposes of this section, the department shall
16 accept reports made to it under the Nebraska Hospital-Medical
17 Liability Act or in accordance with national practitioner data bank
18 requirements of the federal Health Care Quality Improvement Act of
19 1986, as the act existed on January 1, 2007, and may require a
20 supplemental report to the extent such reports do not contain the
21 information required by the department.

22 Sec. 16. Original sections 28-435.01, 38-1,126, 38-1,127,
23 71-6736, and 71-7460.02, Reissue Revised Statutes of Nebraska, are
24 repealed.

25 Sec. 17. The following sections are outright repealed:

- 1 Sections 71-2046, 71-2047, 71-2048, 71-7901, 71-7902, and 71-7903,
- 2 Reissue Revised Statutes of Nebraska.