

LEGISLATIVE BILL 1355

Approved by the Governor April 16, 2024

Introduced by Vargas, 7; Aguilar, 35; Cavanaugh, M., 6; Dorn, 30; Fredrickson, 20.

A BILL FOR AN ACT relating to public health and welfare; to amend section 81-5,153, Reissue Revised Statutes of Nebraska, and sections 38-1201, 38-1225, 71-2485, 71-2486, 71-2487, 71-2488, 71-2489, 71-2490, and 81-3119, Revised Statutes Cumulative Supplement, 2022; to provide for release of certain patient data by an emergency medical service; to restate the purpose and findings of the Opioid Prevention and Treatment Act; to define terms; to create, rename, and provide for additional uses and distribution of funds; to provide for aid programs; to provide for research, support and training for first responders, and staff to carry out the Overdose Fatality Review Teams Act; to harmonize provisions; to provide operative dates; to repeal the original sections; and to declare an emergency.

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

Section 1. Section 38-1201, Revised Statutes Cumulative Supplement, 2022, is amended to read:

38-1201 Sections 38-1201 to 38-1237 and section 3 of this act shall be known and may be cited as the Emergency Medical Services Practice Act.

Sec. 2. Section 38-1225, Revised Statutes Cumulative Supplement, 2022, is amended to read:

38-1225 (1) No patient data received or recorded by an emergency medical service or an emergency care provider shall be divulged, made public, or released by an emergency medical service or an emergency care provider, except that patient data may be released (a) for purposes of treatment, payment, and other health care operations as defined and permitted under the federal Health Insurance Portability and Accountability Act of 1996, as such act existed on January 1, 2024, (b) as required by section 3 of this act ~~2018~~, or (c) as otherwise permitted by law. Such data shall be provided to the department for public health purposes pursuant to rules and regulations of the department. For purposes of this section, patient data means any data received or recorded as part of the records maintenance requirements of the Emergency Medical Services Practice Act.

(2) Patient data received by the department shall be confidential with release only (a) in aggregate data reports created by the department on a periodic basis or at the request of an individual, (b) as case-specific data to approved researchers for specific research projects, (c) as protected health information to a public health authority, as such terms are defined under the federal Health Insurance Portability and Accountability Act of 1996, as such act existed on January 1, ~~2024~~ ~~2018~~, and (d) as protected health information, as defined under the federal Health Insurance Portability and Accountability Act of 1996, as such act existed on January 1, ~~2024~~ ~~2018~~, to an emergency medical service, to an emergency care provider, or to a licensed health care facility for purposes of treatment. A record may be shared with the emergency medical service or emergency care provider that reported that specific record. Approved researchers shall maintain the confidentiality of the data, and researchers shall be approved in the same manner as described in section 81-666. Aggregate reports shall be public documents.

(3) No civil or criminal liability of any kind or character for damages or other relief or penalty shall arise or be enforced against any person or organization by reason of having provided patient data pursuant to this section.

Sec. 3. (1) An emergency medical service that treats and releases, or transports to a medical facility, an individual experiencing a suspected overdose or an actual overdose shall report the incident to the department. A report of an overdose made under this section shall include the information required by the department for occurrences requiring a response to perceived individual need for medical care.

(2) An emergency medical service that reports an overdose under this section shall make best efforts to submit the report within seventy-two hours after responding to the incident.

(3) When the department receives a report pursuant to subsection (1) of this section, it shall report such information using the Washington/Baltimore High Intensity Drug Trafficking Area Overdose Mapping and Application Program or other similar secure access information technology platform.

(4) Overdose information reported pursuant to subsection (1) or (3) of this section shall not be (a) used for a criminal investigation or prosecution or (b) obtained by a law enforcement officer as part of a criminal investigation or prosecution.

Sec. 4. Section 71-2485, Revised Statutes Cumulative Supplement, 2022, is amended to read:

71-2485 Sections 71-2485 to 71-2490 and sections 7 and 11 to 15 of this act shall be known and may be cited as the Opioid Prevention and Treatment Act.

Sec. 5. Section 71-2486, Revised Statutes Cumulative Supplement, 2022, is amended to read:

71-2486 The purpose of the Opioid Prevention and Treatment Act is to provide for the use of dedicated revenue for opioid-disorder-related treatment, ~~and prevention, and remediation and research regarding opioid treatment, prevention, and remediation, in accordance with the terms of any verdict, judgment, compromise, or settlement that is the source of such revenue.~~

Sec. 6. Section 71-2487, Revised Statutes Cumulative Supplement, 2022, is amended to read:

71-2487 The Legislature finds that:

(1) There is an opioid epidemic occurring in the United States, and Nebraska has been impacted;

(2) The opioid epidemic in Nebraska is a serious public health crisis stemming from the rapid increase in the use of prescription and nonprescription opioid drugs;

~~(3) (2) Many states are recovering funds for the management of opioid addiction within their borders;~~

~~(4) (3) Coordination surrounding and managing opioid addiction and related disorders is critical to the health and safety of all Nebraskans;~~

~~(5) (4) Funding for prevention and treatment of opioid addiction and related disorders, including those that are co-occurring with other mental health and substance use disorders, is needed in Nebraska;~~

~~(6) (5) Law enforcement agencies in the State of Nebraska are dealing with the effects of the opioid epidemic daily and are in need of resources for training, education, and interdiction;~~

~~(7) (6) There is a need to enhance the network of professionals who provide treatment for opioid addiction and related disorders, including co-occurring mental health disorders and other co-occurring substance use disorders;~~

~~(8) (7) There is a need for education of medical professionals, including training on proper prescription practices and best practices for tapering patients off of prescribed opioids for medical use;~~

~~(9) (8) Incarcerated individuals in the Nebraska correctional system and other vulnerable populations with opioid use disorder need access to resources that will help address addiction; and~~

~~(10) (9) The health and safety of all Nebraskans will be improved by the abatement of opioid remediation addiction in the State of Nebraska.~~

Sec. 7. For purposes of the Opioid Prevention and Treatment Act:

(1) Division means the Division of Behavioral Health of the Department of Health and Human Services;

(2) Local public health department means a local public health department as defined in section 71-1626;

(3) Opiate or opioid means any drug or other substance having an addiction-forming or addiction-sustaining liability similar to morphine or being capable of conversion into a drug having such addiction-forming or addiction-sustaining liability;

(4) Opioid epidemic means the serious public health crisis stemming from the rapid increase in the use of prescription and nonprescription opioid drugs;

(5) Opioid remediation means care, treatment, and other programs and expenditures designed to (a) address the misuse and abuse of opioid products, (b) treat or mitigate opioid use or related disorders, (c) mitigate other effects of the opioid epidemic, including the effects on those injured as a result of the opioid epidemic, (d) support treatment of any co-occurring substance use disorder or mental health condition; and

(6) Regional behavioral health authority means an authority established pursuant to section 71-808.

Sec. 8. Section 71-2488, Revised Statutes Cumulative Supplement, 2022, is amended to read:

71-2488 (1) Any funds appropriated from the Opioid Prevention and Treatment Cash Fund or the Opioid Treatment Infrastructure Cash Fund or distributed from the Nebraska Opioid Recovery Trust Fund under the Opioid Prevention and Treatment Act shall not be considered ongoing entitlements or an obligation on the part of the State of Nebraska.

(2) Any funds appropriated or distributed under the Opioid Prevention and Treatment Act act shall be spent in accordance with the Opioid Prevention and Treatment Act and the terms of any verdict, judgment, compromise, or settlement in or out of court, of any case or controversy brought by the Attorney General pursuant to the Consumer Protection Act or the Uniform Deceptive Trade Practices Act. If there is any conflict between the terms of any verdict, judgment, compromise, or settlement and the Opioid Prevention and Treatment Act, the terms of the verdict, judgment, compromise, or settlement shall prevail.

Sec. 9. Section 71-2489, Revised Statutes Cumulative Supplement, 2022, is amended to read:

71-2489 The regional behavioral health authorities and local public health departments shall report on or before November 30 of each even-numbered year to the division regarding the use of funds distributed for purposes of the Opioid Prevention and Treatment Act and the outcomes achieved from the use of such funds. The division Department of Health and Human Services shall report annually on or before December 15 to the Legislature, the Governor, and the Attorney General regarding the use of funds appropriated and distributed under the Opioid Prevention and Treatment Act and the outcomes achieved from the use of such funds such use. The reports submitted to the Legislature shall be

submitted electronically.

Sec. 10. Section 71-2490, Revised Statutes Cumulative Supplement, 2022, is amended to read:

71-2490 (1) The Nebraska Opioid Recovery Trust Fund is created. The fund shall include all recoveries received on behalf of the state by the Department of Justice pursuant to the Consumer Protection Act or the Uniform Deceptive Trade Practices Act related to the advertising of opioids. The fund shall include any money, payments, or other things of value in the nature of civil damages or other payment, except criminal penalties, whether such recovery is by way of verdict, judgment, compromise, or settlement in or out of court, of any case or controversy pursuant to such acts. The Department of Justice shall remit any such revenue to the State Treasurer for credit to the Nebraska Opioid Recovery Trust Fund.

(2) Any funds appropriated, expended, or distributed from the Nebraska Opioid Recovery Trust Fund shall be spent in accordance with the terms of any verdict, judgment, compromise, or settlement in or out of court, of any case or controversy brought by the Attorney General pursuant to the Consumer Protection Act or the Uniform Deceptive Trade Practices Act.

(3) The Nebraska Opioid Recovery Trust Fund fund shall exclude funds held in a trust capacity where specific benefits accrue to specific individuals, organizations, political subdivisions, or governments. Such excluded funds shall be deposited in the State Settlement Trust Fund pursuant to section 59-1608.05.

(4)(a) Any money transferred from the Nebraska Opioid Recovery Trust Fund shall be expended in accordance with the terms and conditions of the litigation or settlement from which the money was received.

(b) The State Treasurer shall transfer the following amounts from the Nebraska Opioid Recovery Trust Fund on or after July 1, 2024, but before July 15, 2024, and on or after July 1 but before July 15 of each year thereafter:

(i) One million one hundred twenty-five thousand dollars to the Training Division Cash Fund to connect first responders to behavioral health services, supports, and training and for a statewide wellness learning plan that includes anonymous assessments, education, and awareness to promote resiliency development;

(ii) Four hundred thousand dollars to the Health and Human Services Cash Fund for staff to carry out the Overdose Fatality Review Teams Act;

(iii) Three million dollars to the Opioid Prevention and Treatment Cash Fund for purposes of the Opioid Prevention and Treatment Act; and

(iv) An amount determined by the Legislature to the Opioid Treatment Infrastructure Cash Fund.

(c) It is the intent of the Legislature that, of the total settlement funds received by the State of Nebraska and transferred from the Nebraska Opioid Recovery Trust Fund to the Opioid Prevention and Treatment Cash Fund and to the Opioid Treatment Infrastructure Cash Fund, twenty-five percent of such funds are transferred to the Opioid Prevention and Treatment Cash Fund and seventy-five percent of such funds are transferred to the Opioid Treatment Infrastructure Cash Fund.

(5) (4) Any money in the Nebraska Opioid Recovery Trust Fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act.

Sec. 11. (1) The Opioid Prevention and Treatment Cash Fund is created. The fund shall consist of transfers from the Nebraska Opioid Recovery Trust Fund. No more than the amounts specified in this section may be appropriated or transferred from the Opioid Prevention and Treatment Cash Fund in any fiscal year.

(2) Any money in the Opioid Prevention and Treatment Cash Fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act.

(3) It is the intent of the Legislature to annually appropriate from the Opioid Prevention and Treatment Cash Fund beginning in FY2024-25 three million dollars to the Department of Health and Human Services for disbursement by the division to regional behavioral health authorities for behavioral health regions established pursuant to section 71-807 for opioid use prevention and opioid remediation under the Opioid Prevention and Treatment Act as follows:

(a) Five and four-hundred-seventy-six thousandths percent to region 1;

(b) Five and one-hundred-twelve thousandths percent to region 2;

(c) Ten and eight thousand nine hundred eighty-two ten-thousandths percent to region 3;

(d) Eight and five thousand eight hundred thirty-three ten-thousandths percent to region 4;

(e) Twenty-five and seven thousand four hundred twenty-one ten-thousandths percent to region 5; and

(f) Forty-four and one thousand eight hundred sixty-nine ten-thousandths percent to region 6.

(4) The regional behavioral health authorities shall only spend such disbursements for purposes identified in section 14 of this act.

Sec. 12. (1) The Opioid Treatment Infrastructure Cash Fund is created. The fund shall consist of transfers from the Nebraska Opioid Recovery Trust Fund.

(2) The division shall use the Opioid Treatment Infrastructure Cash Fund as appropriated by the Legislature for local and state public-private partnerships for nonprofit and for-profit entities engaged in opioid use prevention and opioid treatment infrastructure projects as determined by the

division, including capital construction and renovation. The administrative cost for distributing funds under this section shall not exceed an amount equal to five percent of the amount distributed.

(3) Any money in the Opioid Treatment Infrastructure Cash Fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act.

Sec. 13. (1) The division shall equitably distribute aid as appropriated by the Legislature to local public health departments:

(a) To facilitate prevention efforts, including training on the use of overdose response, syringe access and education, and drug-checking products;

(b) For education and training activities related to opioid use prevention and opioid remediation; and

(c) For data tracking efforts related to the opioid epidemic.

(2) Each local public health department may contract for services with hospitals, law enforcement, and community organizations for purposes of subsection (1) of this section. Each local public health department shall report to the division as provided in section 71-2489.

(3) It is the intent of the Legislature to appropriate at least five hundred thousand dollars from the General Fund to the County Public Health Aid Program for disbursement to local public health departments as provided in section 71-1628.08 for opioid use prevention and opioid remediation under the Opioid Prevention and Treatment Act. It is the intent of the Legislature that funds appropriated for purposes of this section are offset by a reduction in funds for Behavioral Health Aid for fiscal year 2024-25.

Sec. 14. (1) Each regional behavioral health authority shall use funds received pursuant to the Opioid Prevention and Treatment Act for:

(a) Opioid treatment and response;

(b) Data tracking related to the opioid epidemic;

(c) Supporting individual recovery and rehabilitation related to the opioid epidemic; and

(d) Opioid use prevention and opioid remediation.

(2) Each regional behavioral health authority shall report to the division as provided in section 71-2489.

(3) The division shall review the reports and require an authority to return unobligated and unexpended funds for the prior biennium to the Opioid Prevention and Treatment Cash Fund.

Sec. 15. (1) The Legislature intends to support opioid misuse prevention research, opioid addiction research, and population, clinical, translational, and basic science research proposals to decrease the harmful impact of the opioid epidemic on Nebraska and carry out the purposes of the Opioid Prevention and Treatment Act.

(2) It is the intent of the Legislature to annually appropriate two hundred fifty thousand dollars from the General Fund to the Board of Regents of the University of Nebraska for research at the University of Nebraska Medical Center, which shall only be used for research on opioid misuse prevention research, opioid addiction research, or population, clinical, translational, and basic science research proposals to decrease the harmful impact of the opioid epidemic on Nebraska. It is the intent of the Legislature that funds appropriated for purposes of this section are offset by a reduction in funds for Behavioral Health Aid for fiscal year 2024-25.

Sec. 16. Section 81-5,153, Reissue Revised Statutes of Nebraska, is amended to read:

81-5,153 (1) The Training Division Cash Fund is created. The State Fire Marshal shall administer the fund.

(2) Money collected pursuant to section 81-5,152 shall be remitted to the State Treasurer for credit to the fund. Such money in the fund shall be used for the purpose of administering the training program established pursuant to sections 81-5,151 to 81-5,157, except that transfers may be made from such money in the fund to the General Fund at the direction of the Legislature.

(3) Money transferred to the Training Division Cash Fund from the Nebraska Opioid Recovery Trust Fund shall be used to connect first responders to behavioral health services, supports, and training and for a statewide wellness learning plan that includes anonymous assessments, education, and awareness to promote resiliency development, in accordance with the terms and conditions of the litigation or settlement that is the source of the money.

(4) Any money in the Training Division Cash Fund The Training Division Cash Fund shall be administered by the State Fire Marshal. Any money in the fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act.

Sec. 17. Section 81-3119, Revised Statutes Cumulative Supplement, 2022, is amended to read:

81-3119 (1) The Health and Human Services Cash Fund is created and shall consist of funds from contracts, grants, gifts, or fees. The fund may also consist of transfers from the Nebraska Opioid Recovery Trust Fund.

(2) Any money transferred from the Nebraska Opioid Recovery Trust Fund shall be used for staff to carry out the Overdose Fatality Review Teams Act, in accordance with the terms and conditions of the litigation or settlement that is the source of the money. Any other money in the Health and Human Services Cash Fund may be transferred to the General Fund at the direction of the Legislature.

(3) Transfers may be made from the fund to the General Fund at the direction of the Legislature. The State Treasurer shall transfer three hundred

~~thousand dollars on or before July 15, 2015, from the Health and Human Services Cash Fund to the Lead-Based Paint Hazard Control Cash Fund. It is the intent of the Legislature that the transfer to the Lead-Based Paint Hazard Control Cash Fund shall be from funds credited to the Medicaid Fraud Settlement Fund. Any money in the Health and Human Services Cash Fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act.~~

Sec. 18. Sections 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, and 19 of this act become operative on July 1, 2024. The other sections of this act become operative on their effective date.

Sec. 19. Original section 81-5,153, Reissue Revised Statutes of Nebraska, and sections 71-2485, 71-2486, 71-2487, 71-2488, 71-2489, 71-2490, and 81-3119, Revised Statutes Cumulative Supplement, 2022, are repealed.

Sec. 20. Original sections 38-1201 and 38-1225, Revised Statutes Cumulative Supplement, 2022, are repealed.

Sec. 21. Since an emergency exists, this act takes effect when passed and approved according to law.