

LEGISLATURE OF NEBRASKA
ONE HUNDRED SEVENTH LEGISLATURE
SECOND SESSION

LEGISLATIVE BILL 956

Introduced by Murman, 38; Aguilar, 35; Briese, 41; Flood, 19.

Read first time January 10, 2022

Committee: Health and Human Services

1 A BILL FOR AN ACT relating to public health information; to amend section
2 71-503.01, Reissue Revised Statutes of Nebraska; to define terms; to
3 provide for confidentiality of certain health information; to
4 provide for use or disclosure of such information; to change
5 provisions relating to confidential health information, reports,
6 use, disclosure, and immunity; and to repeal the original section.
7 Be it enacted by the people of the State of Nebraska,

1 Section 1. (1) For purposes of this section:

2 (a) Covered statute means sections 38-1225, 71-502.03, 71-502.04,
3 71-503, 71-522, 71-552, 71-648, 71-2081, 71-4210, 71-8248, and 81-646,
4 the Brain Injury Registry Act, the Outpatient Surgical Procedures Data
5 Act, and the Parkinson's Disease Registry Act;

6 (b) Health information means any information, including genetic
7 information, whether oral or recorded in any form or medium, that is
8 created or received by a health care provider, health plan, public health
9 authority, employer, life insurer, school, university, or health care
10 clearinghouse, and that relates to the past, present, or future physical
11 or mental health or condition of an individual; the provision of health
12 care to an individual; or the past, present, or future payment for the
13 provision of health care to an individual. Health information includes
14 post-mortem health information, including, but not limited to, toxicology
15 reports; and

16 (c) Individually identifiable health information means health
17 information that identifies the individual or with respect to which there
18 is a reasonable basis to believe the information can be used to identify
19 the individual. Any information that meets the de-identification
20 standards applied under the federal Health Insurance Portability and
21 Accountability Act and its implementing regulations in 45 C.F.R. 164.514
22 shall be deemed not to be individually identifiable health information.

23 (2)(a) Notwithstanding any other provision of law regarding the
24 disclosure or release of health information, the Director of Public
25 Health or the chief executive officer of the Department of Health and
26 Human Services may authorize the disclosure of individually identifiable
27 health information reported to the department under a covered statute if
28 the director or chief executive officer determines that:

29 (i) Disclosure of specific information is necessary to address the
30 occurrence or imminent threat of an illness or health condition caused by
31 bioterrorism, epidemic, or pandemic disease, or a novel and highly

1 infectious agent or biological toxin, that poses a substantial risk of a
2 significant number of human fatalities, incidents of permanent or long-
3 term disability, other harm to the affected population, or health care
4 needs that exceed available resources;

5 (ii) Disclosure is limited to the minimum information necessary for
6 the purposes of the disclosure; and

7 (iii) The information is disclosed only to those persons whose
8 participation is necessary for the purposes of the disclosure.

9 (b) This power shall not be delegated, but if the director and chief
10 executive officer are incapacitated or unavailable due to an emergency,
11 this power may be exercised by the chief medical officer if the chief
12 medical officer is not also the Director of Public Health.

13 (3) Any use or disclosure of health information pursuant to this
14 section shall not make otherwise confidential information (a) a public
15 record, (b) discoverable, (c) subject to subpoena unless authorized by
16 the person to whom the information pertains or that person's legal
17 representative, or (d) admissible in evidence in any legal proceeding of
18 any kind or character.

19 Sec. 2. Section 71-503.01, Reissue Revised Statutes of Nebraska, is
20 amended to read:

21 71-503.01 (1) Any reports of (a) communicable diseases, including
22 sexually transmitted diseases and other reportable diseases; illnesses;
23 or poisonings, (b) notifications of positive laboratory findings, (c)
24 resulting investigations, or (d) information regarding the prescription,
25 provision, or dispensing of prescription drugs pursuant to sections
26 71-503.02 and 71-503.03 and the records pertaining to such reports that
27 are provided to the Department of Health and Human Services, a county or
28 city board of health, a local public health department established
29 pursuant to sections 71-1626 to 71-1636, a city health department, a
30 local health agency, or a local public official exercising the duties and
31 responsibilities of a board of health or health department shall be

1 confidential except as provided in this section, shall not be subject to
2 subpoena, shall be privileged and inadmissible in evidence in any legal
3 proceeding of any kind or character, and shall not be disclosed to any
4 person, including any other department or agency of the State of
5 Nebraska, except as provided in this section.

6 (2) In order to further the protection of public health, a report as
7 described in subsection (1) of this section, including any individually
8 identifiable health information contained in the report, may be disclosed
9 to federal, state, county, or municipal agencies of government or
10 agencies of Native American tribal governments for purposes of public
11 health activities as provided in 45 C.F.R. 165.512(b) or to avert a
12 serious threat to public health as provided in 45 C.F.R. 165.512(j)(1)
13 (i), if the information is disclosed only to those persons that
14 reasonably appear necessary for the purposes of the disclosure and no
15 more information is disclosed than reasonably appears necessary for the
16 purposes of the disclosure.

17 (3) The person receiving a report as described in this section may
18 (a) publish analyses of such reports for scientific and public health
19 purposes in such a manner as to ensure that the identity of any
20 individual who is the subject of such report cannot be ascertained, (b)
21 discuss the report or notification with the attending physician, or (c)
22 make such investigation as deemed necessary. For purposes of this
23 subsection, if a release of information meets the de-identification
24 standards set forth in 45 C.F.R. 164.514, it shall be deemed that an
25 individual's identity cannot be ascertained.

26 (4) Any medical practitioner, official health department, or other
27 person making a report described in subsection (1) of this section shall
28 be immune from suit for slander or libel or breach of privileged
29 communication based on the report and the information contained in the
30 report.

31 ~~(1) Whenever any statute of the state, any ordinance or resolution~~

1 ~~of a municipal corporation or political subdivision enacted pursuant to~~
2 ~~statute, or any rule or regulation of an administrative agency adopted~~
3 ~~and promulgated pursuant to statute allows medical practitioners or other~~
4 ~~persons to prescribe, provide, or dispense prescription drugs pursuant to~~
5 ~~sections 71-503.02 and 71-503.03 or requires medical practitioners or~~
6 ~~other persons to report cases of communicable diseases, including~~
7 ~~sexually transmitted diseases and other reportable diseases, illnesses,~~
8 ~~or poisonings or to give notification of positive laboratory findings to~~
9 ~~the Department of Health and Human Services or any county or city board~~
10 ~~of health, local public health department established pursuant to~~
11 ~~sections 71-1626 to 71-1636, city health department, local health agency,~~
12 ~~or state or local public official exercising the duties and~~
13 ~~responsibilities of any board of health or health department, such~~
14 ~~reports or notifications and the resulting investigations and such~~
15 ~~prescription, provision, or dispensing of prescription drugs and records~~
16 ~~pertaining thereto shall be confidential except as provided in this~~
17 ~~section, shall not be subject to subpoena, and shall be privileged and~~
18 ~~inadmissible in evidence in any legal proceeding of any kind or character~~
19 ~~and shall not be disclosed to any other department or agency of the State~~
20 ~~of Nebraska.~~

21 ~~(2) In order to further the protection of public health, such~~
22 ~~reports, notifications, and prescription, provision, or dispensing of~~
23 ~~prescription drugs may be disclosed by the Department of Health and Human~~
24 ~~Services, the official local health department, and the person making~~
25 ~~such reports or notifications to the Centers for Disease Control and~~
26 ~~Prevention of the Public Health Service of the United States Department~~
27 ~~of Health and Human Services or its successor in such a manner as to~~
28 ~~ensure that the identity of any individual cannot be ascertained except~~
29 ~~as required for delivery of such prescription drugs pursuant to sections~~
30 ~~71-503.02 and 71-503.03. To further protect the public health, the~~
31 ~~Department of Health and Human Services, the official local health~~

1 ~~department, and the person making the report or notification may disclose~~
2 ~~to the official state and local health departments of other states,~~
3 ~~territories, and the District of Columbia such reports and notifications,~~
4 ~~including sufficient identification and information so as to ensure that~~
5 ~~such investigations as deemed necessary are made.~~

6 ~~(3) The appropriate board, health department, agency, or official~~
7 ~~may: (a) Publish analyses of reports, information, and the notifications~~
8 ~~described in subsection (1) of this section for scientific and public~~
9 ~~health purposes in such a manner as to ensure that the identity of any~~
10 ~~individual concerned cannot be ascertained; (b) discuss the report or~~
11 ~~notification with the attending physician; and (c) make such~~
12 ~~investigation as deemed necessary.~~

13 ~~(4) Any medical practitioner, any official health department, the~~
14 ~~Department of Health and Human Services, or any other person making such~~
15 ~~reports or notifications or prescribing, providing, or dispensing such~~
16 ~~prescription drugs pursuant to sections 71-503.02 and 71-503.03 shall be~~
17 ~~immune from suit for slander or libel or breach of privileged~~
18 ~~communication based on any statements contained in such reports and~~
19 ~~notifications or pursuant to prescription, provision, or dispensing of~~
20 ~~such prescription drugs.~~

21 ~~Sec. 3. Original section 71-503.01, Reissue Revised Statutes of~~
22 ~~Nebraska, is repealed.~~