LEGISLATIVE BILL 431

Approved by the Governor May 4, 1993

Introduced by Rasmussen, 20; Ashford, 6; Bernard-Stevens, 42; Bohlke, 33; Chambers, 11; Crosby, 29; Day, 19; Dierks, 40; Hillman, 48; Schimek, 27; Wesely, 26

AN ACT relating to child deaths; to provide for review of child deaths; to state intent; to define terms; to create the State Child Death Review Team; to provide powers and duties; to provide access to certain information; and to provide for confidentiality of certain records.

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

Section 1. The Legislature finds and declares that it is in the best interests of the state, its citizens, and especially the children of this state that the number and causes of death of children in this state be examined. There is a need for a comprehensive integrated review of all child deaths in Nebraska and a system for statewide retrospective review of existing records relating to each child death.

It is the intent of the Legislature by enactment of this legislative bill to: (1) Identify trends from the review of past records to prevent future deaths from similar causes when applicable; (2) recommend systematic changes for the creation of a cohesive method for responding to certain child deaths; and (3) when appropriate, cause referral to be made to those agencies as required in section 28-711 or as otherwise required by state law.

Sec. 2. For purposes of this act:

(1) Child shall mean a person from birth to eighteen years of age;

(2) Investigation shall mean a review of existing records and other information regarding the child from relevant agencies, professionals, and providers of medical, dental, prenatal, and mental health care. The records to be reviewed may include, but not be limited to, medical records, coroner's reports, autopsy reports, social services records, emergency and paramedic records, and law enforcement reports;

(3) Preventable child death shall mean the death of any child which reasonable medical, social, legal, psychological, or educational intervention may have prevented. Preventable child death shall include, but not be limited to, the death of a child from (a) intentional and unintentional injuries, (b) medical misadventures, including untoward results, malpractice, and foreseeable complications, (c) lack of access to medical care, (d) neglect and reckless conduct, including failure to supervise and failure to seek medical care for various reasons, and (e) preventable premature birth;

(4) Reasonable shall mean taking into consideration the

condition, circumstances, and resources available; and

(5) Team shall mean the State Child Death Review Team.

Sec. 3. The Director of Health shall appoint a minimum of eight and a maximum of twelve members to the State Child Death Review Team. The core members shall be (1) the director of maternal and child health of the Department of Health, (2) a senior staff member of the child protective services division of the Department of Social Services, (3) a forensic pathologist, (4) a law enforcement representative, and (5) an attorney. The core members shall meet on a monthly basis. The remaining members appointed may be, but shall not be limited to, the following: A county attorney; a Federal Bureau of Investigation agent responsible for investigations on Native American reservations; a social worker; and members of organizations which represent hospitals or physicians. Members shall serve four-year terms with the exception of the director of maternal and child health who shall be a permanent member. The director of maternal and child health shall serve as the chairperson of the team, and in his or her absence, the Director of Health may appoint another member of the core team to serve as chairperson. The team shall not be considered a public body for purposes of sections 84-1408 to 84-1414. The team shall meet a minimum of four times a year. Members of the team shall be reimbursed for their actual and necessary expenses as provided in sections 81-1174 to 81-1177.

Sec. 4. (1) The purposes of the team shall be to (a) develop an understanding of the causes and incidence of child deaths in this state, (b) develop recommendations for changes within relevant agencies and organizations which may serve to prevent child deaths, and (c) advise the Governor, the Legislature, and the public on changes to law, policy, and practice which will prevent child deaths.

(2) The team shall:

(a) Undertake annual statistical studies of the causes and incidence of child deaths in this state. The studies shall include, but not be limited to, an analysis of the records of community, public, and private agency involvement with the children and their families prior to and subsequent to the deaths;

(b) Develop a protocol for retrospective investigation of child deaths by the team;

(c) Develop a protocol for collection of data regarding child deaths by the team;

(d) Consider training needs, including cross-agency training, and service gaps;

(e) Include in its annual report recommended changes to any law, rule, regulation, or policy needed to decrease the incidence of preventable child deaths;

(f) Educate the public regarding the incidence and causes of child deaths, the public role in preventing child deaths, and specific steps the public can undertake to prevent child deaths. The team may enlist the support of civic, philanthropic, and public service organizations in the performance of its educational duties;

(g) Provide the Governor, the Legislature, and the public with annual written reports which shall include the team's findings and recommendations for each of its duties; and

(h) When appropriate, make referrals to those agencies as required in section 28-711 or as otherwise required by state law.

Sec. 5. The chairperson of the team shall:

(1) Have the necessary information from investigative reports, medical records, coroner's reports, autopsy reports, and other relevant items made available to the team;

(2) Ensure timely notification of the team members of an upcoming meeting;

(3) Chair meetings of the team;

(4) Ensure that all team reporting and data-collection requirements are met;

(5) Ensure identification of strategies to prevent child deaths;

(6) Oversee adherence to the review process established by this act; and

(7) Perform such other duties as the team deems appropriate.

Sec. 6. (1) The team shall review all child deaths occurring on or after January 1, 1993. The review process shall be conducted in three phases.

(2) Phase one shall be conducted by the core members. The core members shall review the death certificate, birth certificate, coroner's report or autopsy report if done, and indicators of child or family involvement with the Department of Social Services. The core members shall classify the nature of the death, whether accidental, homicide, suicide, undetermined, or natural causes, determine the completeness of the death certificate, and identify discrepancies and inconsistencies. The core members may select cases from phase one for review in phase two.

(3) Phase two shall be completed by the core members and shall not be conducted on any child death under active investigation by a law enforcement agency or under criminal prosecution. The core members may seek additional records described in section 7 of this act. The core members shall identify the preventability of death, the possibility of child abuse or neglect, the medical care issues of access and adequacy, and the nature and extent of interagency communication. The core members may select cases from phase two for review by the team in phase three.

(4) Phase three shall be a review by the team of those cases selected by the core members for further discussion, review, and analysis.

Sec. 7. Upon request the team shall be immediately provided:

(1) Information and records maintained by a provider of medical, dental, prenatal, and mental health care, including medical reports, autopsy reports, and emergency and paramedic records; and

(2) All information and records maintained by any state, county, or local government agency, including, but not limited to, birth and death certificates, law enforcement investigative data and reports, coroner investigative data and reports, parole and probation information and records, and information and records of any social services agency that provided services to the child or the child's family.

The Director of Health shall have the authority to issue subpoenas to compel production of any of the records and information specified in subdivisions (1) and (2) of this section, except records and information on any child death under active investigation by a law enforcement agency or which is at the time the subject of a criminal prosecution, and shall provide such records and information to the team.

Sec. 8. (1) All information and records acquired by the team in the exercise of its purposes and duties pursuant to this act shall be confidential and exempt from disclosure and may only be disclosed as necessary to carry out the team's purposes and duties. Statistical compilations of data made by the team which do not contain any information that would permit the identification of any person to be ascertained shall be public records.

(2) Except as necessary to carry out a team's purposes and duties, members of a team and persons attending a team meeting may not disclose what transpired at a meeting and shall not disclose any information the disclosure of which is prohibited by this section.

(3) Members of a team and persons attending a team meeting shall not testify in any civil, administrative, licensure, or criminal proceeding, including depositions, regarding information reviewed in or opinions formed as a result of a team meeting. This subsection shall not be construed to prevent a person from testifying to information obtained independently of the team or which is public information.

(4) Information, documents, and records of the team shall not be subject to subpoena, discovery, or introduction into evidence in any civil or criminal proceeding, except that information, documents, and records otherwise available from other sources shall not be immune from subpoena, discovery, or introduction into evidence through those sources solely because they were presented during proceedings of the team or are maintained by the team.