

LEGISLATURE OF NEBRASKA
 ONE HUNDRED THIRD LEGISLATURE
 FIRST SESSION
LEGISLATIVE BILL 361

Final Reading

Introduced by Howard, 9; Conrad, 46.

Read first time January 18, 2013

Committee: Health and Human Services

A BILL

1 FOR AN ACT relating to public health and welfare; to amend sections
 2 71-3404, 71-3405, 71-3406, 71-3408, 71-3409, 71-3410, and
 3 71-3411, Reissue Revised Statutes of Nebraska, and
 4 section 71-3407, Revised Statutes Cumulative Supplement,
 5 2012; to name the Child and Maternal Death Review Act; to
 6 state intent; to define terms; to provide for review of
 7 maternal deaths; to change review procedures for child
 8 deaths; to rename and change membership of the review
 9 team; to change and provide powers and duties; to provide
 10 for a team coordinator; to change provisions relating to
 11 information and records; to harmonize provisions; and to
 12 repeal the original sections.

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

1 Section 1. Section 71-3404, Reissue Revised Statutes of
2 Nebraska, is amended to read:

3 71-3404 (1) Sections 71-3404 to 71-3411 shall be known
4 and may be cited as the Child and Maternal Death Review Act.

5 (2) The Legislature finds and declares that it is in the
6 best interests of the state, its ~~citizens,~~ residents, and especially
7 the children of this state that the number and causes of death of
8 children in this state be examined. There is a need for a
9 comprehensive integrated review of all child deaths in Nebraska and a
10 system for statewide retrospective review of existing records
11 relating to each child death.

12 (3) The Legislature further finds and declares that it is
13 in the best interests of the state and its residents that the number
14 and causes of maternal death in this state be examined. There is a
15 need for a comprehensive integrated review of all maternal deaths in
16 Nebraska and a system for statewide retrospective review of existing
17 records relating to each maternal death.

18 (4) It is the intent of the Legislature, by ~~enactment of~~
19 ~~Laws 1993, LB 431,~~ creation of the Child and Maternal Death Review
20 Act, to: (1)

21 (a) Identify trends from the review of past records to
22 prevent future child and maternal deaths from similar causes when
23 applicable; ~~(2) recommend~~

24 (b) Recommend systematic changes for the creation of a
25 cohesive method for responding to certain child and maternal deaths;

1 and ~~(3) when~~

2 (c) When appropriate, cause referral to be made to those
3 agencies as required in section 28-711 or as otherwise required by
4 state law.

5 Sec. 2. Section 71-3405, Reissue Revised Statutes of
6 Nebraska, is amended to read:

7 71-3405 For purposes of ~~sections 71-3404 to 71-3411:~~ the
8 Child and Maternal Death Review Act:

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

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

19 (3) Investigation of maternal death means a review of
20 existing records and other information regarding the woman from
21 relevant agencies, professionals, and providers of medical, dental,
22 prenatal, and mental health care. The records to be reviewed may
23 include, but not be limited to, medical records, coroner's reports,
24 autopsy reports, social services records, educational records,
25 emergency and paramedic records, and law enforcement reports;

1 (4) Maternal death means the death of a woman during
2 pregnancy or the death of a postpartum woman;

3 (5) Postpartum woman means a woman during the period of
4 time beginning when the woman ceases to be pregnant and ending one
5 year after the woman ceases to be pregnant;

6 ~~(3)–(6) Preventable child or maternal death shall mean~~
7 means the death of any child or pregnant or postpartum woman which
8 reasonable medical, social, legal, psychological, or educational
9 intervention may have prevented. Preventable child or maternal death
10 ~~shall include, but not be~~includes, but is not limited to, the death
11 of a child or pregnant or postpartum woman from (a) intentional and
12 unintentional injuries, (b) medical misadventures, including untoward
13 results, malpractice, and foreseeable complications, (c) lack of
14 access to medical care, (d) neglect and reckless conduct, including
15 failure to supervise and failure to seek medical care for various
16 reasons, and (e) preventable premature birth;

17 ~~(4)–(7) Reasonable shall mean~~means taking into
18 consideration the condition, circumstances, and resources available;
19 and

20 ~~(5)–(8) Team shall mean~~means the State Child and
21 Maternal Death Review Team.

22 Sec. 3. Section 71-3406, Reissue Revised Statutes of
23 Nebraska, is amended to read:

24 71-3406 (1) The chief executive officer of the Department
25 of Health and Human Services shall appoint a minimum of ~~eight~~twelve

1 and a maximum of ~~twelve~~fifteen members to the State Child and
2 Maternal Death Review Team. The core members shall be (a) a physician
3 employed by the department, who shall be a permanent member and shall
4 serve as the chairperson of the team, (b) a senior staff member with
5 child protective services of the department, (c) a forensic
6 pathologist, (d) a law enforcement representative, and (e) an
7 attorney. The remaining members appointed may be, but shall not be
8 limited to, the following: A county attorney; a Federal Bureau of
9 Investigation agent responsible for investigations on Native American
10 reservations; a social worker; and members of organizations which
11 represent hospitals or physicians. The department shall be
12 responsible for the general administration of the activities of the
13 team and shall employ or contract with a team coordinator to provide
14 administrative support for the team.

15 (2) Members shall serve four-year terms with the
16 exception of the chairperson. In the absence of the chairperson, the
17 chief executive officer may appoint another member of the core team
18 to serve as chairperson.

19 (3) The team shall not be considered a public body for
20 purposes of the Open Meetings Act. The team shall meet a minimum of
21 four times a year. Members of the team shall be reimbursed for their
22 actual and necessary expenses as provided in sections 81-1174 to
23 81-1177.

24 Sec. 4. Section 71-3407, Revised Statutes Cumulative
25 Supplement, 2012, is amended to read:

1 71-3407 (1) The purposes of the team shall be to (a)
2 develop an understanding of the causes and incidence of child or
3 maternal deaths in this state, (b) develop recommendations for
4 changes within relevant agencies and organizations which may serve to
5 prevent child or maternal deaths, and (c) advise the Governor, the
6 Legislature, and the public on changes to law, policy, and practice
7 which will prevent child or maternal deaths.

8 (2) The team shall:

9 (a) Undertake annual statistical studies of the causes
10 and incidence of child or maternal deaths in this state. The studies
11 shall include, but not be limited to, an analysis of the records of
12 community, public, and private agency involvement with the children,
13 the pregnant or postpartum women, and their families prior to and
14 subsequent to the child or maternal deaths;

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

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

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

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

24 (f) Educate the public regarding the incidence and causes
25 of child or maternal deaths, the public role in preventing child or

1 maternal deaths, and specific steps the public can undertake to
2 prevent child or maternal deaths. The team may enlist the support of
3 civic, philanthropic, and public service organizations in the
4 performance of its educational duties;

5 (g) Provide the Governor, the Legislature, and the public
6 with annual reports which shall include the team's findings and
7 recommendations for each of its duties. For ~~2012, 2013,~~ and 2014, the
8 team shall also provide the report to the Health and Human Services
9 Committee of the Legislature on or before September 15. The reports
10 submitted to the Legislature shall be submitted electronically; and

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

13 (3) The team may enter into consultation agreements with
14 relevant experts to evaluate the information and records collected by
15 the team. All of the confidentiality provisions of section 71-3411
16 shall apply to the activities of a consulting expert.

17 (4) The team may enter into agreements with a local
18 public health department as defined in section 71-1626 to act as the
19 agent of the team in conducting all information gathering and
20 investigation necessary for the purposes of the Child and Maternal
21 Death Review Act. All of the confidentiality provisions of section
22 71-3411 shall apply to the activities of the agent.

23 Sec. 5. Section 71-3408, Reissue Revised Statutes of
24 Nebraska, is amended to read:

25 71-3408 (1) The chairperson of the team shall:

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

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

6 ~~(3)-(a) Chair meetings of the team; and~~

7 ~~(4) Ensure that all team reporting and data collection~~
8 ~~requirements are met;~~

9 ~~(5)-(b) Ensure identification of strategies to prevent~~
10 ~~child or maternal deaths. †~~

11 ~~(6) Oversee adherence to the review process established~~
12 ~~by sections 71-3404 to 71-3411; and~~

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

15 (2) The team coordinator provided under subsection (1) of
16 section 71-3406 shall:

17 (a) Have the necessary information from investigative
18 reports, medical records, coroner's reports, autopsy reports,
19 educational records, and other relevant items made available to the
20 team;

21 (b) Ensure timely notification of the team members of an
22 upcoming meeting;

23 (c) Ensure that all team reporting and data-collection
24 requirements are met;

25 (d) Oversee adherence to the review process established

1 by the Child and Maternal Death Review Act; and

2 (e) Perform such other duties as the team deems
3 appropriate.

4 Sec. 6. Section 71-3409, Reissue Revised Statutes of
5 Nebraska, is amended to read:

6 71-3409 (1)(a) The team shall review all child deaths
7 occurring on or after January 1, 1993, and before January 1, 2014, -
8 ~~The review process shall be conducted in three phases as provided in~~
9 this subsection.

10 ~~(2)-(b)~~ Phase one shall be conducted by the core members.
11 The core members shall review the death certificate, birth
12 certificate, coroner's report or autopsy report if done, and
13 indicators of child or family involvement with the Department of
14 Health and Human Services. The core members shall classify the nature
15 of the death, whether accidental, homicide, suicide, undetermined, or
16 natural causes, determine the completeness of the death certificate,
17 and identify discrepancies and inconsistencies. The core members may
18 select cases from phase one for review in phase two.

19 ~~(3)-(c)~~ Phase two shall be completed by the core members
20 and shall not be conducted on any child death under active
21 investigation by a law enforcement agency or under criminal
22 prosecution. The core members may seek additional records described
23 in section 71-3410. The core members shall identify the
24 preventability of death, the possibility of child abuse or neglect,
25 the medical care issues of access and adequacy, and the nature and

1 extent of interagency communication. The core members may select
2 cases from phase two for review by the team in phase three.

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

6 (2)(a) The team shall review all child deaths occurring
7 on or after January 1, 2014, in the manner provided in this
8 subsection.

9 (b) The members shall review the death certificate, birth
10 certificate, coroner's report or autopsy report if done, and
11 indicators of child or family involvement with the department. The
12 members shall classify the nature of the death, whether accidental,
13 homicide, suicide, undetermined, or natural causes, determine the
14 completeness of the death certificate, and identify discrepancies and
15 inconsistencies.

16 (c) A review shall not be conducted on any child death
17 under active investigation by a law enforcement agency or under
18 criminal prosecution. The members may seek records described in
19 section 71-3410. The members shall identify the preventability of
20 death, the possibility of child abuse or neglect, the medical care
21 issues of access and adequacy, and the nature and extent of
22 interagency communication.

23 (3)(a) The team shall review all maternal deaths
24 occurring on or after January 1, 2014, in the manner provided in this
25 subsection.

1 (b) The members shall review the death certificate,
2 coroner's report or autopsy report if done, and indicators of the
3 woman's involvement with the department. The members shall classify
4 the nature of the death, whether accidental, homicide, suicide,
5 undetermined, or natural causes, determine the completeness of the
6 death certificate, and identify discrepancies and inconsistencies.

7 (c) A review shall not be conducted on any maternal death
8 under active investigation by a law enforcement agency or under
9 criminal prosecution. The members may seek records described in
10 section 71-3410. The members shall identify the preventability of
11 death, the possibility of domestic abuse, the medical care issues of
12 access and adequacy, and the nature and extent of interagency
13 communication.

14 Sec. 7. Section 71-3410, Reissue Revised Statutes of
15 Nebraska, is amended to read:

16 71-3410 (1) Upon request, the team shall be immediately
17 provided:

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

22 ~~(2)-(b)~~ All information and records maintained by any
23 agency of state, county, or local government, any other political
24 subdivision, any school district, or any public or private
25 educational institution, agency, including, but not limited to, birth

1 and death certificates, law enforcement investigative data and
2 reports, coroner investigative data and reports, educational records,
3 parole and probation information and records, and information and
4 records of any social services agency that provided services to the
5 child, the pregnant or postpartum woman, or the ~~child's family~~ of the
6 child or woman.

7 (2) The Department of Health and Human Services shall
8 have the authority to issue subpoenas to compel production of any of
9 the records and information specified in subdivisions ~~(1) and (2)~~ (1)
10 (a) and (b) of this section, except records and information on any
11 child or maternal death under active investigation by a law
12 enforcement agency or which is at the time the subject of a criminal
13 prosecution, and shall provide such records and information to the
14 team.

15 Sec. 8. Section 71-3411, Reissue Revised Statutes of
16 Nebraska, is amended to read:

17 71-3411 (1)(a) All information and records acquired by
18 the team in the exercise of its purposes and duties pursuant to
19 ~~sections 71-3404 to 71-3411 the Child and Maternal Death Review Act~~
20 shall be confidential and exempt from disclosure and may only be
21 disclosed as ~~necessary to carry out the team's purposes and duties.~~
22 provided in this section and as provided in section 71-3407.
23 Statistical compilations of data made by the team which do not
24 contain any information that would permit the identification of any
25 person to be ascertained shall be public records.

1 (b) De-identified information and records obtained by the
2 team may be released to a researcher, upon proof of identity and
3 qualifications of the researcher, if the researcher is employed by a
4 research organization, university, institution, or government agency
5 and is conducting scientific, medical, or public health research and
6 if there is no publication or disclosure of any name or facts that
7 could lead to the identity of any person included in the information
8 or records. Such release shall provide for a written agreement with
9 the Department of Health and Human Services providing protection of
10 the security of the content of the information, including access
11 limitations, storage of the information, destruction of the
12 information, and use of the information. The release of such
13 information pursuant to this subdivision shall not make otherwise
14 confidential information a public record.

15 (c) De-identified information and records obtained by the
16 team may be released to the United States Public Health Service or
17 its successor, a government health agency, or a local public health
18 department as defined in section 71-1626 if there is no publication
19 or disclosure of any name or facts that could lead to the identity of
20 any person included in the information or records. Such release shall
21 provide for protection of the security of the content of the
22 information, including access limitations, storage of the
23 information, destruction of the information, and use of the
24 information. The release of such information pursuant to this
25 subdivision shall not make otherwise confidential information a

1 public record.

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

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

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

21 Sec. 9. Original sections 71-3404, 71-3405, 71-3406,
22 71-3408, 71-3409, 71-3410, and 71-3411, Reissue Revised Statutes of
23 Nebraska, and section 71-3407, Revised Statutes Cumulative
24 Supplement, 2012, are repealed.