

LEGISLATURE OF NEBRASKA

ONE HUNDRED SECOND LEGISLATURE

SECOND SESSION

LEGISLATIVE BILL 1103

Introduced by Wightman, 36.

Read first time January 19, 2012

Committee:

A BILL

1 FOR AN ACT relating to medical records; to amend sections 71-8402,
2 71-8406, 71-8407, and 83-178, Reissue Revised Statutes of
3 Nebraska, and section 71-8403, Revised Statutes
4 Cumulative Supplement, 2010; to provide for access to a
5 deceased family member's medical records as prescribed;
6 to harmonize provisions; and to repeal the original
7 sections.

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

1 Section 1. Section 71-8402, Reissue Revised Statutes of
2 Nebraska, is amended to read:

3 71-8402 For purposes of sections 71-8401 to 71-8407 and
4 section 2 of this act:

5 (1) Medical records means a provider's record of a
6 patient's health history and treatment rendered;

7 (2) Mental health medical records means medical records
8 or parts thereof created by or under the direction or supervision of
9 a licensed psychiatrist, a licensed psychologist, or a mental health
10 practitioner licensed or certified pursuant to the Mental Health
11 Practice Act;

12 (3) Patient includes a patient, ~~or~~ former patient, or
13 deceased patient;

14 (4) Patient request or request of a patient includes the
15 request of a patient's guardian or other authorized representative or
16 a family member of a deceased patient if authorized under section 2
17 of this act; and

18 (5) Provider means a physician, psychologist,
19 chiropractor, dentist, hospital, clinic, and any other licensed or
20 certified health care practitioner or entity.

21 Sec. 2. Access to a deceased patient's medical records
22 under section 71-8403 may be requested by any person who is not
23 disqualified having priority in the following order:

24 (1) The personal representative of the deceased's estate;

25 (2) An agent appointed by the deceased under a power of

1 attorney for health care who is authorized to act for the deceased
2 after death, and the deceased did not specifically object in writing
3 to disclosure of his or her medical records;

4 (3) The surviving spouse;

5 (4) An adult son or adult daughter of the deceased;

6 (5) A parent of the deceased; or

7 (6) An adult brother or adult sister of the deceased.

8 Sec. 3. Section 71-8403, Revised Statutes Cumulative
9 Supplement, 2010, is amended to read:

10 71-8403 (1) A patient may request a copy of the patient's
11 medical records or may request to examine such records. Access to
12 such records shall be provided upon request pursuant to sections
13 71-8401 to 71-8407 and section 2 of this act, except that mental
14 health medical records may be withheld if any treating physician,
15 psychologist, or mental health practitioner determines in his or her
16 professional opinion that release of the records would not be in the
17 best interest of the patient unless the release is required by court
18 order. The request and any authorization shall be in writing. If an
19 authorization does not contain an expiration date or specify an event
20 the occurrence of which causes the authorization to expire, the
21 authorization shall expire twelve months after the date the
22 authorization was executed by the patient.

23 (2) Upon receiving a written request for a copy of the
24 patient's medical records under subsection (1) of this section, the
25 provider shall furnish the person making the request a copy of such

1 records not later than thirty days after the written request is
2 received.

3 (3) Upon receiving a written request to examine the
4 patient's medical records under subsection (1) of this section, the
5 provider shall, as promptly as required under the circumstances but
6 no later than ten days after receiving the request: (a) Make the
7 medical records available for examination during regular business
8 hours; (b) inform the patient if the records do not exist or cannot
9 be found; (c) if the provider does not maintain the records, inform
10 the patient of the name and address of the provider who maintains
11 such records, if known; or (d) if unusual circumstances have delayed
12 handling the request, inform the patient in writing of the reasons
13 for the delay and the earliest date, not later than twenty-one days
14 after receiving the request, when the records will be available for
15 examination. The provider shall furnish a copy of medical records to
16 the patient as provided in subsection (2) of this section if
17 requested.

18 (4) This section does not require the retention of
19 records or impose liability for the destruction of records in the
20 ordinary course of business prior to receipt of a request made under
21 subsection (1) of this section. A provider shall not be required to
22 disclose confidential information in any medical record concerning
23 another patient or family member who has not consented to the release
24 of the record.

25 Sec. 4. Section 71-8406, Reissue Revised Statutes of

1 Nebraska, is amended to read:

2 71-8406 A provider who transfers or submits information
3 in good faith to a patient's medical record shall not be liable in
4 damages to the patient or any other person for the disclosure of such
5 medical records as provided in sections 71-8401 to 71-8407 and
6 section 2 of this act.

7 Sec. 5. Section 71-8407, Reissue Revised Statutes of
8 Nebraska, is amended to read:

9 71-8407 Sections 71-8401 to 71-8407 and section 2 of this
10 act do not apply to the release of medical records under the Nebraska
11 Workers' Compensation Act.

12 Sec. 6. Section 83-178, Reissue Revised Statutes of
13 Nebraska, is amended to read:

14 83-178 (1) The director shall establish and maintain, in
15 accordance with the regulations of the department, an individual file
16 for each person committed to the department. Each individual file
17 shall include, when available and appropriate, the following
18 information on such person:

- 19 (a) His or her admission summary;
- 20 (b) His or her presentence investigation report;
- 21 (c) His or her classification report and recommendation;
- 22 (d) Official records of his or her conviction and
23 commitment as well as any earlier criminal records;
- 24 (e) Progress reports and admission-orientation reports;
- 25 (f) Reports of any disciplinary infractions and of their

1 disposition;

2 (g) His or her parole plan; and

3 (h) Other pertinent data concerning his or her
4 background, conduct, associations, and family relationships.

5 (2) Any decision concerning the classification,
6 reclassification, transfer to another facility, preparole
7 preparation, or parole release of a person committed to the
8 department shall be made only after his or her file has been
9 reviewed. The content of the file shall be confidential and shall not
10 be subject to public inspection except by court order for good cause
11 shown and shall not be accessible to any person committed to the
12 department. An inmate may obtain access to his or her medical records
13 by request to the provider pursuant to sections 71-8401 to 71-8407
14 and section 2 of this act notwithstanding the fact that such medical
15 records may be a part of his or her individual department file. The
16 department retains the authority to withhold mental health and
17 psychological records of the inmate when appropriate.

18 (3) The program of each person committed to the
19 department shall be reviewed at regular intervals and recommendations
20 shall be made to the chief executive officer concerning changes in
21 such person's program of treatment, training, employment, care, and
22 custody as are considered necessary or desirable.

23 (4) The chief executive officer of the facility shall
24 have final authority to determine matters of treatment classification
25 within his or her facility and to recommend to the director the

1 transfer of any person committed to the department who is in his or
2 her custody.

3 (5) The director may at any time order a person committed
4 to the department to undergo further examination and study for
5 additional recommendations concerning his or her classification,
6 custodial control, and rehabilitative treatment.

7 (6) Nothing in this section shall be construed to limit
8 in any manner the authority of the Public Counsel to inspect and
9 examine the records and documents of the department pursuant to
10 sections 81-8,240 to 81-8,254, except that the Public Counsel's
11 access to an inmate's medical or mental health records shall be
12 subject to the inmate's consent. The office of Public Counsel shall
13 not disclose an inmate's medical or mental health records to anyone
14 else, including any person committed to the department, except as
15 authorized by law.

16 Sec. 7. Original sections 71-8402, 71-8406, 71-8407, and
17 83-178, Reissue Revised Statutes of Nebraska, and section 71-8403,
18 Revised Statutes Cumulative Supplement, 2010, are repealed.