

LEGISLATURE OF NEBRASKA
ONE HUNDRED EIGHTH LEGISLATURE
FIRST SESSION

LEGISLATIVE BILL 570

Introduced by Vargas, 7; Hunt, 8.

Read first time January 17, 2023

Committee:

- 1 A BILL FOR AN ACT relating to public health; to adopt the Overdose
- 2 Fatality Review Teams Act; to provide severability; and to declare
- 3 an emergency.
- 4 Be it enacted by the people of the State of Nebraska,

1 Section 1. Sections 1 to 17 of this act shall be known and may be
2 cited as the Overdose Fatality Review Teams Act.

3 Sec. 2. (1) The Legislature finds that:

4 (a) Substance use disorders and drug overdoses are major health
5 problems that affect the lives of many people and multiple services
6 systems and lead to profound consequences, including permanent injury and
7 death;

8 (b) Overdoses caused by heroin, fentanyl, other opioids, stimulants,
9 controlled substance analogs, novel psychoactive substances, and other
10 legal and illegal drugs are a public health crisis that stress and strain
11 financial, public health, health care, and public safety resources in
12 Nebraska;

13 (c) Overdose fatality reviews, which are designed to uncover the
14 who, what, when, where, why, and how of fatal overdoses, allow local
15 authorities to examine and understand the circumstances leading to a
16 fatal drug overdose; and

17 (d) Through a comprehensive and multidisciplinary review, overdose
18 fatality review teams can better understand the individual and population
19 factors and characteristics of potential overdose victims. This provides
20 local authorities with a greater sense of the strategies and multiagency
21 coordination needed to prevent future overdoses and results in the more
22 productive allocation of overdose prevention resources and services
23 within Nebraska communities.

24 Sec. 3. The purposes of the Overdose Fatality Review Teams Act are
25 to:

26 (1) Create a legislative framework for establishing county-level,
27 multidisciplinary overdose fatality review teams in Nebraska;

28 (2) Provide overdose fatality review teams with duties and
29 responsibilities to examine and understand the circumstances leading up
30 to overdoses so that the teams can make recommendations on policy changes
31 and resource allocation to prevent future overdoses; and

1 (3) Allow overdose fatality review teams to obtain and review
2 records and other documentation related to overdoses from relevant
3 agencies, entities, and individuals while remaining compliant with local,
4 state, and federal confidentiality laws and regulations.

5 Sec. 4. For purposes of the Overdose Fatality Review Teams Act:

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

7 (2) Drug means a substance which produces a physiological effect
8 when ingested or otherwise introduced into the body, and includes both
9 controlled substances and lawful substances;

10 (3) Health care provider means any of the following individuals who
11 are licensed, certified, or registered to perform specified health
12 services consistent with state law: A physician, a physician assistant,
13 or an advanced practice registered nurse;

14 (4) Local team means the multidisciplinary and multiagency drug
15 overdose fatality review team established for a county, a group of
16 counties, a tribe, or one or more counties and tribes;

17 (5) Mental health provider means:

18 (a) A psychiatrist licensed to practice under the Medicine and
19 Surgery Practice Act;

20 (b) A psychologist licensed to engage in the practice of psychology
21 in this state as provided in section 38-3111 or as provided in similar
22 provisions of the Psychology Interjurisdictional Compact;

23 (c) A person licensed as an independent mental health practitioner
24 under the Mental Health Practice Act; or

25 (d) A professional counselor who holds a privilege to practice in
26 Nebraska as a professional counselor under the Licensed Professional
27 Counselors Interstate Compact;

28 (6) Next of kin means the person or persons most closely related to
29 a decedent by blood or affinity;

30 (7) Overdose fatality review means a process in which a local team
31 performs a series of individual overdose fatality reviews to effectively

1 identify system gaps and innovative, community-specific overdose
2 prevention and intervention strategies;

3 (8) Overdose means injury to the body that happens when one or more
4 drugs are taken in excessive amounts. An overdose can be fatal or
5 nonfatal;

6 (9) Substance use disorder means a pattern of use of alcohol or
7 other drugs leading to clinical or functional impairment, in accordance
8 with the definition in the Diagnostic and Statistical Manual of Disorders
9 (DSM-5) of the American Psychiatric Association, or a subsequent edition
10 of such manual; and

11 (10) Substance use disorder treatment provider means any individual
12 or entity who is licensed, registered, or certified within Nebraska to
13 treat substance use disorders or who has a federal Drug Addiction
14 Treatment Act of 2000 waiver from the Substance Abuse and Mental Health
15 Services Administration to treat individuals with substance use disorder
16 using medications approved for that indication by the United States Food
17 and Drug Administration.

18 Sec. 5. (1) A local team shall consist of the core members that may
19 include one or more members from the following backgrounds:

20 (a) City or county public health official or such officials'
21 designees;

22 (b) Behavioral health providers or officials;

23 (c) Law enforcement personnel;

24 (d) Representatives of jails or detention centers;

25 (e) The coroner or the coroner's designee;

26 (f) Health care providers who specialize in the prevention,
27 diagnosis, and treatment of substance use disorders;

28 (g) Mental health providers who specialize in substance use
29 disorders;

30 (h) Representatives of emergency medical services providers in the
31 county;

1 (i) The Director of Children and Family Services of the Division of
2 Children and Family Services of the Department of Health and Human
3 Services or the director's designee; and

4 (j) Representatives from the Board of Parole, the Office of
5 Probation Administration, the Division of Parole Supervision, or the
6 Community Corrections Division of the Nebraska Commission on Law
7 Enforcement and Criminal Justice.

8 (2) A local team may also include, either as permanent or temporary
9 members:

10 (a) A local school superintendent or the superintendent's designee;

11 (b) A representative of a local hospital;

12 (c) A health care provider who specializes in emergency medicine;

13 (d) A health care provider who specializes in pain management;

14 (e) A pharmacist with a background in prescription drug misuse and
15 diversion;

16 (f) A substance use disorder treatment provider from a licensed
17 substance use disorder treatment program;

18 (g) A poison control center representative;

19 (h) A mental health provider who is a generalist;

20 (i) A prescription drug monitoring program administrator or such
21 administrator's designee;

22 (j) A representative from a harm reduction provider;

23 (k) A recovery coach, peer support worker, or other representative
24 of the recovery community;

25 (l) A representative from the local drug court; and

26 (m) Any other individual necessary for the work of the local team,
27 recommended by the local team and appointed by the chairperson.

28 (3) The members of the team shall select from among themselves a
29 chairperson, who shall be a city or county public health official or such
30 official's designee. The chairperson of the local team shall:

31 (a) Solicit and recruit members and fill vacancies that may arise on

1 the team. In carrying out this responsibility, the chairperson shall, at
2 a minimum, attempt to appoint at least one member from each of the
3 backgrounds or positions described in subsection (1) of this section;

4 (b) Facilitate local team meetings and implement the protocols and
5 procedures of the local team;

6 (c) Request and collect the information needed for the local team's
7 case review;

8 (d) Gather, store, and distribute the necessary records and
9 information for reviews conducted by the team;

10 (e) Ensure timely notification of the team members of upcoming
11 meetings;

12 (f) Ensure the team fulfills the requirements of section 6 of this
13 act to publish an annual report, including recommendations to prevent
14 future drug overdose deaths;

15 (g) Ensure that all members of the local team and all guest
16 observers or participants sign confidentiality forms as required under
17 section 13 of this act;

18 (h) Oversee compliance with the Overdose Fatality Review Teams Act
19 and the protocols developed by the team;

20 (i) Serve as a liaison for the local team; and

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

22 (4) Members of the local team shall not receive compensation for
23 their services.

24 Sec. 6. (1) A local team shall:

25 (a) Promote cooperation and coordination among agencies involved in
26 the investigation of drug overdose fatalities;

27 (b) Examine the incidence, causes, and contributing factors of drug
28 overdose deaths in jurisdictions where the local team operates;

29 (c) Develop recommendations for changes within communities, public
30 and private agencies, institutions, and systems, based on an analysis of
31 the causes and contributing factors of drug overdose deaths;

1 (d) Advise local, regional, and state policymakers about potential
2 changes to law, policy, funding, or practices to prevent drug overdoses;

3 (e) Establish and implement protocols and procedures for overdose
4 investigations and to maintain confidentiality;

5 (f) Conduct a multidisciplinary review of information received
6 pursuant to section 9 of this act regarding a person who died of a drug
7 overdose. Such review shall include, but not be limited to:

8 (i) Consideration of the decedent's points of contact with health
9 care systems, social services, educational institutions, child and family
10 services, law enforcement and the criminal justice system, and any other
11 systems with which the decedent had contact prior to death; and

12 (ii) Identification of the specific factors and social determinants
13 of health that put the decedent at risk for an overdose;

14 (g) Recommend prevention and intervention strategies to improve
15 coordination of services and investigations among member agencies and
16 providers to reduce overdose deaths; and

17 (h) Collect, analyze, interpret, and maintain data on local overdose
18 deaths.

19 (2) A local team may investigate nonfatal overdose cases occurring
20 within the team's jurisdiction.

21 (3)(a) On or before June 1, 2024, and on or before each June 1
22 thereafter, each local team shall submit a report to the department. The
23 report shall include at least the following:

24 (i) The total number of fatal drug overdoses that occurred within
25 the jurisdiction of the local team;

26 (ii) The number of fatal drug overdoses investigated by the local
27 team;

28 (iii) The causes, manner, and contributing factors of drug overdose
29 deaths in the team's jurisdiction, including trends;

30 (iv) Recommendations regarding the prevention of fatal and nonfatal
31 drug overdoses for changes within communities, public and private

1 agencies, institutions, and systems, based on an analysis of such causes
2 and contributing factors. Such recommendations shall include recommended
3 changes to laws, rules and regulations, policies, training needs, or
4 service gaps to prevent future drug overdose deaths; and

5 (v) Follow-up analysis of the implementation of and results from any
6 recommendations made by the local team, including, but not limited to,
7 changes in local or state law, policy, or funding made as a result of the
8 local team's recommendations.

9 (b) The report shall include only de-identified information and
10 shall not identify any victim, living or dead, of a drug overdose.

11 (c) The report is not confidential and shall be made available to
12 the public.

13 (d) The department may analyze each annual report submitted pursuant
14 to this subsection and create a single report containing an aggregate of
15 the data submitted. The department shall make any such report publicly
16 available and submit it electronically to the Clerk of the Legislature.

17 Sec. 7. (1) Members of a local team and other individuals in
18 attendance at a local team meeting, including, but not limited to,
19 experts, health care professionals, or other observers:

20 (a) Shall sign a confidentiality agreement as provided in section 13
21 of this act;

22 (b) Are bound by all applicable state and federal laws concerning
23 the confidentiality of matters reviewed by the local team, but may
24 discuss confidential matters and share confidential information during
25 such meeting; and

26 (c) Except as otherwise permitted by law, shall not disclose
27 confidential information outside of the meeting.

28 (2) A member of a local team or an individual in attendance at a
29 local team meeting shall not be subject to civil or criminal liability or
30 any professional disciplinary action for the sharing or discussion of any
31 confidential matter with the local team during a local team meeting. This

1 immunity does not apply to a local team member or attendee who
2 intentionally or knowingly discloses confidential information in
3 violation of the Overdose Fatality Review Teams Act or any state or
4 federal law.

5 Sec. 8. (1) A local team shall not be considered a public body for
6 purposes of the Open Meetings Act.

7 (2) Except for reports published under section 6 of this act,
8 information and records acquired or created by a local team are not
9 public records subject to disclosure pursuant to sections 84-712 to
10 84-712.09.

11 Sec. 9. (1) Except as provided in subsection (4) of this section,
12 on written request of the local team, and as necessary to carry out the
13 purpose and duties of the local team, the local team shall be provided
14 with the following information:

15 (a) Information and records regarding the physical health, mental
16 health, and treatment for any substance use disorder maintained by a
17 health care provider, substance use disorder treatment provider,
18 hospital, or health system for an individual whose death or near death is
19 being reviewed by the local team; and

20 (b) Information and records maintained by a state or local
21 government agency or entity, including, but not limited to, death
22 investigative information, medical examiner investigative information,
23 law enforcement investigative information, emergency medical services
24 reports, fire department records, prosecutorial records, parole and
25 probation information and records, court records, school records, and
26 information and records of a social services agency, including the
27 department, if the agency or entity provided services to:

28 (i) An individual whose death or near death is being reviewed by the
29 local team; or

30 (ii) The family of a decedent being investigated.

31 (2) Except as provided in subsection (4) of this section, the

1 following persons shall comply with a records request by the local team
2 made pursuant to subsection (1) of this section:

3 (a) A coroner or medical examiner;

4 (b) A fire department;

5 (c) A health system;

6 (d) A hospital;

7 (e) A law enforcement agency;

8 (f) A local or state governmental agency, including, but not limited
9 to, the department, local public health authorities, the Attorney
10 General, county attorneys, public defenders, the Commission on Public
11 Advocacy, the Department of Correctional Services, the Office of
12 Probation Administration, and the Division of Parole Supervision;

13 (g) A mental health provider;

14 (h) A health care provider;

15 (i) A substance use disorder treatment provider;

16 (j) A school, including a public or private elementary, secondary,
17 or post-secondary institution;

18 (k) An emergency medical services provider;

19 (l) A social services provider;

20 (m) The prescription drug monitoring program created under section
21 71-2454; and

22 (n) Any other person who is in possession of records pertinent to
23 the local team's investigation of an overdose fatality.

24 (3) A person subject to a records request by a local team under
25 subsection (1) of this section may charge the local team a reasonable fee
26 for the service of duplicating any records requested by the local team,
27 not to exceed the actual cost of duplication.

28 (4) The disclosure or redisclosure of a medical record developed in
29 connection with the provision of substance abuse treatment services,
30 without the authorization of a person in interest, is subject to any
31 limitations that exist under 42 U.S.C. section 290dd-2 or 42 C.F.R. Part

1 2.

2 (5) Information requested by the local team shall be provided within
3 five business days after receipt of the written request, unless an
4 extension is granted by the chairperson. Written request includes a
5 request submitted via email or facsimile transmission.

6 (6)(a) A person required to provide information or records to a
7 local team under this section shall do so without a subpoena or other
8 form of legal compulsion.

9 (b) A county attorney or the Attorney General may, upon request by a
10 local team, to issue subpoenas to compel production of any of the records
11 and information specified in this section.

12 (c) Any willful failure to comply with such subpoena may be
13 certified by the county attorney or Attorney General to the district
14 court for enforcement or punishment for contempt of court.

15 Sec. 10. The chairperson of a local team or the chairperson's
16 designee may request the individual whose overdose is under review or, if
17 such individual is deceased, the individual's next of kin, to sign a
18 consent form for the release of confidential information.

19 Sec. 11. A member of the local team may contact, interview, or
20 obtain information by request from a family member or friend of an
21 individual whose death is being reviewed by the local team.

22 Sec. 12. (1) A local team may invite other individuals to
23 participate on the team on an ad hoc basis for a particular
24 investigation. Such individuals may include those with expertise that
25 would aid in the investigation and representatives from organizations or
26 agencies that had contact with, or provided services to, the overdose
27 victim. If an overdose occurred on tribal lands or involves a member of a
28 federally recognized Indian tribe, additional agencies and tribal
29 representatives may be invited to participate.

30 (2) So long as each individual present at a local team meeting has
31 signed the confidentiality form provided for in section 13 of this act,

1 any otherwise confidential information received by the local team may be
2 shared at a local team meeting with any non-member attendees.

3 (3) Local team meetings in which confidential information is
4 discussed shall be closed to the public.

5 (4) A local team shall enter into confidentiality agreements with
6 social service agencies, nonprofit organizations, and private agencies to
7 obtain otherwise confidential information and to ensure that all
8 confidentiality provisions of the Overdose Fatality Review Teams Act are
9 satisfied.

10 (5) A local team may enter into consultation agreements with
11 relevant experts to evaluate the information and records collected by the
12 team. All of the confidentiality provisions of the Overdose Fatality
13 Review Teams Act shall apply to the activities of a consulting expert.

14 (6) A local team may enter into written agreements with entities to
15 provide for the secure storage of electronic data based on information
16 and records collected in carrying out the team's duties, including data
17 that contains personal or incident identifiers. Such agreements shall
18 provide for the protection of the security and confidentiality of the
19 information, including access limitations, storage, and destruction of
20 the information. The confidentiality provisions of the Overdose Fatality
21 Review Teams Act shall apply to the activities of the data storage
22 entity.

23 Sec. 13. (1) Each local team member and any non-member in
24 attendance at a meeting shall sign a confidentiality form and review the
25 purposes and goals of the local team before they may participate in the
26 meeting or review. The form shall set out the requirements for
27 maintaining the confidentiality of any information disclosed during the
28 meeting and the penalties associated with failure to maintain such
29 confidentiality.

30 (2) Except as necessary to carry out the local team's purposes and
31 duties, members of the local team and individuals attending a team

1 meeting shall not disclose any discussion among team members at a meeting
2 and shall not disclose any information prohibited from disclosure by the
3 Overdose Fatality Review Teams Act.

4 (3) De-identified information and records obtained by a local team
5 may be released to a researcher, research organization, university,
6 institution, or governmental agency for the purpose of conducting
7 scientific, medical, or public health research upon proof of identity and
8 execution of a confidentiality agreement as provided in this section.
9 Such release shall provide for a written agreement with the Attorney
10 General providing protection of the security of the information,
11 including access limitations, and the storage, destruction, and use of
12 the information. The release of such information pursuant to this
13 subsection shall not make otherwise confidential information a public
14 record.

15 (4) Members of a local team and individuals attending a team meeting
16 shall not testify in any civil, administrative, licensure, or criminal
17 proceeding, including depositions, regarding information reviewed in or
18 an opinion formed as a result of a team meeting. This subsection shall
19 not be construed to prevent a person from testifying to information
20 obtained independently of the team or that is public information.

21 (5) Conclusions, findings, recommendations, information, documents,
22 and records of a local team shall not be subject to subpoena, discovery,
23 or introduction into evidence in any civil or criminal proceeding, except
24 that conclusions, findings, recommendations, information, documents, and
25 records otherwise available from other sources shall not be immune from
26 subpoena, discovery, or introduction into evidence through those sources
27 solely because they were presented during proceedings of a local team or
28 are maintained by a local team.

29 Sec. 14. Any person that in good faith provides information or
30 records to a local team shall not be subject to civil or criminal
31 liability or any professional disciplinary action as a result of

1 providing the information or record.

2 Sec. 15. A person aggrieved by the intentional or knowing
3 disclosure of confidential information in violation of the Overdose
4 Fatality Review Teams Act by a local team, its members, or a person in
5 attendance at a local team meeting may bring a civil action for
6 appropriate relief against the person who committed such violation.
7 Appropriate relief in an action under this section shall include:

8 (1) Damages;

9 (2) Such preliminary and other equitable or declaratory relief as
10 may be appropriate; and

11 (3) Reasonable attorney's fees and other litigation costs reasonably
12 incurred.

13 Sec. 16. A person who intentionally or knowingly violates the
14 confidentiality requirements of the Overdose Fatality Review Teams Act is
15 guilty of a Class II misdemeanor.

16 Sec. 17. The department may adopt and promulgate such rules and
17 regulations as are necessary to carry out the Overdose Fatality Review
18 Teams Act.

19 Sec. 18. If any section in this act or any part of any section is
20 declared invalid or unconstitutional, the declaration shall not affect
21 the validity or constitutionality of the remaining portions.

22 Sec. 19. Since an emergency exists, this act takes effect when
23 passed and approved according to law.