

NEBRASKA DEPARTMENT OF HEALTH AND HUMAN SERVICES
NOTICE OF PUBLIC HEARING

January 27, 2022
1:00 p.m. Central Time
Nebraska State Office Building – Lower Level A
301 Centennial Mall South, Lincoln, Nebraska
Phone call information: 888-820-1398; Participant code: 3213662#

The purpose of this hearing is to receive comments on proposed changes to Title 186, Chapter 2 of the Nebraska Administrative Code (NAC) – *Brain Injury Registry*. The proposed changes update the regulations' scope; update definitions; update requirements for availability of medical records, release of information, and data provided to the International Classification of Disease, Tenth Revision, Clinical Modification Coding System of the World Health Organization; remove all duplicate statutory, unnecessary, and inconsistent language from the regulations; and update formatting.

Authority for these regulations is found in Neb. Rev. Stat. § 81-3117(7).

In order to encourage participation in this public hearing, a phone conference line will be set up for any member of the public to call in and provide oral comments. Interested persons may provide verbal comments in person or by participating via phone conference line by calling 888-820-1398; Participant code: 3213662#.

Interested persons may attend the hearing and provide verbal or written comments, or mail, fax or email written comments, no later than the day of the hearing to: DHHS Legal Services, PO Box 95026, Lincoln, NE 68509-5026, (402) 742-2382 or dhhs.regulations@nebraska.gov, respectively.

A copy of the proposed changes is available online at <http://www.sos.ne.gov>, or by contacting DHHS at the mailing address or email above, or by phone at (402) 471-8417. The fiscal impact statement for these proposed changes may be obtained at the office of the Secretary of State, Regulations Division, 1201 N Street, Suite 120, Lincoln, NE 68508, or by calling (402) 471-2385.

Auxiliary aids or reasonable accommodations needed to participate in a hearing can be requested by calling (402) 471-8417. Individuals who are deaf or hard of hearing may call DHHS at (402) 471-9570 (voice and TDD) or the Nebraska Relay System at 711 or (800) 833-7352 TDD at least 2 weeks prior to the hearing.



TO: Executive Board
Room 2108 State Capitol
Legislative Council

FROM: Marge Respeliers, Paralegal I
Legal Services
Department of Health and Human Services (DHHS)

DATE: December 20, 2021

RE: Notice of Rulemaking under Neb. Rev. Stat. § 84-907.06

The Department of Health and Human Services (DHHS) will be holding a public hearing on amending the following regulations:

TITLE: 186 Health Registries and Release of Information
CHAPTER: 2 Brain Injury Registry

These regulations are scheduled for public hearing on January 27, 2022.

The purpose of this hearing is to receive comments on proposed changes to Title 186, Chapter 2 of the Nebraska Administrative Code (NAC) – *Brain Injury Registry*. The proposed changes update the regulations' scope; update definitions; update requirements for availability of medical records, release of information, and data provided to the International Classification of Disease, Tenth Revision, Clinical Modification Coding System of the World Health Organization; remove all duplicate statutory, unnecessary, and inconsistent language from the regulations; and update formatting.

The following items are enclosed for your referral to the chair of the relevant standing committee of the Legislature:

1. A copy of the notice of public hearing;
2. A copy of the proposed regulations;
3. A copy of the Policy Pre-Review Checklist; and
4. The estimated fiscal impact of this rulemaking action on state agencies, political subdivisions or persons being regulated.

FISCAL IMPACT STATEMENT

Agency: Department of Health and Human Services	
Title: Title 186	Prepared by: Andrew Ngochoch
Chapter: Chapter 2	Date prepared: 08/17/2021
Subject: Brain Injury Registry	Telephone: 402-471-1370

Type of Fiscal Impact:

	State Agency	Political Sub.	Regulated Public
No Fiscal Impact	(<input checked="" type="checkbox"/>)	(<input checked="" type="checkbox"/>)	(<input checked="" type="checkbox"/>)
Increased Costs	(<input type="checkbox"/>)	(<input type="checkbox"/>)	(<input type="checkbox"/>)
Decreased Costs	(<input type="checkbox"/>)	(<input type="checkbox"/>)	(<input type="checkbox"/>)
Increased Revenue	(<input type="checkbox"/>)	(<input type="checkbox"/>)	(<input type="checkbox"/>)
Decreased Revenue	(<input type="checkbox"/>)	(<input type="checkbox"/>)	(<input type="checkbox"/>)
Indeterminable	(<input type="checkbox"/>)	(<input type="checkbox"/>)	(<input type="checkbox"/>)

Provide an Estimated Cost & Description of Impact:

There is no cost. Impact will affect how health practitioners, hospitals and rehabilitation centers in Nebraska report Brain Injury Registry data to the department.

State Agency: This changes will not increase cost. Regulations were passed in 2012.

Political Subdivision: None.

Regulated Public: Regulations passed in 2012 and these changes will not increase Costs.

If indeterminable, explain why:

TITLE 186 HEALTH REGISTRIES AND RELEASE OF INFORMATION

CHAPTER 2 BRAIN INJURY REGISTRY

001. SCOPE AND AUTHORITY. These regulations are authorized by and implement the Brain Injury Registry Act, Nebraska Revised Statutes (Neb. Rev. Stat.) §§ 81-653 to 81-662 and §§81-663 to 81-675.

002. DEFINITIONS. Definitions set out in Neb. Rev. Stat. §§ 81-653 to 81-662, § 81-663 to 81-675 and the following apply to this chapter:

002.01 DISPOSITION UPON DISCHARGE. The destination of the patient following dismissal such as type of facility, service or home.

003. DATA REQUIREMENTS. The data that must be provided to the Department from medical records or made available through medical records for abstracting by the Department is set out in Neb. Rev. Stat. §§ 81-657 and must include the final diagnosis or classification of the injury according to the International Classification of Disease, Tenth Revision, Clinical Modification Coding System of the World Health Organization (ICD-10-CM), and available for viewing at the Nebraska Department of Health and Human Services, Division of Public Health, Office of Health Statistics, 301 Centennial Mall South, Lincoln, Nebraska 68509-5026.

003.01 REPORTING BY NEBRASKA HOSPITAL ASSOCIATION OR SUCCEEDING ASSOCIATION IN LIEU OF PHYSICIANS OR PSYCHOLOGIST. If the Nebraska Hospital Association or a succeeding entity provides a report containing the required information to the Department, a hospital, rehabilitation center located in a hospital, physician or psychologist is not required to make the report to the Department. Hospitals, rehabilitation centers located in a hospital, physicians and psychologists remain obligated to report when such reports are not made by Nebraska Hospital Association or do not contain all of the required information.

003.02 REPORTING BY HEALTHCARE FACILITIES IN LIEU OF PHYSICIANS OR PSYCHOLOGIST. If a hospital or rehabilitation center located in a hospital provides a report containing the required information to the Department, the physician or psychologist is not required to make the report to the department. Physicians and psychologists remain obligated to report when such reports are not made by a hospital or rehabilitation center located in a hospital or do not contain all of the required information.

004. AVAILABILITY OF MEDICAL RECORDS. Each hospital, rehabilitation center located in a hospital, physician, and psychologist required to report must make available medical records which document the diagnosis and treatment received by individuals with head and brain injury. Such medical records must be made available to the Department or its authorized representative.

005. CONFIDENTIALITY AND RELEASE OF INFORMATION. All data and information obtained from records of individuals with brain or head injury are classified as Class I, Class II, or Class IV. Data can only be released as provided by statute and Title 186 of the Nebraska Administrative Code (NAC). Any de-identified data asked for by and furnished to a researcher may not be intentionally re-identified in any manner. Should a recipient of de-identified information unintentionally or accidentally be able to identify any individual, the recipient must not use that information in any way. The recipient must notify the Department of the means of accidental re-identification in order for the Department to consider additional procedures to safeguard against breaches in confidentiality.

~~TITLE 186 — HEALTH REGISTRIES AND RELEASE OF INFORMATION~~

~~CHAPTER 2 — BRAIN INJURY REGISTRY~~

~~2-001 SCOPE AND AUTHORITY: The purpose of the brain injury registry is to provide a central data bank of accurate, precise and current information concerning persons with brain or head injury. The information from the data bank will assist in the statistical identification, the need for treatment, the rehabilitation of persons with brain or head injury, and the prevention of such injury. These regulations are authorized by and implement the Brain Injury Registry Act, Neb. Rev. Stat. §§ 81-653 to 81-662.~~

~~In classification of brain or head injuries, the Department is guided by the standards and definitions of the International Classification of Disease, Ninth Revision, Clinical Modifications (ICD-9-CM). This is the uniform system of classification used by the World Health Organization to identify brain or head injury that is consistent with medically and clinically accepted standards and definitions for use in reporting. Specific ICD-9-CM codes are identified in 186 NAC 2-003.01, item 6.~~

~~186 NAC 2 applies to each treating physician and psychologist licensed to practice in the State of Nebraska, all hospitals, and each rehabilitation center located within a hospital within the State of Nebraska. 186 NAC 2 sets forth procedures for the reporting of such cases and information to the Department by health practitioners, hospitals, and each rehabilitation center located within a hospital in the State of Nebraska. 186 NAC 2 also provides procedures and standards that govern access to registry data pursuant to Neb. Rev. Stat. §§ 81-663 to 81-675.~~

~~2-002 DEFINITIONS~~

~~Brain or head injury means clinically evident neurotrauma resulting directly or indirectly from closed or penetrating brain or head trauma, infection, febrile condition, anoxia, vascular lesions, toxin, or spinal cord injury, not related primarily to congenital or degenerative conditions, chemical dependency, or aging processes, which impairs mental, cognitive, behavioral, or physical functioning.~~

~~Department means the Department of Health and Human Services.~~

~~Disposition upon discharge means, for the purpose of this Registry, the destination of the patient following dismissal (i.e. home, skilled care, rehabilitation care, nursing home, transfer to another acute care hospital, against medical advice, expired, etc.).~~

~~2-003 DATA REQUIREMENTS: Data to be abstracted from medical records or made available through medical records for abstracting as specified by reporting requirements as set forth in 186 NAC 2-004 through 2-007.~~

~~2-003.01 Physician, Psychologist, Hospital, and Rehabilitation Center Reporting: A report must contain the following information about the person who has sustained the brain or head injury, if known:~~

- ~~1. Name;~~
- ~~2. Date of birth;~~
- ~~3. Gender;~~
- ~~4. Residence;~~
- ~~5. Date of the injury;~~
- ~~6. Final diagnosis or classification of the injury in the following categories, according to the International Classification of Disease, Ninth Revision, Clinical Modification Coding System of the World Health Organization (ICD-9-CM), incorporated herein by reference and available for viewing at the Nebraska Department of Health and Human Services, Division of Public Health, Office of Health Statistics, 301 Centennial Mall South, Lincoln, Nebraska 68509-5026:~~
 - ~~800.0-801.99: Fracture of the vault or base of the skull~~
 - ~~803.0-804.9: Other and unqualified and multiple fractures of the skull~~
 - ~~805.0-805.9: Fracture of vertebral column without mention of spinal cord lesion~~
 - ~~806.0-806.9: Fracture of vertebral column with spinal cord lesion~~
 - ~~850.0-854.19: Intracranial injury, including concussion, contusion, laceration and hemorrhage~~
 - ~~907.0: Late effect of intracranial injury~~
 - ~~907.2: Late effect of spinal cord injury~~
 - ~~950.1-950.3: Injury to optic chiasm, optic pathways, and visual cortex~~
 - ~~952.00-952.9: Spinal cord lesion without evidence of spinal bone injury~~
 - ~~953.0-953.9: Injury to nerve roots and spinal plexus~~
 - ~~959.01: Unspecified head injury~~
 - ~~995.55: Shaken infant syndrome~~
- ~~7. Cause of the injury, and, if practicable, whether the injury resulted from an accident involving the use of alcohol;~~
- ~~8. Place or site of occurrence of the injury;~~
- ~~9. Identification of the reporting source;~~
- ~~10. Disposition upon discharge;~~
- ~~11. Payor source; and~~
- ~~12. Any additional information the Department deems necessary and appropriate to carry out the purposes of the Brain Injury Registry Act.~~

~~2-004 HOSPITAL REPORTING REQUIREMENTS: If a person with brain or head injury is admitted to or treated at a hospital or a rehabilitation center located within a hospital in this state, the hospital~~

or rehabilitation center must provide a report of the injury to the Department within 30 days after the discharge of the person from the hospital or rehabilitation center.

~~2-005 PHYSICIAN OR PSYCHOLOGIST REPORTING REQUIREMENTS: If a person with a brain or head injury is treated in this state in the office of a physician or psychologist licensed to practice in the State of Nebraska but is not admitted to a hospital within this state, the treating physician or psychologist must provide a report of such injury to the Department within 30 days after such treatment and identification of the person sustaining the injury.~~

~~2-006 AVAILABILITY OF MEDICAL RECORDS: Each facility must make available medical records which document the diagnosis and treatment received by individuals with head and brain injury. For the Department's purpose of recording and auditing specific data, such medical records must be made available to the Department or its authorized representative on the premises of the facility during normal working hours. The Department or its authorized representative will present proper identification.~~

~~2-007 CONFIDENTIALITY AND RELEASE OF INFORMATION: No patient identifying data as identified in Neb. Rev. Stat. § 81-664 will be disclosed, made public, or released by the Department to any public or private person or entity. All data and information obtained from records of individuals with brain or head injury are classified as Class I, Class II, or Class IV data as defined by Neb. Rev. Stat. § 81-667 and 186 NAC 5 Release of Medical Records and Health Information.~~

~~2-007.01 Release of Statistical Information: Statistical reports developed pursuant to Neb. Rev. Stat. § 81-656, containing information obtained from patient data, will be considered Class I data as described in Neb. Rev. Stat. § 81-667.~~

~~2-007.02 Any de-identified data (other than Class III data) asked for by and furnished to a researcher may not be intentionally re-identified in any manner. Should a recipient of de-identified information unintentionally or accidentally be able to identify any individual, they must not use that information in any way. The recipient must also notify the Department of the means of accidental re-identification in order for the Department to consider additional procedures to safeguard against breaches in confidentiality.~~

~~2-008 INFORMATION REGARDING SERVICES: Within 30 days after receiving a report of brain or head injury, the Department will provide relevant and timely information to the person with the injury to assist the person in accessing necessary and appropriate services relating to the injury. The Department may develop the information or utilize information developed by other sources and approved by the Department. The Department may provide the information directly or contract with an appropriate entity to provide the information.~~