

# Law Enforcement Interactions

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Guidance for Healthcare Providers in Nebraska

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## INTRODUCTION

Healthcare providers may experience interactions with law enforcement personnel that create uncertainty around their responsibilities to patients, including the duty to protect patients' privacy. Law enforcement personnel are tasked with ensuring public safety and conducting criminal investigations. When these duties intersect as they relate to patients in the healthcare system, providers should understand how to meet their obligations while respecting the requests of law enforcement personnel.

### Important Note

The information provided herein does not, and is not intended to constitute legal, medical, or other professional advice; instead, this information is for general informational purposes only. The specifics of each state's laws and the specifics of each circumstance may impact its accuracy and applicability; therefore, the information should not be relied upon for medical, legal, or financial decisions and you should consult an appropriate professional for specific advice that pertains to your situation.



## Protected Health Information Under HIPAA

Before disclosing patient information to law enforcement, a provider should consider whether it is protected under the federal Health Insurance Portability and Accountability Act (HIPAA) rules, which provide privacy protections for individually identifiable health information held by healthcare providers and their business associates. HIPAA "covered entities" include healthcare providers who transmit any health information in electronic form in connection with a transaction covered under the HIPAA regulations.

Protected health information (PHI) includes individually identifiable health information transmitted or maintained in electronic media or any other form or medium.

Individually identifiable health information is information created or received by a healthcare provider that identifies the individual and relates to the past, present, or future physical/mental health or condition of an individual; the provision of healthcare to the individual; or payment for the provision of healthcare to the individual.<sup>1</sup>

## Who Is Considered a Law Enforcement Official?

As outlined in the HIPAA Privacy Rule, a law enforcement official means an officer or employee of any agency or authority within the U.S., who is empowered by law to:

- (1) Investigate or conduct an official inquiry into a potential violation of law; or
- (2) Prosecute or otherwise conduct a criminal, civil, or administrative proceeding arising from an alleged violation of law.<sup>2</sup>

Law enforcement officials include (but are not limited to):

- Police officers and state troopers
- Sheriffs and sheriffs' deputies
- District attorneys
- DEA and FBI special agents
- ICE officers

*The default position under HIPAA is that PHI cannot be disclosed without the patient's authorization, but there are some exceptions relevant to law enforcement, including where reporting is required by state law.*

## Key Considerations for Any Law Enforcement Interaction:

- ☒ **Don't be afraid to ask for identification.** Have they properly identified themselves? If the law enforcement official is not known to the provider, the provider must verify the identity and authority of the person.<sup>3</sup> Processes should be in place for in-person, phone, and email interactions.
- ☒ **Share your side of the situation.** Explain your understanding of the situation and the laws (HIPAA, etc.) that govern your actions of what you can and can't do.
- ☒ **When trying to decide which federal or state law applies, the more restrictive one will likely apply.** In general, if there is a state or federal law that is more restrictive than HIPAA (more protective of a patient's privacy), providers are required to comply with the more restrictive law.
- ☒ **Document the details.** Carefully document any disclosures and any supporting information about why the decision was made to provide information to law enforcement officials.<sup>4</sup>
- ☒ **Respect law enforcement and the challenges they are dealing with.** Do not physically interfere with law enforcement officials or provide them false or misleading information.
- ☒ **Don't provide more information than what is necessary.** Unless disclosures made to law enforcement are required by law, they should be held to the "minimum necessary" standard. This means that when using or disclosing protected health information (PHI), the HIPAA-covered entity or provider must make reasonable efforts to limit PHI to the minimum necessary to accomplish the purpose of the use, disclosure, or request.<sup>5</sup> A provider may rely upon the representations of a law enforcement official that the information requested is the minimum necessary for the stated purpose.<sup>6</sup>

<sup>1</sup> 45 C.F.R. § 160.103

<sup>2</sup> 45 C.F.R. § 164.103

<sup>3</sup> 45 C.F.R. § 164.514(h)(1)(i)

<sup>4</sup> 45 C.F.R. § 164.514(h)(1)(iii)

<sup>5</sup> 45 C.F.R. § 164.502(b)

<sup>6</sup> 45 C.F.R. § 164.514(d)(3)(iii)(A)

# DISCLOSURES UNDER HIPAA

Covered entities may disclose PHI without a patient authorization or an opportunity for the patient to agree or object to the extent that such use or disclosure is required by law, and it complies with and is limited to the relevant requirements of such law.<sup>7</sup> Please see the Nebraska section (starting on page 6) for more specifics on what rules and regulations apply to various situations.

## Reporting Child Abuse or Neglect (Under HIPAA)

HIPAA allows a provider to disclose PHI for public health activities including to a public health authority or other appropriate government authority, including law enforcement, authorized by law to receive reports of child abuse or neglect.<sup>8</sup>

*A provider who makes a permitted disclosure must promptly inform the patient that such a report has been or will be made, except if, in the provider's professional judgment:*

- 1. The provider believes informing the patient would place the patient at risk of serious harm; or*
- 2. The provider would be informing a personal representative, and the provider reasonably believes the personal representative is responsible for the abuse, neglect, or other injury, and that informing such person would not be in the best interests of the patient as determined by the provider.<sup>9</sup>*

## Reporting Regarding Adult Victims of Abuse, Neglect, or Domestic Violence (Under HIPAA)

A provider may disclose PHI about an individual the provider reasonably believes to be a victim of abuse, neglect, or domestic violence to a government authority, including a social service or protective services agency, authorized by law to receive such reports:

- To the extent the disclosure is required by law and the disclosure complies with and is limited to the relevant requirements of such law;
- If the individual agrees to the disclosure; or
- To the extent the disclosure is expressly authorized by statute or regulation and:
  - ▶ The provider, in the exercise of professional judgment, believes the disclosure is necessary to prevent serious harm to the individual or other potential victims; or
  - ▶ If the person is unable to agree because of incapacity, a law enforcement or other public official authorized to receive the report represents that the PHI for which disclosure is sought is not intended to be used against the person, and that an immediate enforcement activity that depends upon the disclosure would be materially and adversely affected by waiting until the person is able to agree to the disclosure.<sup>10</sup>

## Disclosures for Law Enforcement Purposes

A provider may disclose PHI **for a law enforcement purpose** to a law enforcement official if the following conditions are met, as applicable.<sup>11</sup>

### 1. Pursuant to process and as otherwise required by law

- As required by law, including laws that require the reporting of certain types of wounds (e.g., gunshot wounds) or other physical injuries<sup>12</sup>; or
- In compliance with and as limited by the relevant requirements of:
  - ▶ A court order or court-ordered warrant, or a subpoena or summons issued by a judicial officer;
  - ▶ A grand jury subpoena; or
  - ▶ An administrative request, including an administrative subpoena or summons, a civil or an authorized investigative demand, or similar process authorized under law. The administrative request must include a written statement that:
    - » The information sought is relevant and material to a legitimate law enforcement inquiry (one regarding a potential violation of law);
    - » The request is specific and limited in scope to the extent reasonably practicable in light of the purpose for which the information is sought; and
    - » De-identified information could not reasonably be used.<sup>13</sup>

<sup>7</sup> 45 C.F.R. § 164.512(a)(1)

<sup>8</sup> 45 C.F.R. § 164.512(b)(1)(ii)

<sup>9</sup> 45 C.F.R. § 164.512(c)(2)

<sup>10</sup> 45 C.F.R. § 164.512(c)(1)

<sup>11</sup> 45 C.F.R. § 164.512(f)

<sup>12</sup> 45 C.F.R. § 164.512(f)(1)(i)

<sup>13</sup> 45 C.F.R. § 164.512(f)(1)(ii);

45 C.F.R. § 164.514(h)(2)(i)(A)



## 2. Information for identification and location purposes only

Providers may disclose limited PHI in response to a request for such information for the purposes of identifying or locating a suspect, fugitive, material witness, or missing person. The provider may disclose only the following information:

- Name and address;
- Date and place of birth;
- Social security number;
- ABO blood type and Rh factor;
- Type of injury;
- Date and time of treatment;
- Date and time of death, if applicable; and
- Distinguishing physical characteristics, including height, weight, gender, race, hair and eye color, presence or absence of facial hair (beard or moustache), scars, and tattoos.

*Except as permitted above, the provider may not disclose for the purposes of identification or location any PHI related to the patient's DNA or DNA analysis, dental records, or typing, samples or analysis of body fluids or tissue.<sup>14</sup>*

## 3. Victims of a crime

Except for disclosures required by law, a provider may disclose PHI in response to a request for such information about a patient who is or is suspected to be a victim of a crime if:

- The patient agrees to the disclosure; or
- The provider is unable to obtain the victim's agreement because of incapacity or other emergency circumstance, provided that:
  - ▶ The law enforcement official represents that such information is needed to determine whether a violation of law by a person other than the victim has occurred and such information is not intended to be used against the victim;
  - ▶ The law enforcement official represents that immediate law enforcement activity that depends upon the disclosure would be materially and adversely affected by waiting until the patient is able to agree to the disclosure; and
  - ▶ The disclosure is in the best interests of the patient as determined by the provider's professional judgment.<sup>15</sup>

## 4. Deceased patients

A provider may disclose PHI about a patient who has died for the purpose of alerting law enforcement of the patient's death if the provider has a suspicion that the person's death resulted from criminal conduct.<sup>16</sup>

## 5. Crime on premises

A provider may disclose PHI that the provider believes in good faith constitutes evidence of criminal conduct that occurred on the provider's premises.<sup>17</sup>

## 6. Reporting crime in emergencies

A provider providing emergency healthcare in response to a medical emergency, other than an emergency on the provider's premises, may disclose PHI if the disclosure appears necessary to alert law enforcement to:

- The commission and nature of a crime;
- The location of such crime or the victims of such crime; and
- The identity, description, and location of the perpetrator of such crime.<sup>18</sup>

*If the provider believes that the medical emergency is the result of abuse, neglect, or domestic violence of the individual in need of emergency healthcare, this section does not apply, and any disclosure would fall under the requirements for "disclosures about adult victims of abuse, neglect, or domestic violence" (see page 3).<sup>19</sup>*

*The Privacy Rule is balanced to protect an individual's privacy while allowing important law enforcement functions to continue. Except when required by law, the disclosures to law enforcement are subject to a minimum necessary determination by the covered entity.<sup>20</sup>*

<sup>14</sup> 45 C.F.R. § 164.512(f)(2)

<sup>15</sup> 45 C.F.R. § 164.512(f)(3)

<sup>16</sup> 45 C.F.R. § 164.512(f)(4)

<sup>17</sup> 45 C.F.R. § 164.512(f)(5)

<sup>18</sup> 45 C.F.R. § 164.512(f)(6)(i)

<sup>19</sup> 45 C.F.R. § 164.512(f)(6)(ii)

<sup>20</sup> 45 C.F.R. § 164.502(b);  
45 C.F.R. § 164.514(d)



# DISCLOSURES UNDER HIPAA (continued)

## Mental Health Patients

The Department of Health and Human Services (HHS) has released guidance under HIPAA regarding the situation where law enforcement requests to be notified when a patient is released from a mental health hold. Under the HHS guidance, a facility could inform law enforcement of the release if it falls within one of the permitted disclosures:

- The Privacy Rule permits a HIPAA covered entity, such as a hospital, to disclose certain PHI, including the date and time of admission and discharge, in response to a law enforcement official's request, for the purpose of locating or identifying a suspect, fugitive, material witness, or missing person.<sup>21</sup>
- Other Privacy Rule provisions also may be relevant depending on the circumstances, such as when a law enforcement official is seeking information about a person who may not rise to the level of a suspect, fugitive, material witness, or missing person, or needs PHI not permitted under the above provision. For example, the Privacy Rule's law enforcement provisions also permit a provider to respond to an administrative request, such as an investigative demand for a patient's PHI, provided the administrative request includes or is accompanied by a written statement specifying that the information requested is relevant, specific and limited in scope, and that de-identified information would not suffice in that situation.<sup>22</sup>
- Finally, the Privacy Rule permits a covered entity to disclose a patient's PHI, consistent with applicable legal and ethical standards, to avert a serious and imminent threat to the health or safety of the patient or others. Such disclosures may be to law enforcement authorities or any other persons, such as family members, who are able to prevent or lessen the threat.<sup>23</sup>

### HIPAA Privacy Rule & Sharing Information Related to Mental Health:

[www.hhs.gov/sites/default/files/hipaa-privacy-rule-and-sharing-info-related-to-mental-health.pdf](http://www.hhs.gov/sites/default/files/hipaa-privacy-rule-and-sharing-info-related-to-mental-health.pdf)

## Serious Threat to Health or Safety

A provider may use or disclose PHI without a patient's written authorization or the opportunity for the person to agree or object in certain situations where there is a possible threat to public safety. Under HIPAA, a provider may, consistent with applicable law and standards of ethical conduct, use or disclose PHI if the provider, in good faith, believes the use or disclosure is necessary:

- To prevent or lessen a serious and imminent threat to the health or safety of a person or the public; and is to a person or persons reasonably able to prevent or lessen the threat, including the target of the threat; or
- For law enforcement to identify or apprehend an individual:
  - ▶ Because of a statement by an individual admitting participation in a violent crime that the provider reasonably believes may have caused serious physical harm to the victim; or
  - ▶ Where it appears from all the circumstances that the individual has escaped from a correctional institution or from lawful custody.

A use or disclosure of PHI may not be made if this information is learned by the provider:

- In the course of treatment to affect the propensity to commit the criminal conduct that is the basis of the disclosure or counseling or therapy; or
- Through a request by the individual to initiate or be referred for such treatment, counseling, or therapy.<sup>24</sup>

## Patient in Custody

A provider may disclose to a correctional institution or a law enforcement official having lawful custody of an inmate or other individual PHI about such inmate or individual, if the correctional institution or such law enforcement official represents that such information is necessary for:

- The provision of healthcare to such individuals;
- The health and safety of such individual or other inmates;
- The health and safety of the officers or employees of or others at the correctional institution;
- The health and safety of such individuals and officers or other persons responsible for the transporting of inmates or their transfer from one institution, facility, or setting to another;
- Law enforcement on the premises of the correctional institution; or
- The administration and maintenance of the safety, security, and good order of the correctional institution.<sup>25</sup>

<sup>21</sup> 45 C.F.R. § 164.512(f)(2)

<sup>23</sup> 45 C.F.R. § 164.512(j)

<sup>22</sup> 45 C.F.R. § 164.512(f)(1)(ii);

<sup>24</sup> 45 C.F.R. § 164.512(j)

45 C.F.R. § 164.514(h)(2)(i)(A)

<sup>25</sup> 45 C.F.R. § 164.512(k)(5)

# MANDATORY REPORTING UNDER NEBRASKA LAWS



HIPAA allows disclosures of PHI to law enforcement officials under Nebraska's mandatory reporting laws for healthcare providers.

*A healthcare provider means a physician, physician assistant, nurse, or advanced practice registered nurse.<sup>26</sup>*

## Reporting of Injuries of Violence

Except as provided below for sexual assault, every healthcare provider must immediately report to law enforcement every case in which the provider is consulted for medical care for a physical injury which appears to have been received in connection with, or as a result of, the commission of a criminal offense. The report must include:

- The name of the victim;
- A brief description of the victim's physical injury; and
- If ascertainable, the victim's residential address and the location of the offense.<sup>27</sup>

## Sexual Assault

When a healthcare provider is consulted for medical care for a physical injury which reasonably appears to have been received in connection with, or as a result of, the commission of an actual or attempted sexual assault, and the victim was 18 years of age or older at the time, the provider must:

- Provide the victim with information detailing the following reporting options available by asking the victim either:
  - ▶ To provide written consent to report such actual or attempted sexual assault. If the victim provides such written consent, the provider shall make the report required and submit to law enforcement a sexual assault evidence collection kit if one was obtained<sup>28</sup>; or
  - ▶ To sign a written acknowledgment that such actual or attempted sexual assault will not be reported, but that the provider will submit to law enforcement a sexual assault evidence collection kit, if one was obtained, using an anonymous reporting protocol.<sup>29</sup>

Regardless of the victim's decision, if the victim is suffering from a serious bodily injury, or any bodily injury where a deadly weapon was used to inflict such injury, which appears to have been received in connection with, or as a result of, the commission of an actual or attempted sexual assault, the provider must report such injury to law enforcement.<sup>30</sup> The provider also must refer the victim to an advocate, unless the victim declines.<sup>31</sup>

A provider evaluating a patient for a physical injury which reasonably appears to have been received as a result of an actual or attempted sexual assault is required to provide law enforcement with a sexual assault evidence collection kit if one has been obtained regardless of the victim's age or the victim's decision about reporting the sexual assault.<sup>32</sup>

***Serious bodily injury** is bodily injury which involves a substantial risk of death, or which involves substantial risk of serious permanent disfigurement, or protracted loss or impairment of the function of any part or organ of the body.<sup>33</sup>*

***Bodily injury** is physical pain, illness, or impairment of any physical condition.<sup>34</sup>*

***Deadly weapon** means any firearm, knife, bludgeon, or other device, instrument, material, or substance, whether animate or inanimate, which in the manner it is used or intended to be used is capable of producing death or serious bodily injury.<sup>35</sup>*

<sup>26</sup> Neb. Rev. St. § 28-902(6)(c)

<sup>27</sup> Neb. Rev. St. § 28-902(1)

<sup>28</sup> Neb. Rev. St. § 28-902(2)(b)(i)

<sup>29</sup> Neb. Rev. St. § 28-902(2)(b)(ii)

<sup>30</sup> Neb. Rev. St. § 28-902(2)(c)

<sup>31</sup> Neb. Rev. St. § 28-902(2)(d)

<sup>32</sup> Neb. Rev. St. § 28-902(3)

<sup>33</sup> Neb. Rev. St. § 28-109(21)

<sup>34</sup> Neb. Rev. St. § 28-109(4)

<sup>35</sup> Neb. Rev. St. § 28-109(8)

# MANDATORY REPORTING UNDER NEBRASKA LAWS (continued)

## Abuse, Neglect, or Exploitation of a Vulnerable Adult

When any physician, physician assistant, nurse, or other medical or mental health professional or employee of a licensed healthcare facility has reasonable cause to believe that a vulnerable adult has been subjected to abuse, neglect, or exploitation, or circumstances which reasonably would result in abuse, neglect, or exploitation, he or she must report the incident or cause a report to be made to the proper law enforcement agency or to the Nebraska Department of Health and Human Services (DHHS) by calling (800) 652-1999 or using the online portal at <https://neabusehotline-dhhs.ne.gov/>.<sup>36</sup>

Such a report can be made by telephone, with the caller giving his or her name and address, and, if requested by DHHS, shall be followed by a written report within 48 hours. To the extent available, this report should contain:

- The name, address, and age of the vulnerable adult;
- The address of the caregiver or caregivers of the vulnerable adult;
- The nature and extent of the alleged abuse, neglect or exploitation;
- Any evidence of previous abuse, neglect, or exploitation, including the nature and extent of it;
- Any other information which in the opinion of the person making the report may be helpful in establishing the cause of the alleged abuse, neglect, or exploitation and the identity of the perpetrator(s).<sup>37</sup>

*A **vulnerable adult** is any person eighteen years of age or older who has a substantial mental or functional impairment or for whom a guardian or conservator has been appointed under the Nebraska Probate Code.*<sup>38</sup>

***Abuse** means any knowing or intentional act on the part of a caregiver or any other person which results in physical injury, unreasonable confinement, cruel punishment, sexual abuse, or sexual exploitation of a vulnerable adult.*<sup>39</sup>

***Neglect** means any knowing or intentional act or omission on the part of a caregiver to provide essential services or the failure of a vulnerable adult, due to physical or mental impairments, to perform self-care or obtain essential services to such an extent that there is actual physical injury to a vulnerable adult or imminent danger of the vulnerable adult suffering physical injury or death.*<sup>40</sup>

***Exploitation** means the wrongful or unauthorized taking, withholding, appropriation, conversion, control, or use of money, funds, securities, assets, or any other property of a vulnerable adult or senior adult (age 65 or older) by any person by means of undue influence, breach of a fiduciary relationship, deception, extortion, intimidation, force or threat of force, isolation, or any unlawful means or by the breach of a fiduciary duty by the guardian, conservator, agent under a power of attorney, trustee, or any other fiduciary of a vulnerable adult or senior adult.*<sup>41</sup>

*A **caregiver** is any person or entity which has assumed the responsibility for the care of a vulnerable adult voluntarily, by express or implied contract, or by order of a court of competent jurisdiction.*<sup>42</sup>

<sup>36</sup> Neb. Rev. St. § 28-372(1)

<sup>37</sup> Neb. Rev. St. § 28-372(2)

<sup>38</sup> Neb. Rev. St. § 28-371

<sup>39</sup> Neb. Rev. St. § 28-351

<sup>40</sup> Neb. Rev. St. § 28-361.01

<sup>41</sup> Neb. Rev. St. § 28-358;  
Neb. Rev. St. § 28-366.01

<sup>42</sup> Neb. Rev. St. § 28-353





## Child Abuse and Neglect

A person commits child abuse if he or she knowingly, intentionally, or negligently causes or permits a minor child to be:

- Placed in a situation that endangers his or her life or physical or mental health;
- Cruelly confined or cruelly punished;
- Deprived of necessary food, clothing, shelter, or care;
- Placed in a situation to be sexually exploited through sex trafficking or by allowing, encouraging, or forcing such minor to engage in debauchery, public indecency, or obscene or pornographic photography, films, or depictions;
- Placed in a situation to be sexually abused or sexually assaulted; or
- Placed in a situation to be a trafficking victim.<sup>43</sup>

**Report incidents of child abuse or neglect to the Nebraska Department of Health and Human Services at (800) 652-1999.**

The statutory privilege between patient and physician is not available for excluding or refusing testimony in any prosecution for child abuse.<sup>44</sup>

When any physician, medical institution, nurse, or any other person has reasonable cause to believe that a child has been subjected to child abuse or neglect or observes such child being subjected to conditions or circumstances which reasonably would result in child abuse or neglect, he or she shall report such incident to the proper law enforcement agency or to the Nebraska Department of Health and Human Services at (800) 652-1999.

Such report may be made orally by telephone with the caller giving his or her name and address. The oral report shall be followed by a written report, and to the extent available shall contain:

- The address and age of the abused or neglected child;
- The address of the person or persons having custody of the abused or neglected child;
- The nature and extent of the child abuse or neglect or the conditions and circumstances which would reasonably result in such child abuse or neglect;
- Any evidence of previous child abuse or neglect including the nature and extent; and
- Any other information which in the opinion of the person may be helpful in establishing the cause of such child abuse or neglect and the identity of the perpetrator or perpetrators.<sup>45</sup>

Any person participating in an investigation or the making of a report of child abuse or neglect or participating in a judicial proceeding shall be immune from any civil or criminal liability except for maliciously false statements.<sup>46</sup>

Federal privacy laws authorize disclosure of the limited protected health information described previously in this section. Release of the entire medical record requires a HIPAA compliant authorization or court order.

Any person who willfully fails to make any report of child abuse or neglect shall be guilty of a Class III misdemeanor.<sup>47</sup>

Nebraska law is silent on whether a physician can treat a victim of child abuse or sexual assault without the permission of the parent. However, if the Department of Health and Human Services (DHHS) has taken custody of the child, DHHS can consent to medical care for the child. Additionally, Nebraska has set up child abuse investigation teams and child advocacy centers for abused children.<sup>48</sup> The child advocacy centers are designed to assist in providing a child-focused location for conducting forensic interviews and medical evaluations of abused children. Either parental consent, or consent by DHHS if in custody of the child, is necessary.<sup>49</sup>

<sup>43</sup> Neb. Rev. St. § 28-707(1)

<sup>44</sup> Neb. Rev. St. § 28-707(2) and § 28-714

<sup>45</sup> Neb. Rev. St. § 28-711(1)

<sup>46</sup> Neb. Rev. St. § 28-716

<sup>47</sup> Neb. Rev. St. § 28-717

<sup>48</sup> Neb. Rev. St. § 28-728 and § 43-285(1)

<sup>49</sup> [www.nebraskacacs.com](http://www.nebraskacacs.com)

# PATIENT TESTING

Nebraska law allows patient testing in certain circumstances for drug, alcohol, or infectious diseases, including sexually transmitted infections.

## Drug and Alcohol

Nebraska has an “implied consent” law, meaning that any person who operates or has in his or her actual physical control a motor vehicle shall be deemed to have given his or her consent to submit to a chemical test or tests of his or her blood, breath, or urine for the purpose of determining the concentration of alcohol or the presence of drugs in such blood, breath, or urine.<sup>50</sup>

Any peace officer who has been duly authorized to make arrests for violations of Nebraska’s traffic laws or ordinances of any city or village may require any person arrested for any offense arising out of acts alleged to have been committed while the person was driving or was in actual physical control of a motor vehicle while under the influence of alcoholic liquor or drugs to submit to a chemical test or tests of his or her blood, breath, or urine for the purpose of determining the concentration of alcohol or the presence of drugs in such blood, breath, or urine when the officer has reasonable grounds to believe that such person was driving or was in the actual physical control of a motor vehicle while under the influence of alcohol or drugs.<sup>51</sup>

Any person arrested as described above may, upon the direction of a peace officer, be required to submit to a chemical test or tests of his or her blood, breath, or urine for a determination of the concentration of alcohol or the presence of drugs. [If the chemical test discloses the presence of a

concentration of alcohol in violation of the law, the person is subject to the administrative license revocation procedures and, upon conviction, additional criminal penalties. Any person who refuses to submit to such test or tests is subject to the administrative license revocation procedures and shall be guilty of a crime subject to additional criminal penalties.<sup>52</sup>]

Any person who was involved in a motor vehicle accident in Nebraska may be required to submit to a chemical test or tests of his or her blood, breath, or urine by any peace officer if the officer has reasonable grounds to believe that the person was driving or was in actual physical control of a motor vehicle on a public highway while under the influence of alcohol or drugs at the time of the accident. A person involved in a motor vehicle accident subject to the implied consent law of Nebraska shall not be deemed to have withdrawn consent to submit to a chemical test of his or her blood, breath, or urine by reason of leaving the state.<sup>53</sup>

Notably, Nebraska’s Supreme Court reviewed this implied consent law in 2017 and found certain provisions unconstitutional because it criminalized a driver’s refusal to submit to a warrantless search of his blood. Based on that, it is questionable whether law enforcement can require a hospital to provide a blood specimen sample without first obtaining a search warrant.<sup>54</sup>



**Nebraska has an “implied consent” law, meaning that any person who operates a motor vehicle shall be deemed to have given consent to submit to a chemical test of blood, breath, or urine for the purpose of determining the presence of drugs or alcohol.**



<sup>50</sup> Neb. Rev. St. § 60-6,197(1)

<sup>51</sup> Neb. Rev. St. § 60-6,197(2)

<sup>52</sup> Neb. Rev. St. § 60-6,197(3)

<sup>53</sup> Neb. Rev. St. § 60-6,197(4)

<sup>54</sup> See *State v. McCumber*, 295 Neb. 941, 893 N.W.2d 411 (2017); *State v. Hood*, 917 N.W.2d 880, 891 (Neb. 2018) (finding that [a 2016 U.S. Supreme Court case] limited the legal force and effect of [Nebraska’s implied consent law] only to the extent that warrantless blood draws and prosecutions of a refusal to submit to a warrantless blood draw cannot be justified as part of a search incident to arrest or based on implied consent).



## Infectious Diseases, Including Sexually Transmitted Infections

Providers must obtain a patient's consent before testing for an infectious disease or condition.<sup>55</sup> If the patient or individual is unconscious or incapable of signing an informed consent form, the consent may be obtained from the patient's or individual's next of kin or legal guardian.<sup>56</sup>

However, if an emergency services provider (which includes a law enforcement officer) believes he or she has had a significant exposure while acting as an emergency services provider, he or she may complete a significant exposure report form. A copy of the completed form shall be given by the emergency services provider to the healthcare facility or alternate facility (other facility that receives a patient by emergency services), to the emergency services provider's supervisor, and to the **designated physician**.<sup>57</sup>

**Designated Physician** means the physician representing the emergency service provider as identified by name, address, and telephone number on the significant exposure report form. The designated physician shall serve as the contact for notification in the event an emergency services provider believes he or she has had significant exposure to an infectious disease or condition.<sup>58</sup>

Upon receipt of the significant exposure form, if a patient has been diagnosed during the normal course of treatment as having an infectious disease or condition or information is received from which it may be concluded that a patient has an infectious disease or condition, the healthcare facility or alternate facility receiving the form shall notify the designated physician. If the patient has not been diagnosed as having an infectious disease or condition and upon the request of the designated physician, the healthcare facility or alternate facility shall request the patient's attending physician or other responsible person to order the necessary diagnostic testing of the patient to determine the presence of an infectious disease or condition.<sup>59</sup>

If an emergency services provider has a significant exposure which, in the opinion of the designated physician, could involve the transmission of hepatitis B, hepatitis C, or human immunodeficiency virus, the patient's attending physician shall initiate the necessary diagnostic blood tests of the

patient. If the patient or patient's representative refuses to grant consent for such test and a sample of the patient's blood is available, the blood shall be tested for hepatitis B, hepatitis C, or human immunodeficiency virus. If the patient or patient's guardian refuses to grant consent and a sample of the patient's blood is not available, the patient's refusal shall be communicated to the designated physician who shall inform the emergency services provider. The emergency services provider may petition the district court for an order mandating that the test be performed.<sup>60</sup> If the patient or individual is deceased, no consent shall be required to test for the presence of an infectious disease or condition.<sup>61</sup>

The results shall be reported by the healthcare facility or alternate facility that conducted the test to the designated physician and to the patient's attending physician, if any.<sup>62</sup> Notification of the patient's diagnosis of infectious disease, including the results of any tests, shall be made orally to the designated physician within 48 hours of confirmed diagnosis. A written report shall be forwarded to the designated physician within 72 hours of confirmed diagnosis.<sup>63</sup> Upon receipt of the notification, the designated physician shall notify the emergency services provider of the exposure to an infectious disease or condition and the results of any tests conducted.<sup>64</sup> The notification to the emergency services provider shall include the name of the infectious disease or condition diagnosed but shall not include the patient's name or any other identifying information.<sup>65</sup> The patient's attending physician shall inform the patient of test results for all tests conducted.<sup>66</sup>

The significant exposure form can be downloaded from the DHHS website:

<https://dhhs.ne.gov/OEHS%20Program%20Documents/Significant%20Exposure%20Report%20Form.pdf>

<sup>55</sup> Neb. Rev. St. § 71-510(1)

<sup>56</sup> Neb. Rev. St. § 71-510(2)

<sup>57</sup> Neb. Rev. St. § 71-509(2);  
Neb. Rev. St. § 77-507

<sup>58</sup> Neb. Rev. St. § 71-507(3)

<sup>59</sup> Neb. Rev. St. § 71-509(3)

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<sup>61</sup> Neb. Rev. St. § 71-510(5)

<sup>62</sup> Neb. Rev. St. § 71-509(4)

<sup>63</sup> Neb. Rev. St. § 71-509(5)

<sup>64</sup> Neb. Rev. St. § 71-509(6)

<sup>65</sup> Neb. Rev. St. § 71-509(7)

<sup>66</sup> Neb. Rev. St. § 71-509(9)



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7351 E. Lowry Boulevard, Suite 400, Denver, CO 80230  
copic.com • Tel: 720.858.6000 or 800.421.1834 • Fax: 877.263.6665

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