

LEGISLATURE OF NEBRASKA
ONE HUNDRED FOURTH LEGISLATURE
SECOND SESSION

LEGISLATIVE BILL 471

FINAL READING

Introduced by Howard, 9; Lindstrom, 18; Mello, 5; Nordquist, 7; Garrett, 3; Kuehn, 38; McCollister, 20; Morfeld, 46; Hansen, 26.

Read first time January 20, 2015

Committee: Health and Human Services

- 1 A BILL FOR AN ACT relating to health and human services; to amend section
- 2 84-712.05, Reissue Revised Statutes of Nebraska, and section
- 3 71-2454, Revised Statutes Cumulative Supplement, 2014; to change
- 4 provisions relating to prescription drug monitoring; to create a
- 5 task force; to provide powers and duties; to provide that certain
- 6 prescription information, data, and reports are not a public record;
- 7 to harmonize provisions; to repeal the original sections; and to
- 8 declare an emergency.
- 9 Be it enacted by the people of the State of Nebraska,

1 Section 1. Section 71-2454, Revised Statutes Cumulative Supplement,
2 2014, is amended to read:

3 71-2454 (1) An It is the intent of the Legislature that an entity
4 described in section 71-2455 shall establish a system of prescription
5 drug monitoring for the purposes of (a 1) preventing the misuse of
6 controlled substances that are prescribed in an efficient and cost-
7 effective manner and (b 2) allowing prescribers and dispensers doctors
8 and pharmacists to monitor the care and treatment of patients for whom
9 such a prescription drug is prescribed to ensure that such prescription
10 drugs are used for medically appropriate purposes and that the State of
11 Nebraska remains on the cutting edge of medical information technology.

12 (2) Such system of prescription drug monitoring shall be implemented
13 as follows: Except as provided in subsection (4) of this section,
14 beginning January 1, 2017, all dispensed prescriptions of controlled
15 substances shall be reported; and beginning January 1, 2018, all
16 prescription information shall be reported to the prescription drug
17 monitoring system. The prescription drug monitoring system shall include,
18 but not be limited to, provisions that:

19 (a) Prohibit any patient from opting out of the prescription drug
20 monitoring system;

21 (b) Require all prescriptions dispensed in this state or to an
22 address in this state to be entered into the system by the dispenser or
23 his or her designee daily after such prescription is dispensed, including
24 those for patients paying cash for such prescription drug or otherwise
25 not relying on a third-party payor for payment for the prescription drug;

26 (c) Allow all prescribers or dispensers of prescription drugs to
27 access the system at no cost to such prescriber or dispenser; and

28 (d) Ensure that such system includes information relating to all
29 payors, including, but not limited to, the medical assistance program
30 established pursuant to the Medical Assistance Act.

31 Dispensers may begin on the effective date of this act to report

1 dispensing of prescriptions to the entity described in section 71-2455
2 which is responsible for establishing the system of prescription drug
3 monitoring.

4 (3) Prescription information that shall be submitted electronically
5 to the prescription drug monitoring system shall be determined by the
6 entity described in section 71-2455 and shall include, but not be limited
7 to:

8 (a) The patient's name, address, and date of birth;
9 (b) The name and address of the pharmacy dispensing the
10 prescription;

11 (c) The date the prescription is issued;
12 (d) The date the prescription is filled;
13 (e) The name of the drug dispensed or the National Drug Code number
14 as published by the federal Food and Drug Administration of the drug
15 dispensed;

16 (f) The strength of the drug prescribed;
17 (g) The quantity of the drug prescribed and the number of days'
18 supply; and

19 (h) The prescriber's name and National Provider Identifier number or
20 Drug Enforcement Administration number when reporting a controlled
21 substance.

22 (4) Beginning January 1, 2018, a veterinarian licensed under the
23 Veterinary Medicine and Surgery Practice Act shall be required to report
24 a dispensed prescription of controlled substances listed on Schedule II,
25 Schedule III, or Schedule IV pursuant to section 28-405.

26 (5) All prescription drug information submitted pursuant to this
27 section, all data contained in the prescription drug monitoring system,
28 and any report obtained from data contained in the prescription drug
29 monitoring system are not public records and may be withheld pursuant to
30 section 84-712.05.

31 (6) For purposes of this section:

1 (a) Designee means any licensed or registered health care
2 professional designated by a dispenser to act as an agent of the
3 dispenser for purposes of submitting or accessing data in the
4 prescription drug monitoring system and who is directly supervised by
5 such dispenser;

6 (b) Dispenser means a person authorized in the jurisdiction in which
7 he or she is practicing to deliver a prescription to the ultimate user by
8 or pursuant to the lawful order of a prescriber but does not include (i)
9 the delivery of such prescription drug for immediate use for purposes of
10 inpatient hospital care or emergency department care, (ii) the
11 administration of a prescription drug by an authorized person upon the
12 lawful order of a prescriber, (iii) a wholesale distributor of a
13 prescription drug monitored by the prescription drug monitoring system,
14 or (iv) through December 31, 2017, a veterinarian licensed under the
15 Veterinary Medicine and Surgery Practice Act when dispensing
16 prescriptions for animals in the usual course of providing professional
17 services; and

18 (c) Prescriber means a health care professional authorized to
19 prescribe in the profession which he or she practices.

20 Sec. 2. (1) The Veterinary Prescription Monitoring Program Task
21 Force is created. The task force shall conduct a study to develop
22 recommendations of which controlled substances shall be reported by a
23 veterinarian to the prescription drug monitoring program created under
24 section 71-2454 when dispensing drugs from a veterinarian's office or an
25 animal shelter. The study shall include appropriate methods and
26 procedures of reporting by the veterinarians with the necessary data base
27 field information. The task force shall utilize nationally available
28 resources afforded by the American Association of Veterinary State Boards
29 and the Department of State Legislative and Regulatory Affairs of the
30 American Veterinary Medical Association in development of the
31 recommendations.

1 (2) The task force shall consist of at least ten members appointed
2 by the chairperson of the Health and Human Services Committee of the
3 Legislature as follows: One member of the Health and Human Services
4 Committee; two at-large members of the Legislature; three members
5 selected from a list of six veterinarians provided by the Board of
6 Veterinary Medicine and Surgery, one of whom is employed by or provides
7 services at an animal shelter; one pharmacist nominated by the Nebraska
8 Pharmacists Association or its successor organization; and two members
9 nominated by the Nebraska Veterinary Medical Association or its successor
10 organization. The task force shall also include a representative of the
11 prescription drug monitoring program who shall be a nonvoting member and
12 serve in an advisory capacity only.

13 (3) The members of the task force shall be appointed within one
14 hundred twenty days after the effective date of this act. The initial
15 meeting of the task force shall be convened within one hundred eighty
16 days after the effective date of this act. The task force shall elect a
17 chairperson and may elect any additional officers from among its members.
18 All task force members shall serve without compensation.

19 (4) The task force shall report its findings and recommendations to
20 the Health and Human Services Committee of the Legislature on or before
21 December 1, 2016.

22 (5) For purposes of this section, animal shelter has the definition
23 found in section 54-626.

24 Sec. 3. Section 84-712.05, Reissue Revised Statutes of Nebraska, is
25 amended to read:

26 84-712.05 The following records, unless publicly disclosed in an
27 open court, open administrative proceeding, or open meeting or disclosed
28 by a public entity pursuant to its duties, may be withheld from the
29 public by the lawful custodian of the records:

30 (1) Personal information in records regarding a student, prospective
31 student, or former student of any educational institution or exempt

1 school that has effectuated an election not to meet state approval or
2 accreditation requirements pursuant to section 79-1601 when such records
3 are maintained by and in the possession of a public entity, other than
4 routine directory information specified and made public consistent with
5 20 U.S.C. 1232g, as such section existed on February 1, 2013, and
6 regulations adopted thereunder;

7 (2) Medical records, other than records of births and deaths and
8 except as provided in subdivision (5) of this section, in any form
9 concerning any person; records of elections filed under section 44-2821;
10 and patient safety work product under the Patient Safety Improvement Act;

11 (3) Trade secrets, academic and scientific research work which is in
12 progress and unpublished, and other proprietary or commercial information
13 which if released would give advantage to business competitors and serve
14 no public purpose;

15 (4) Records which represent the work product of an attorney and the
16 public body involved which are related to preparation for litigation,
17 labor negotiations, or claims made by or against the public body or which
18 are confidential communications as defined in section 27-503;

19 (5) Records developed or received by law enforcement agencies and
20 other public bodies charged with duties of investigation or examination
21 of persons, institutions, or businesses, when the records constitute a
22 part of the examination, investigation, intelligence information, citizen
23 complaints or inquiries, informant identification, or strategic or
24 tactical information used in law enforcement training, except that this
25 subdivision shall not apply to records so developed or received relating
26 to the presence of and amount or concentration of alcohol or drugs in any
27 body fluid of any person;

28 (6) Appraisals or appraisal information and negotiation records
29 concerning the purchase or sale, by a public body, of any interest in
30 real or personal property, prior to completion of the purchase or sale;

31 (7) Personal information in records regarding personnel of public

1 bodies other than salaries and routine directory information;

2 (8) Information solely pertaining to protection of the security of
3 public property and persons on or within public property, such as
4 specific, unique vulnerability assessments or specific, unique response
5 plans, either of which is intended to prevent or mitigate criminal acts
6 the public disclosure of which would create a substantial likelihood of
7 endangering public safety or property; computer or communications network
8 schema, passwords, and user identification names; guard schedules; lock
9 combinations; or public utility infrastructure specifications or design
10 drawings the public disclosure of which would create a substantial
11 likelihood of endangering public safety or property, unless otherwise
12 provided by state or federal law;

13 (9) The security standards, procedures, policies, plans,
14 specifications, diagrams, access lists, and other security-related
15 records of the Lottery Division of the Department of Revenue and those
16 persons or entities with which the division has entered into contractual
17 relationships. Nothing in this subdivision shall allow the division to
18 withhold from the public any information relating to amounts paid persons
19 or entities with which the division has entered into contractual
20 relationships, amounts of prizes paid, the name of the prize winner, and
21 the city, village, or county where the prize winner resides;

22 (10) With respect to public utilities and except as provided in
23 sections 43-512.06 and 70-101, personally identified private citizen
24 account payment and customer use information, credit information on
25 others supplied in confidence, and customer lists;

26 (11) Records or portions of records kept by a publicly funded
27 library which, when examined with or without other records, reveal the
28 identity of any library patron using the library's materials or services;

29 (12) Correspondence, memoranda, and records of telephone calls
30 related to the performance of duties by a member of the Legislature in
31 whatever form. The lawful custodian of the correspondence, memoranda, and

1 records of telephone calls, upon approval of the Executive Board of the
2 Legislative Council, shall release the correspondence, memoranda, and
3 records of telephone calls which are not designated as sensitive or
4 confidential in nature to any person performing an audit of the
5 Legislature. A member's correspondence, memoranda, and records of
6 confidential telephone calls related to the performance of his or her
7 legislative duties shall only be released to any other person with the
8 explicit approval of the member;

9 (13) Records or portions of records kept by public bodies which
10 would reveal the location, character, or ownership of any known
11 archaeological, historical, or paleontological site in Nebraska when
12 necessary to protect the site from a reasonably held fear of theft,
13 vandalism, or trespass. This section shall not apply to the release of
14 information for the purpose of scholarly research, examination by other
15 public bodies for the protection of the resource or by recognized tribes,
16 the Unmarked Human Burial Sites and Skeletal Remains Protection Act, or
17 the federal Native American Graves Protection and Repatriation Act;

18 (14) Records or portions of records kept by public bodies which
19 maintain collections of archaeological, historical, or paleontological
20 significance which reveal the names and addresses of donors of such
21 articles of archaeological, historical, or paleontological significance
22 unless the donor approves disclosure, except as the records or portions
23 thereof may be needed to carry out the purposes of the Unmarked Human
24 Burial Sites and Skeletal Remains Protection Act or the federal Native
25 American Graves Protection and Repatriation Act;

26 (15) Job application materials submitted by applicants, other than
27 finalists, who have applied for employment by any public body as defined
28 in section 84-1409. For purposes of this subdivision, (a) job application
29 materials means employment applications, resumes, reference letters, and
30 school transcripts and (b) finalist means any applicant (i) who reaches
31 the final pool of applicants, numbering four or more, from which the

1 successful applicant is to be selected, (ii) who is an original applicant
2 when the final pool of applicants numbers less than four, or (iii) who is
3 an original applicant and there are four or fewer original applicants;

4 (16) Records obtained by the Public Employees Retirement Board
5 pursuant to section 84-1512;

6 (17) Social security numbers; credit card, charge card, or debit
7 card numbers and expiration dates; and financial account numbers supplied
8 to state and local governments by citizens; and

9 (18) Information exchanged between a jurisdictional utility and city
10 pursuant to section 66-1867; and -

11 (19) All prescription drug information submitted pursuant to section
12 71-2454, all data contained in the prescription drug monitoring system,
13 and any report obtained from data contained in the prescription drug
14 monitoring system.

15 Sec. 4. Original section 84-712.05, Reissue Revised Statutes of
16 Nebraska, and section 71-2454, Revised Statutes Cumulative Supplement,
17 2014, are repealed.

18 Sec. 5. Since an emergency exists, this act takes effect when
19 passed and approved according to law.