

**ONE HUNDRED THIRD LEGISLATURE - SECOND SESSION - 2014**  
**COMMITTEE STATEMENT**  
**LB1072**

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**Hearing Date:** Wednesday February 12, 2014  
**Committee On:** Health and Human Services  
**Introducer:** Lathrop  
**One Liner:** Adopt the Prescription Monitoring and Health Information Exchange Act

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**Roll Call Vote - Final Committee Action:**  
Advanced to General File with amendment(s)

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**Vote Results:**  
**Aye:** 7 Senators Campbell, Cook, Crawford, Gloor, Howard, Krist, Watermeier  
**Nay:**  
**Absent:**  
**Present Not Voting:**

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<b>Proponents:</b> Senator Steve Lathrop Dr. Jason Kruger  Deborah Bass	<b>Representing:</b> District 12 Nebraska Medica Association/Nebraska Chapter, American College of Emergency Physicians NEHII, Inc.
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<b>Opponents:</b>	<b>Representing:</b>
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<b>Neutral:</b> Bruce Rieker Joni Cover Michelle Mack	<b>Representing:</b> Nebraska Hospital Association Nebraska Pharmacists Association Express Scripts
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**Summary of purpose and/or changes:**

The purpose of this bill is to create the Prescription Monitoring and Health Information Exchange Act.

Section 1: Names sections 1 to 9 of this act the Prescription Monitoring and Health Information Exchange Act (PMHIEA).

Section 2: Defines board, controlled substance, department, delegate, dispense, dispenser, e-Prescriber platform, health information exchange, interoperability, Nebraska Health Information Initiative, patient, practitioner, prescribe, prescriber, prescription, prescription information, prescription monitoring program organization, program, and state for purposes of the PHMIEA.

Section 3: (1) Requires the board to establish and maintain a program to monitor the prescribing and dispensing of substances that demonstrate a potential for abuse. Authorizes the board to contract with an organization to facilitate the secure exchange of clinical information among health care providers in real time at the point of care. (2) The organization providing the prescription monitoring program shall provide access to prescription information for all prescriptions for controlled substances or drugs identified in (1), and information required by the board in (4). Prescription information shall also include any information from any licensed and registered dispenser located outside Nebraska but prescribing substances to a Nebraska patient. (3) Requires all dispensers mentioned in (2) to provide the prescription monitoring program organization with that information. Any dispenser located outside Nebraska who is

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licensed and registered by the department shall submit information regarding each prescription dispensed to a patient who resides in Nebraska. (4) Prescription information made accessible on the health information exchange. (5) Disallows opting out or electing against (a) a dispenser's collection and provision of the patient's prescription information or (b) the operations of the prescription monitoring program organization, but a patient may opt out of or elect against a dispenser, practitioner, or prescriber making available any other information to the prescription monitoring program organization. (6) Requires all dispensers, beginning two years after the operative date of this act, to electronically record prescription information in accordance with the requirements of the dispenser's e-Prescriber platform within an hour of the dispensing of each prescription. (7) Allows the board to waive the requirement in (6) if a dispenser cannot comply with it and uses an alternative format. (8) Exempts prescription drug samples of nonnarcotic controlled substances from the electronic reporting requirement.

Section 4: (1) Clarifies that all information submitted under the PMHIEA shall be confidential and not subject to 84-712 to 84-712.09 except as provided in section 5 of this act. (2) Requires the prescription monitoring program organization to enforce the privacy and confidentiality described in (1). (3) Requires the prescription monitoring program to verify credentials and authorize the use of prescription information by those listed in section 5.

Section 5: (1) Requires the prescription monitoring program organization to make prescription information available on the exchange to: (a) practitioners, prescribers, delegates, and dispensers investigating potential misuse or abuse of controlled substances or drugs; the requirement goes into effect two years from the effective date of this act; (b) health information exchange participants for certain purposes; (c) a patient properly requesting his or her own (or his or her child's) prescription information; (d) the board; (e) law enforcement or prosecutorial offices pursuant to a valid subpoena; or (f) the investigatory unit of the Division of Medicaid and Long-Term Care pursuant to a valid subpoena. (2) Allows any person who identifies indications of misuse or abuse pursuant to (1) to report it to law enforcement.

Section 6: (1) Authorizes the board to provide prescription information to the program of other states for use consistent with the Prescription Monitoring and Health Information Exchange Act. (2) Authorizes the board to request and receive such information from other states. (3) Authorizes the board to aid the prescription monitoring organization to share prescription information with other programs employing standards of interoperability. (4) Authorizes the board to collaborate with other states and the prescription monitoring program organization to share prescription information.

Section 7: Authorizes the prescription monitoring program organization to contract with another agency or vendor to ensure effective operation of the program, so long as the contractor is subject to the regulations in sections 4 and 8.

Section 8: (1) Penalizes a person who abuses their authorization to receive prescription information with a civil penalty of not more than one thousand dollars per occurrence. (2) Penalizes a person who fraudulently obtains or attempts to obtain information under the act with a civil penalty of not more than one thousand dollars.

Section 9: Authorizes the department to adopt and promulgate rules and regulations to carry out the PMHIEA.

Section 10: Amends 38-178 to add violation of the PMHIEA as a grounds for denial of a credential to practice a profession or other disciplinary measures.

Section 11: Sets January 1, 2015 as the operative date for this act.

Section 12: Repeals the original sections.

Section 13: Outright repeals 71-2454 and 71-2455.

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**Explanation of amendments:**

Strikes the original sections and inserts the following new sections.

Section 1: Amends 71-2454 to change "prescription drugs" to "Controlled substances that are prescribed" in (1), and to

add the word "such" for clarity in (2).

Section 2: Amends 71-2455 to clarify that successor public-private statewide health information exchanges must "[facilitate] the secure exchange of clinical information among physicians and other health care providers in real time at the point of care." The prohibition on use of state funds to implement or operate the drug monitoring system is removed, and the amendment expressly clarifies that the department "may use state funds and accept grants, gifts, or other funds" to do so.

Section 3: This new section creates the Prescription Drug Monitoring Program Fund. DHHS shall administer the fund, which includes the sources of funding added in Section 2. The state investment officer shall invest any money in the fund available for investment, pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act.

Section 4: This new section creates the Prescription Drug Monitoring Program Task Force.

(1) Members include

- (a) the CMO of DHHS,
- (b) a representative of a statewide organization that represents physicians,
- (c) a pain management physician,
- (d) a representative of a statewide organization that represents pharmacists and pharmaceutical representatives,
- (e) a representative from a statewide health information exchange program,
- (f) a representative of a Nebraska health insurer,
- (g) a representative of a Nebraska pharmacy benefit manager, and
- (h) a representative of a statewide association that represents hospitals and health systems.

(2) The governor shall appoint those enumerated members of the task force by July 1, 2014, and appoint one of them to be the chairperson. Members shall be reimbursed for their actual and necessary expenses pursuant to 81-1174 to 81-1177.

(3) The task force may gather information from interested parties. The Division of Public Health of DHHS shall provide administrative support to the task force and be responsible for production and distribution of the final report, which shall be created and distributed to the Governor and Legislature by December 1, 2014.

(4) The task force shall study and make recommendations on the following topics:

- (a) effectiveness and history of prescription drug monitoring programs in other states;
- (b) effectiveness and history of the Nebraska Health Information Exchange as a prescription drug monitoring program;
- (c) options for Nebraska to establish a new or enhance an existing prescription drug monitoring system;
- (d) costs involved in establishing and maintaining an effective and widely used prescription drug monitoring program;
- (e) options for funding (d);
- (f) required legislation for (d);

(5) The legislature intends any money appropriated to it for this study to be appropriated to the Division of Public Health of DHHS.

Section 5: Repeals the original sections.

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Kathy Campbell, Chairperson