

AMENDMENTS TO LB1183

Introduced by Health and Human Services.

1           1. Strike the original sections and insert the following new  
2 sections:

3           Section 1. Sections 1 to 4 of this act shall be known and may be  
4 cited as the Population Health Information Act.

5           Sec. 2. For purposes of the Population Health Information Act:

6           (1) Clinical information means information related to the diagnosis  
7 and treatment of health conditions or services provided for health  
8 conditions;

9           (2) Department means the Department of Health and Human Services;

10          (3) Designated health information exchange means the statewide  
11 health information exchange described in section 71-2455;

12          (4) Health care entity means a health care facility as defined in  
13 section 71-413, a home health agency as defined in section 71-417, an  
14 urgent care treatment center, a laboratory, a medicaid managed care  
15 organization, a federally qualified health center, a health care  
16 practitioner facility as defined in section 71-414, a dental facility, a  
17 local public health department, a health insurance carrier, or any other  
18 organization or entity providing health care services in Nebraska;

19          (5) Health care provider means a person practicing as a health care  
20 professional under the Uniform Credentialing Act; and

21          (6) Prescription drug monitoring program means the program created  
22 under section 71-2454.

23          Sec. 3. The purpose of the Population Health Information Act is to  
24 designate a health information exchange to provide the data  
25 infrastructure needed to assist in creating a healthier Nebraska and  
26 operating the electronic health records initiative. The designated health  
27 information exchange shall:

1           (1) Aggregate clinical information from health care entities needed  
2 to support the operation of the medical assistance program under the  
3 Medical Assistance Act;

4           (2) Act as the designated entity for purposes of access to and  
5 analysis of health data;

6           (3) Collect and analyze data for purposes of informing the  
7 Legislature, the department, health care providers, and health care  
8 entities as to the cost of, access to, and quality of health care in  
9 Nebraska;

10           (4) Act as a collector and reporter of public health data for  
11 registry submissions, electronic laboratory reporting, immunization  
12 reporting, and syndromic surveillance from an electronic health record,  
13 which does not include claims data; and

14           (5) Enable any health care provider or health care entity to access  
15 information available within the designated health information exchange  
16 to evaluate and monitor care and treatment of a patient in accordance  
17 with the privacy and security provisions set forth in the federal Health  
18 Insurance Portability and Accountability Act of 1996, Public Law 104-191.

19           Sec. 4. (1) The department shall work collaboratively with the  
20 designated health information exchange to access funding through federal  
21 programs, which shall include, but not be limited to, the Centers for  
22 Medicare and Medicaid Services, the Centers for Disease Control and  
23 Prevention, and the Health Resources and Services Administration of the  
24 United States Department of Health and Human Services, and other federal  
25 programs related to health information, technology, population health,  
26 and health care delivery system initiatives, for purposes of supporting  
27 the designated health information exchange and the prescription drug  
28 monitoring program.

29           (2) Nothing in the Population Health Information Act shall preclude  
30 the department from working collaboratively with other entities for  
31 purposes of collecting and analyzing data to inform the Legislature, the

1 department, health care providers, and health care entities regarding the  
2 cost of, access to, and quality of health care in Nebraska.

3 Sec. 5. (1) The Health Information Technology Board is created. The  
4 board shall have seventeen members. Except for members designated in  
5 subdivision (2)(o) of this section, the members shall be appointed by the  
6 Governor with the approval of a majority of the members of the  
7 Legislature. The members may begin to serve immediately following  
8 appointment and prior to approval by the Legislature. The members shall  
9 be appointed by October 1, 2020, and the board shall begin meeting on or  
10 before December 1, 2020.

11 (2) Members designated under subdivisions (b), (c), (d), (e), (g),  
12 (h), and (i) of this subsection shall hold a credential under the Uniform  
13 Credentialing Act. Except as otherwise provided in subsection (4) of this  
14 section, the board shall consist of:

15 (a) One individual who has experience in operating the prescription  
16 drug monitoring program created under section 71-2454;

17 (b) Two physicians, one of whom shall be a family practice  
18 physician, who are in active practice and in good standing with the  
19 Department of Health and Human Services appointed from a list of  
20 physicians provided by a statewide organization representing physicians;

21 (c) One pharmacist who is in active practice and in good standing  
22 with the department appointed from a list of pharmacists provided by a  
23 statewide organization representing pharmacists;

24 (d) One alcohol and drug counselor providing services for a state-  
25 licensed alcohol and drug abuse addiction treatment program;

26 (e) One health care provider who is board-certified in pain  
27 management;

28 (f) One hospital administrator appointed from a list of hospital  
29 administrators provided by a statewide organization representing hospital  
30 administrators;

31 (g) One dentist who is in active practice and in good standing with

1 the department appointed from a list of dentists provided by a statewide  
2 organization representing dentists;

3 (h) One nurse practitioner who is in active practice and in good  
4 standing with the department authorized to prescribe medication appointed  
5 from a list of nurse practitioners authorized to prescribe medication  
6 provided by a statewide organization representing such nurse  
7 practitioners;

8 (i) One veterinarian who is in active practice and in good standing  
9 with the department appointed from a list of veterinarians provided by a  
10 statewide organization representing veterinarians;

11 (j) One representative of the Department of Health and Human  
12 Services;

13 (k) One representative of a delegate as defined in section 71-2454;

14 (l) One health care payor as defined in section 25-21,247 or an  
15 employee of a health care payor;

16 (m) One credentialed health information management professional  
17 appointed from a list of such professionals provided by a statewide  
18 organization representing such professionals;

19 (n) One representative of the statewide health information exchange  
20 described in section 71-2455; and

21 (o) The chairperson of the Health and Human Services Committee of  
22 the Legislature and the chairperson of the Appropriations Committee of  
23 the Legislature, both of whom are nonvoting, ex officio members.

24 (3) Except for members designated in subdivisions (2)(a) and (o) of  
25 this section:

26 (a) A minimum of three members shall be appointed from each  
27 congressional district;

28 (b) Each member shall be appointed for a five-year term beginning on  
29 December 1, 2020, and may serve for any number of such terms;

30 (c) Any member appointed prior to December 1, 2020, shall begin to  
31 serve immediately upon appointment and continue serving for the term

1 beginning on December 1, 2020; and

2 (d) Any vacancy in membership, other than by expiration of a term,  
3 shall be filled within ninety days by the Governor by appointment for the  
4 vacant position as provided in subsection (2) of this section.

5 (4) If, after appointment, the classification of a member's  
6 credential changes or a member's credential classification is terminated  
7 and if such credential was a qualification for appointment, the member  
8 shall be permitted to continue to serve as a member of the board until  
9 the expiration of the term for which appointed unless the member loses  
10 the credential due to disciplinary action.

11 (5) The members shall be reimbursed for their actual and necessary  
12 expenses incurred in serving on the board as provided in section 71-2455.

13 (6) A simple majority of members shall constitute a quorum for the  
14 transaction of all business.

15 Sec. 6. (1) The Health Information Technology Board shall:

16 (a) Establish criteria for data collection and disbursement by the  
17 statewide health information exchange described in section 71-2455 and  
18 the prescription drug monitoring program created under section 71-2454 to  
19 improve the quality of information provided to clinicians;

20 (b) Evaluate and ensure that the statewide health information  
21 exchange is meeting technological standards for reporting of data for the  
22 prescription drug monitoring program, including the data to be collected  
23 and reported and the frequency of data collection and disbursement;

24 (c) Provide the governance oversight necessary to ensure that any  
25 health information in the statewide health information exchange and the  
26 prescription drug monitoring program may be accessed, used, or disclosed  
27 only in accordance with the privacy and security protections set forth in  
28 the federal Health Insurance Portability and Accountability Act of 1996,  
29 Public Law 104-191, and regulations promulgated thereunder. All protected  
30 health information is privileged, is not a public record, and may be  
31 withheld from the public pursuant to section 84-712.05; and

1       (d) Provide recommendations to the statewide health information  
2 exchange on any other matters referred to the board.

3       (2) The board shall adopt policies and procedures necessary to carry  
4 out its duties.

5       (3) The board may hold meetings by telecommunication or electronic  
6 communication subject to the Open Meetings Act. Any official action or  
7 vote of the members of the board shall be preserved in the records of the  
8 board.

9       (4) By November 15, 2021, and November 15 of each year thereafter,  
10 the board shall develop and submit an annual report to the Governor and  
11 the Health and Human Services Committee of the Legislature regarding  
12 considerations undertaken, decisions made, accomplishments, and other  
13 relevant information. The report submitted to the Legislature shall be  
14 submitted electronically.

15       Sec. 7. Section 71-2454, Revised Statutes Supplement, 2019, is  
16 amended to read:

17       71-2454 (1) An entity described in section 71-2455 shall establish a  
18 system of prescription drug monitoring for the purposes of (a) preventing  
19 the misuse of controlled substances that are prescribed, (b) allowing  
20 prescribers and dispensers to monitor the care and treatment of patients  
21 for whom such a prescription drug is prescribed to ensure that such  
22 prescription drugs are used for medically appropriate purposes, (c)  
23 providing information to improve the health and safety of patients, and  
24 (d) ensuring that the State of Nebraska remains on the cutting edge of  
25 medical information technology.

26       (2) Such system of prescription drug monitoring shall be implemented  
27 as follows: Except as provided in subsection (4) of this section, all  
28 prescription drug information shall be reported to the prescription drug  
29 monitoring system. The prescription drug monitoring system shall include,  
30 but not be limited to, provisions that:

31       (a) Prohibit any patient from opting out of the prescription drug

1 monitoring system;

2 (b) Require any prescription drug that is dispensed in this state or  
3 to an address in this state to be entered into the system by the  
4 dispenser or his or her delegate no less frequently than designee daily  
5 after such prescription drug is sold ~~dispensed~~, including prescription  
6 drugs for patients paying cash or otherwise not relying on a third-party  
7 payor for payment;

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

10 (d) Ensure that such system includes information relating to all  
11 payors, including, but not limited to, the medical assistance program  
12 established pursuant to the Medical Assistance Act; and

13 (e) Make the prescription drug information available to the  
14 statewide health information exchange described in section 71-2455 for  
15 access by its participants if such access is in compliance with the  
16 privacy and security protections set forth in the provisions of the  
17 federal Health Insurance Portability and Accountability Act of 1996,  
18 Public Law 104-191, and regulations promulgated thereunder, except that  
19 if a patient opts out of the statewide health information exchange, the  
20 prescription drug information regarding that patient shall not be  
21 accessible by the participants in the statewide health information  
22 exchange.

23 (3) Except as provided in subsection (4) of this section,  
24 prescription drug information that shall be submitted electronically to  
25 the prescription drug monitoring system shall be determined by the entity  
26 described in section 71-2455 and shall include, but not be limited to:

27 (a) The patient's name, address, telephone number, if a telephone  
28 number is available, gender, and date of birth;

29 (b) A patient identifier such as a military identification number,  
30 driver's license number, state identification card number, or other valid  
31 government-issued identification number, insurance identification number,

1 pharmacy software-generated patient-specific identifier, or other  
2 identifier associated specifically with the patient;

3 (c) The name and address of the pharmacy dispensing the prescription  
4 drug;

5 (d) The date the prescription is issued;

6 (e) The date the prescription is filled;

7 (f) The date the prescription is sold to the patient;

8 (g) ~~(f)~~ The number of refills authorized;

9 (h) ~~(g)~~ The prescription number of the prescription drug;

10 (i) ~~(h)~~ The National Drug Code number as published by the federal  
11 Food and Drug Administration of the prescription drug;

12 (j) ~~(i)~~ The strength of the prescription drug prescribed;

13 (k) ~~(j)~~ The quantity of the prescription drug prescribed and the  
14 number of days' supply; ~~and~~

15 (l) ~~(k)~~ The prescriber's name and National Provider Identifier  
16 number or Drug Enforcement Administration number when reporting a  
17 controlled substance; and -

18 (m) Additional information as determined by the Health Information  
19 Technology Board and as published in the submitter guide for the  
20 prescription drug monitoring system.

21 (4) Beginning July 1, 2018, a veterinarian licensed under the  
22 Veterinary Medicine and Surgery Practice Act shall be required to report  
23 the dispensing of prescription drugs which are controlled substances  
24 listed on Schedule II, Schedule III, Schedule IV, or Schedule V pursuant  
25 to section 28-405. Each such veterinarian shall indicate that the  
26 prescription is an animal prescription and shall include the following  
27 information in such report:

28 (a) The first and last name and address, including city, state, and  
29 zip code, of the individual to whom the prescription drug is dispensed in  
30 accordance with a valid veterinarian-client-patient relationship;

31 (b) Reporting status;



1 (c) The first and last name of the prescribing veterinarian and his  
2 or her federal Drug Enforcement Administration number;

3 (d) The National Drug Code number as published by the federal Food  
4 and Drug Administration of the prescription drug and the prescription  
5 number;

6 (e) The date the prescription is written and the date the  
7 prescription is filled;

8 (f) The number of refills authorized, if any; and

9 (g) The quantity of the prescription drug and the number of days'  
10 supply.

11 (5)(a) All prescription drug information submitted pursuant to this  
12 section, all data contained in the prescription drug monitoring system,  
13 and any report obtained from data contained in the prescription drug  
14 monitoring system are confidential, are privileged, are not public  
15 records, and may be withheld pursuant to section 84-712.05 except for  
16 information released as provided in subsection (9) or (10) of this  
17 section.

18 (b) No patient-identifying data as defined in section 81-664,  
19 including the data collected under subsection (3) of this section, shall  
20 be disclosed, made public, or released to any public or private person or  
21 entity except to the statewide health information exchange described in  
22 section 71-2455 and its participants, to prescribers and dispensers as  
23 provided in subsection (2) of this section, or as provided in subsection  
24 (7), (9), or (10) of this section.

25 (c) All other data is for the confidential use of the department and  
26 the statewide health information exchange described in section 71-2455  
27 and its participants. The department, or the statewide health information  
28 exchange in accordance with policies adopted by the Health Information  
29 Technology Board and in collaboration with the department, may release  
30 such information in accordance with the privacy and security provisions  
31 set forth in the federal Health Insurance Portability and Accountability

1 Act of 1996, Public Law 104-191, and regulations promulgated thereunder,  
2 as Class I, Class II, or Class IV data in accordance with section 81-667,  
3 except for purposes in accordance with subsection (9) or (10) of this  
4 section, to the private or public persons or entities that the department  
5 or the statewide health information exchange, in accordance with policies  
6 adopted by the Health Information Technology Board, determines may view  
7 such records as provided in sections 81-663 to 81-675. In addition, the  
8 department, or the statewide health information exchange in accordance  
9 with policies adopted by the Health Information Technology Board and in  
10 collaboration with the department, may release such information as  
11 provided in subsection (9) or (10) of this section.

12 (6) The statewide health information exchange described in section  
13 71-2455, in accordance with policies adopted by the Health Information  
14 Technology Board and in collaboration with the department, shall  
15 establish the minimum administrative, physical, and technical safeguards  
16 necessary to protect the confidentiality, integrity, and availability of  
17 prescription drug information.

18 (7) If the entity receiving the prescription drug information has  
19 privacy protections at least as restrictive as those set forth in this  
20 section and has implemented and maintains the minimum safeguards required  
21 by subsection (6) of this section, the statewide health information  
22 exchange described in section 71-2455, in accordance with policies  
23 adopted by the Health Information Technology Board and in collaboration  
24 with the department, may release the prescription drug information and  
25 any other data collected pursuant to this section to:

- 26 (a) Other state prescription drug monitoring programs;  
27 (b) State and regional health information exchanges;  
28 (c) The medical director and pharmacy director of the Division of  
29 Medicaid and Long-Term Care of the department, or their designees;  
30 (d) The medical directors and pharmacy directors of medicaid-managed  
31 care entities, the state's medicaid drug utilization review board, and

1 any other state-administered health insurance program or its designee if  
2 any such entities have a current data-sharing agreement with the  
3 statewide health information exchange described in section 71-2455, and  
4 if such release is in accordance with the privacy and security provisions  
5 of the federal Health Insurance Portability and Accountability Act of  
6 1996, Public Law 104-191, and all regulations promulgated thereunder;

7 (e) Organizations which facilitate the interoperability and mutual  
8 exchange of information among state prescription drug monitoring programs  
9 or state or regional health information exchanges; or

10 (f) Electronic health record systems or pharmacy-dispensing software  
11 systems for the purpose of integrating prescription drug information into  
12 a patient's medical record.

13 (8) The department, or the statewide health information exchange  
14 described in section 71-2455, in accordance with policies adopted by the  
15 Health Information Technology Board and in collaboration with the  
16 department, may release to patients their prescription drug information  
17 collected pursuant to this section. Upon request of the patient, such  
18 information may be released directly to the patient or a personal health  
19 record system designated by the patient which has privacy protections at  
20 least as restrictive as those set forth in this section and that has  
21 implemented and maintains the minimum safeguards required by subsection  
22 (6) of this section.

23 (9) In accordance with the privacy and security provisions set forth  
24 in the federal Health Insurance Portability and Accountability Act of  
25 1996, Public Law 104-191, and regulations promulgated thereunder, the The  
26 department, or the statewide health information exchange described in  
27 section 71-2455 under policies adopted by in collaboration with the  
28 Health Information Technology Board department, may release data  
29 collected pursuant to this section for statistical, ~~public research,~~  
30 public policy, or educational purposes after removing information which  
31 identifies or could reasonably be used to identify the patient,

1 prescriber, dispenser, or other person who is the subject of the  
2 information, except as otherwise provided in subsection (10) of this  
3 section.

4 (10) In accordance with the privacy and security provisions set  
5 forth in the federal Health Insurance Portability and Accountability Act  
6 of 1996, Public Law 104-191, and regulations promulgated thereunder, the  
7 department, or statewide health information exchange described in section  
8 71-2455 under policies adopted by the Health Information Technology  
9 Board, may release data collected pursuant to this section for quality  
10 measures as approved or regulated by state or federal agencies or for  
11 patient quality improvement or research initiatives approved by the  
12 Health Information Technology Board.

13 (11) ~~(10)~~ The statewide health information exchange described in  
14 section 71-2455, entities described in subsection (7) of this section, or  
15 the department may request and receive program information from other  
16 prescription drug monitoring programs for use in the prescription drug  
17 monitoring system in this state in accordance with the privacy and  
18 security provisions set forth in the federal Health Insurance Portability  
19 and Accountability Act of 1996, Public Law 104-191, and regulations  
20 promulgated thereunder.

21 (12) ~~(11)~~ The statewide health information exchange described in  
22 section 71-2455, in collaboration with the department, shall implement  
23 technological improvements to facilitate the secure collection of, and  
24 access to, prescription drug information in accordance with this section.

25 (13) ~~(12)~~ Before accessing the prescription drug monitoring system,  
26 any user shall undergo training on the purpose of the system, access to  
27 and proper usage of the system, and the law relating to the system,  
28 including confidentiality and security of the prescription drug  
29 monitoring system. Such training shall be administered by the statewide  
30 health information exchange described in section 71-2455 or the  
31 department. The statewide health information exchange described in

1 section 71-2455 ~~which~~ shall have access to the prescription drug  
2 monitoring system for training operations, maintenance, and  
3 administrative purposes. Users who have been trained prior to May 10,  
4 2017, or who are granted access by an entity receiving prescription drug  
5 information pursuant to subsection (7) of this section, are deemed to be  
6 in compliance with the training requirement of this subsection.

7 (14) ~~(13)~~ For purposes of this section:

8 (a) Deliver or delivery means to actually, constructively, or  
9 attempt to transfer a drug or device from one person to another, whether  
10 or not for consideration;

11 (b) Department means the Department of Health and Human Services;

12 (c) Delegate Designee ~~Designee~~ means any licensed or registered health care  
13 professional credentialed under the Uniform Credentialing Act designated  
14 by a prescriber or dispenser to act as an agent of the prescriber or  
15 dispenser for purposes of submitting or accessing data in the  
16 prescription drug monitoring system and who is supervised by such  
17 prescriber or dispenser;

18 (d) Prescription drug or drugs means a prescription drug or drugs  
19 dispensed by delivery to the ultimate user or caregiver by or pursuant to  
20 the lawful order of a prescriber but does not include (i) the delivery of  
21 such prescription drug for immediate use for purposes of inpatient  
22 hospital care or emergency department care, (ii) the administration of a  
23 prescription drug by an authorized person upon the lawful order of a  
24 prescriber, (iii) a wholesale distributor of a prescription drug  
25 monitored by the prescription drug monitoring system, or (iv) the  
26 dispensing to a nonhuman patient of a prescription drug which is not a  
27 controlled substance listed in Schedule II, Schedule III, Schedule IV, or  
28 Schedule V of section 28-405;

29 (e) Dispenser means a person authorized in the jurisdiction in which  
30 he or she is practicing to deliver a prescription drug to the ultimate  
31 user or caregiver by or pursuant to the lawful order of a prescriber;

1 (f) Participant means an individual or entity that has entered into  
2 a participation agreement with the statewide health information exchange  
3 described in section 71-2455 which requires the individual or entity to  
4 comply with the privacy and security protections set forth in the  
5 provisions of the federal Health Insurance Portability and Accountability  
6 Act of 1996, Public Law 104-191, and regulations promulgated thereunder;  
7 and

8 (g) Prescriber means a health care professional authorized to  
9 prescribe in the profession which he or she practices.

10 Sec. 8. Section 71-2455, Reissue Revised Statutes of Nebraska, is  
11 amended to read:

12 71-2455 Subject to sections 5 and 6 of this act, the The Department  
13 of Health and Human Services, in collaboration with the Nebraska Health  
14 Information Initiative or any successor public-private statewide health  
15 information exchange, shall enhance or establish technology for  
16 prescription drug monitoring to carry out the purposes of section  
17 71-2454. The department may use state funds and accept grants, gifts, or  
18 other funds in order to implement and operate the technology. The  
19 department may adopt and promulgate rules and regulations to authorize  
20 use of electronic health information, if necessary to carry out the  
21 purposes of sections 71-2454 and 71-2455. The department shall contract  
22 with the statewide health information exchange to be responsible for the  
23 administration of the Health Information Technology Board, including, but  
24 not limited to, providing meeting notices, recording and distributing  
25 meeting minutes, administrative tasks related to the same, and funding  
26 such activities. The contract shall include provisions for reimbursement  
27 of expenses of the members of the board pursuant to subsection (5) of  
28 section 5 of this act by the statewide health information exchange. Such  
29 reimbursement shall be paid using a process essentially similar to  
30 sections 81-1174 to 81-1177.

31 Sec. 9. Original section 71-2455, Reissue Revised Statutes of

1 Nebraska, and section 71-2454, Revised Statutes Supplement, 2019, are  
2 repealed.

3 Sec. 10. Since an emergency exists, this act takes effect when  
4 passed and approved according to law.