

LEGISLATURE OF NEBRASKA
ONE HUNDRED SIXTH LEGISLATURE
SECOND SESSION

LEGISLATIVE BILL 1183

Introduced by Arch, 14.

Read first time January 23, 2020

Committee: Health and Human Services

- 1 A BILL FOR AN ACT relating to public health and welfare; to amend section
- 2 71-2455, Reissue Revised Statutes of Nebraska, and section 71-2454,
- 3 Revised Statutes Supplement, 2019; to create the Health Information
- 4 Technology Board; to provide powers and duties; to change provisions
- 5 relating to the prescription drug monitoring system; to harmonize
- 6 provisions; to repeal the original sections; and to declare an
- 7 emergency.
- 8 Be it enacted by the people of the State of Nebraska,

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

9 (2) Except for members designated under subdivisions (a), (f), (j),
10 (k), and (l) of this subsection, the members shall hold a credential
11 under the Uniform Credentialing Act. Except as otherwise provided in
12 subsection (4) of this section, the board shall consist of:

13 (a) The program director of the prescription drug monitoring program
14 created under section 71-2454;

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

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

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

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

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

29 (g) One dentist who is in active practice and in good standing with
30 the department appointed from a list of dentists provided by a statewide
31 organization representing dentists;

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

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

9 (j) One representative of the Department of Health and Human
10 Services;

11 (k) One representative of the statewide health information exchange
12 described in section 71-2455; and

13 (l) The chairperson of the Health and Human Services Committee of
14 the Legislature and the chairperson of the Appropriations Committee of
15 the Legislature, both of whom are nonvoting, ex officio members.

16 (3) Except for members designated in subdivisions (2)(a) and (1) of
17 this section:

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

20 (b) Any member appointed prior to December 1, 2020, shall begin to
21 serve upon appointment for the term beginning on such date; and

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

25 (4) If, after appointment, a member changes the classification of
26 the credential or has a credential classification that is terminated and
27 if such credential was a qualification for appointment, the member shall
28 be permitted to continue to serve as a member of the board until the
29 expiration of the term for which appointed unless the member loses the
30 credential due to disciplinary action.

31 (5) The members shall be reimbursed for their actual and necessary

1 expenses incurred in serving on the board.

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

4 Sec. 2. (1) The Health Information Technology Board shall:

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

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

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

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

23 (2) The board shall adopt policies and procedures necessary to carry
24 out its duties. The statewide health information exchange shall be
25 responsible for the administration of the Health Information Technology
26 Board, including, but not limited to, providing meeting notices,
27 recording and distributing meeting minutes, administrative tasks related
28 to the same, and funding such activities.

29 (3) By November 15 of each year, the board shall develop and submit
30 an annual report to the Governor and the Health and Human Services
31 Committee of the Legislature regarding considerations undertaken,

1 decisions made, accomplishments, and other relevant information. The
2 report submitted to the Legislature shall be submitted electronically.

3 Sec. 3. Section 71-2454, Revised Statutes Supplement, 2019, is
4 amended to read:

5 71-2454 (1) An entity described in section 71-2455 shall establish a
6 system of prescription drug monitoring for the purposes of (a) preventing
7 the misuse of controlled substances that are prescribed, (b) allowing
8 prescribers and dispensers to monitor the care and treatment of patients
9 for whom such a prescription drug is prescribed to ensure that such
10 prescription drugs are used for medically appropriate purposes, (c)
11 providing information to improve the health and safety of patients, and
12 (d) ensuring that the State of Nebraska remains on the cutting edge of
13 medical information technology.

14 (2) Such system of prescription drug monitoring shall be implemented
15 as follows: Except as provided in subsection (4) of this section, all
16 prescription drug 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 any prescription drug that is dispensed in this state or
22 to an address in this state to be entered into the system by the
23 dispenser or his or her delegate no less frequently than ~~designee~~ daily
24 after such prescription drug is delivered ~~dispensed~~, including
25 prescription drugs for patients paying cash or otherwise not relying on a
26 third-party payor for payment;

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

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

1 (e) Make the prescription drug information available to the
2 statewide health information exchange described in section 71-2455 for
3 access by its participants if such access is in compliance with the
4 privacy and security protections set forth in the provisions of the
5 federal Health Insurance Portability and Accountability Act of 1996,
6 Public Law 104-191, and regulations promulgated thereunder, except that
7 if a patient opts out of the statewide health information exchange, the
8 prescription drug information regarding that patient shall not be
9 accessible by the participants in the statewide health information
10 exchange.

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

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

17 (b) A patient identifier such as a military identification number,
18 driver's license number, state identification card number, or other valid
19 government-issued identification number, insurance identification number,
20 pharmacy software-generated patient-specific identifier, or other
21 identifier associated specifically with the patient;

22 (c) The name and address of the pharmacy dispensing the prescription
23 drug;

24 (d) The date the prescription is issued;

25 (e) The date the prescription is filled;

26 (f) The date the prescription is delivered to the patient;

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

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

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

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

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

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

6 (m) Additional information as determined by the Health Information
7 Technology Board or as published in the submitter guide for the
8 prescription drug monitoring system.

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

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

19 (b) Reporting status;

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

22 (d) The National Drug Code number as published by the federal Food
23 and Drug Administration of the prescription drug and the prescription
24 number;

25 (e) The date the prescription is written and the date the
26 prescription is filled;

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

28 (g) The quantity of the prescription drug and the number of days'
29 supply.

30 (5)(a) All prescription drug information submitted pursuant to this
31 section, all data contained in the prescription drug monitoring system,

1 and any report obtained from data contained in the prescription drug
2 monitoring system are confidential, are privileged, are not public
3 records, and may be withheld pursuant to section 84-712.05 except for
4 information released as provided in subsection (9) of this section.

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

12 (c) All other data is for the confidential use of the department and
13 the statewide health information exchange described in section 71-2455
14 and its participants. The department, or the statewide health information
15 exchange ~~in collaboration with the department,~~ may release such
16 information as ~~Class I, Class II, or Class IV data in accordance with~~
17 ~~section 81-667~~ to the private or public persons or entities that the
18 department or the statewide health information exchange, in accordance
19 with policies adopted by the Health Information Technology Board,
20 ~~determines may view such records as provided in sections 81-663 to~~
21 ~~81-675.~~ In addition, the department, or the statewide health information
22 exchange ~~in collaboration with the department,~~ may release such
23 information as provided in subsection (9) of this section.

24 (6) The statewide health information exchange described in section
25 71-2455, in collaboration with the department, shall establish the
26 minimum administrative, physical, and technical safeguards necessary to
27 protect the confidentiality, integrity, and availability of prescription
28 drug information.

29 (7) If the entity receiving the prescription drug information has
30 privacy protections at least as restrictive as those set forth in this
31 section and has implemented and maintains the minimum safeguards required

1 by subsection (6) of this section, the statewide health information
2 exchange described in section 71-2455, ~~in collaboration with the~~
3 ~~department,~~ may release the prescription drug information and any other
4 data collected pursuant to this section to:

5 (a) Other state prescription drug monitoring programs;

6 (b) State and regional health information exchanges;

7 (c) The medical director and pharmacy director of the Division of
8 Medicaid and Long-Term Care of the department, or their designees;

9 (d) The medical directors and pharmacy directors of medicaid-managed
10 care entities, the state's medicaid drug utilization review board, and
11 any other state-administered health insurance program or its designee if
12 any such entities have a current data-sharing agreement with the
13 statewide health information exchange described in section 71-2455, and
14 if such release is in accordance with the privacy and security provisions
15 of the federal Health Insurance Portability and Accountability Act of
16 1996, Public Law 104-191, and all regulations promulgated thereunder;

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

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

23 (8) The department or statewide health information exchange
24 described in section 71-2455, ~~in collaboration with the department,~~ may
25 release to patients their prescription drug information collected
26 pursuant to this section. Upon request of the patient, such information
27 may be released directly to the patient or a personal health record
28 system designated by the patient which has privacy protections at least
29 as restrictive as those set forth in this section and that has
30 implemented and maintains the minimum safeguards required by subsection
31 (6) of this section.

1 (9) The department, or the statewide health information exchange
2 described in section 71-2455 in accordance ~~collaboration~~ with policies
3 adopted by the Health Information Technology Board ~~department~~, may
4 release data collected pursuant to this section for quality measures as
5 approved or regulated by state or federal agencies, statistical, public
6 research, public policy, or educational purposes, or patient quality
7 improvement initiatives approved by the Health Information Technology
8 Board ~~after removing information which identifies or could reasonably be~~
9 ~~used to identify the patient, prescriber, dispenser, or other person who~~
10 ~~is the subject of the information.~~

11 (10) The statewide health information exchange described in section
12 71-2455, entities described in subsection (7) of this section, or the
13 department may request and receive program information from other
14 prescription drug monitoring programs for use in the prescription drug
15 monitoring system in this state.

16 (11) The statewide health information exchange described in section
17 71-2455, in collaboration with the department, shall implement
18 technological improvements to facilitate the secure collection of, and
19 access to, prescription drug information in accordance with this section.

20 (12) Before accessing the prescription drug monitoring system, any
21 user shall undergo training on the purpose of the system, access to and
22 proper usage of the system, and the law relating to the system, including
23 confidentiality and security of the prescription drug monitoring system.
24 Such training shall be administered by the statewide health information
25 exchange described in section 71-2455 or the department. The statewide
26 health information exchange described in section 71-2455 and its
27 designated vendor that collects information for and maintains the
28 prescription drug monitoring program ~~which~~ shall have access to the
29 prescription drug monitoring system for training operations, maintenance,
30 and administrative purposes. Users who have been trained prior to May 10,
31 2017, or who are granted access by an entity receiving prescription drug

1 information pursuant to subsection (7) of this section, are deemed to be
2 in compliance with the training requirement of this subsection.

3 (13) For purposes of this section:

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

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

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

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

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

28 (f) Participant means an individual or entity that has entered into
29 a participation agreement with the statewide health information exchange
30 described in section 71-2455 which requires the individual or entity to
31 comply with the privacy and security protections set forth in the

1 provisions of the federal Health Insurance Portability and Accountability
2 Act of 1996, Public Law 104-191, and regulations promulgated thereunder;
3 and

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

6 Sec. 4. Section 71-2455, Reissue Revised Statutes of Nebraska, is
7 amended to read:

8 71-2455 Subject to sections 1 and 2 of this act, the The Department
9 of Health and Human Services, in collaboration with the Nebraska Health
10 Information Initiative or any successor public-private statewide health
11 information exchange, shall enhance or establish technology for
12 prescription drug monitoring to carry out the purposes of section
13 71-2454. The department may use state funds and accept grants, gifts, or
14 other funds in order to implement and operate the technology. The
15 department may adopt and promulgate rules and regulations to authorize
16 use of electronic health information, if necessary to carry out the
17 purposes of sections 71-2454 and 71-2455.

18 Sec. 5. Original section 71-2455, Reissue Revised Statutes of
19 Nebraska, and section 71-2454, Revised Statutes Supplement, 2019, are
20 repealed.

21 Sec. 6. Since an emergency exists, this act takes effect when
22 passed and approved according to law.