

LEGISLATURE OF NEBRASKA  
ONE HUNDRED SIXTH LEGISLATURE  
FIRST SESSION

**LEGISLATIVE BILL 556**

Introduced by Howard, 9; Lindstrom, 18.

Read first time January 22, 2019

Committee: Health and Human Services

- 1 A BILL FOR AN ACT relating to the prescription drug monitoring program;
- 2 to amend section 71-2454, Reissue Revised Statutes of Nebraska; to
- 3 change provisions relating to program purposes, reporting,
- 4 prescription information, disclosure, and user access as prescribed;
- 5 to provide duties; to define and redefine terms; to harmonize
- 6 provisions; to repeal the original section; and to declare an
- 7 emergency.
- 8 Be it enacted by the people of the State of Nebraska,

1 Section 1. Section 71-2454, Reissue Revised Statutes of Nebraska, is  
2 amended to read:

3 71-2454 (1) An entity described in section 71-2455 shall establish a  
4 system of prescription drug monitoring for the purposes of (a) preventing  
5 the misuse of controlled substances that are prescribed, ~~and~~ (b) allowing  
6 prescribers and dispensers to monitor the care and treatment of patients  
7 for whom such a prescription drug is prescribed to ensure that such  
8 prescription drugs are used for medically appropriate purposes, (c)  
9 providing information to improve the health and safety of patients, and  
10 (d) ensuring ~~and~~ that the State of Nebraska remains on the cutting edge  
11 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 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 ~~all prescriptions~~  
22 ~~dispensed in this state or to an address in this state to be entered into~~  
23 ~~the system by the dispenser or his or her designee daily after such~~  
24 ~~prescription drug is dispensed, including prescription drugs those for~~  
25 ~~patients paying cash for such prescription drug or otherwise not relying~~  
26 ~~on a third-party payor for payment for the prescription drug;~~

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 ~~Dispensers may begin on February 25, 2016, to report dispensing of~~  
12 ~~prescriptions to the entity described in section 71-2455 which is~~  
13 ~~responsible for establishing the system of prescription drug monitoring.~~

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

18 (a) The patient's name, address, telephone number, gender, and date  
19 of birth;

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

26 (c) ~~(b)~~ The name and address of the pharmacy dispensing the  
27 prescription drug;

28 (d) ~~(e)~~ The date the prescription is issued;

29 (e) ~~(d)~~ The date the prescription is filled;

30 (f) The number of refills authorized;

31 (g) ~~(e)~~ The prescription number name of the prescription drug

1 ~~dispensed ;~~

2 ~~(h) The or the~~ National Drug Code number as published by the federal  
3 Food and Drug Administration of the prescription drug ~~dispensed~~;

4 ~~(i) (f)~~ The strength of the prescription drug prescribed;

5 ~~(j) (g)~~ The quantity of the prescription drug prescribed and the  
6 number of days' supply; ~~and~~

7 ~~(k) The prescription directions, if available to be reported, in~~  
8 accordance with the American Society for Automation in Pharmacy version  
9 4.2A format;

10 ~~(l) (h)~~ The prescriber's name and National Provider Identifier  
11 number or Drug Enforcement Administration number when reporting a  
12 controlled substance; ~~and -~~

13 ~~(m) Any other information as required by the Dispenser's~~  
14 Implementation Guide for the prescription drug monitoring program  
15 developed by the statewide health information exchange described in  
16 section 71-2455 in collaboration with the department.

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

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

27 (b) Reporting status;

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

30 (d) The name of the prescription drug ~~dispensed~~ and the prescription  
31 number;

1 (e) The date the prescription is written and the date the  
2 prescription is filled;

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

4 (g) The quantity of the prescription drug dispensed and the number  
5 of days' supply.

6 (5)(a) All prescription drug information submitted pursuant to this  
7 section, all data contained in the prescription drug monitoring system,  
8 and any report obtained from data contained in the prescription drug  
9 monitoring system are confidential, are privileged, are not public  
10 records, and may be withheld pursuant to section 84-712.05.

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

18 (c) All other data is for the confidential use of the department and  
19 the statewide health information exchange described in section 71-2455  
20 and its participants. The department or the statewide health information  
21 exchange may release such information as Class I, Class II, or Class IV  
22 data in accordance with section 81-667 to the private or public persons  
23 or entities that the department determines may view such records as  
24 provided in sections 81-663 to 81-675. In addition, the department or the  
25 statewide health information exchange may release such information as  
26 provided in subsection (9) of this section.

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

1       (7) If the entity receiving the prescription drug information has  
2 privacy protections at least as restrictive as those set forth in this  
3 section and has implemented and maintains the minimum safeguards required  
4 by subsection (6) of this section, the statewide health information  
5 exchange described in section 71-2455, in collaboration with the  
6 department, may release the prescription drug information and any other  
7 data collected pursuant to this section to:

8           (a) Other state prescription drug monitoring programs;

9           (b) State and regional health information exchanges;

10          (c) The medical director and pharmacy director of the Division of  
11 Medicaid and Long-Term Care of the department, or his or her designees;

12          (d) The medical directors and pharmacy directors of medicaid-managed  
13 care entities, the state's medicaid drug utilization review board, and  
14 any other state-administered health insurance program or its designee if  
15 any such entities have a current data-sharing agreement with the  
16 statewide health information exchange described in section 71-2455, and  
17 if such release is in accordance with the privacy and security provisions  
18 of the federal Health Insurance Portability and Accountability Act of  
19 1996, Public Law 104-191, and all regulations promulgated thereunder;

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

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

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

1 in this section and that has implemented and maintains the minimum  
2 safeguards required by subsection (6) of this section.

3 (9) The statewide health information exchange described in section  
4 71-2455 or the department may release data collected pursuant to this  
5 section for statistical, public research, public policy, or educational  
6 purposes after removing information which identifies or could reasonably  
7 be used to identify the patient, prescriber, dispenser, or other person  
8 who is the subject of the information.

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

13 (11) The statewide health information exchange described in section  
14 71-2455, in collaboration with the department, shall implement  
15 technological improvements to facilitate the secure collection of, and  
16 access to, prescription drug information in accordance with this section.

17 (12) ~~(6)~~ Before accessing the prescription drug monitoring system,  
18 any user shall undergo training on the purpose of the system, access to  
19 and proper usage of the system, and the law relating to the system,  
20 including confidentiality and security of the prescription drug  
21 monitoring system. Such training shall be administered by the statewide  
22 health information exchange described in section 71-2455 which shall have  
23 access to the prescription drug monitoring system for training and  
24 administrative purposes. Users who have been trained prior to May 10,  
25 2017, or who are granted access by an entity receiving prescription drug  
26 information pursuant to subsection (7) of this section, are deemed to be  
27 in compliance with the training requirement of this subsection.

28 (13) ~~(7)~~ For purposes of this section:

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

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

2           **(c) (a) Designee means any licensed or registered health care**  
3 professional credentialed under the Uniform Credentialing Act designated  
4 by a prescriber or dispenser to act as an agent of the prescriber or  
5 dispenser for purposes of submitting or accessing data in the  
6 prescription drug monitoring system and who is supervised by such  
7 prescriber or dispenser;

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

20           **(e) (e) Dispenser means a person authorized in the jurisdiction in**  
21 which he or she is practicing to deliver a prescription **drug** to the  
22 ultimate user **or caregiver** by or pursuant to the lawful order of a  
23 prescriber;

24           **(f) (d) Participant means an individual or entity that has entered**  
25 into a participation agreement with the statewide health information  
26 exchange described in section 71-2455 which requires the individual or  
27 entity to comply with the privacy and security protections set forth in  
28 the provisions of the federal Health Insurance Portability and  
29 Accountability Act of 1996, Public Law 104-191, and regulations  
30 promulgated thereunder; and

31           **(g) (e) Prescriber means a health care professional authorized to**

1 prescribe in the profession which he or she practices.

2       Sec. 2.   Original section 71-2454, Reissue Revised Statutes of  
3 Nebraska, is repealed.

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