

AMENDMENTS TO LB950

Introduced by Banking, Commerce and Insurance.

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

3 **Section 1.** Section 81-6,123, Reissue Revised Statutes of Nebraska,
4 is amended to read:

5 81-6,123 Sections 81-6,123 to 81-6,128 ~~81-6,126~~ shall be known and
6 may be cited as the Population Health Information Act.

7 **Sec. 2.** Section 81-6,125, Reissue Revised Statutes of Nebraska, is
8 amended to read:

9 81-6,125 (1) The purpose of the Population Health Information Act is
10 to designate a health information exchange to provide the data
11 infrastructure needed to assist in creating a healthier Nebraska and
12 operating the electronic health records initiative.

13 (2) The designated health information exchange shall:

14 (a) Enable the secure and seamless exchange of health information in
15 real-time between health care providers and health care entities for the
16 purposes of evaluating and monitoring a patient's care and treatment and
17 reducing health care costs;

18 (b) (a) Aggregate clinical information from health care entities
19 needed to support the operation of the medical assistance program under
20 the Medical Assistance Act;

21 (c) (b) Act as the designated entity for purposes of access to, and
22 analysis of, health data;

23 (d) (e) Collect and analyze data for purposes of informing the
24 Legislature, the department, health care providers, and health care
25 entities as to the cost of, access to, and quality of health care in
26 Nebraska; and

27 (e) (d) Act as a collector and reporter of public health data for

1 registry submissions, electronic laboratory reporting, immunization
2 reporting, and syndromic surveillance from an electronic health record,
3 which does not include claims data, ~~;~~ and

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

9 (3)(a) On or before January 1, 2027 ~~September 30, 2021~~, each health
10 care facility listed in subdivision (b) of this subsection shall
11 participate in the designated health information exchange through sharing
12 of clinical information. Subject to subsection (5) of this section, such
13 ~~Such~~ clinical information shall include the clinical data that the health
14 care facility captured in its existing electronic health record as
15 permitted by state and federal laws, rules, and regulations. Any patient
16 health information shared with the designated health information exchange
17 as determined by the rules and regulations ~~policies~~ adopted by the Health
18 Information Technology Board shall be provided in accordance with the
19 privacy and security provisions set forth in the federal Health Insurance
20 Portability and Accountability Act of 1996 and regulations adopted under
21 the act.

22 (b) This subsection applies to an ambulatory surgical center, a
23 critical access hospital, a general acute hospital, a health clinic, a
24 hospital, an intermediate care facility, a long-term care hospital, a
25 mental health substance use treatment center, a PACE center, a pharmacy,
26 a psychiatric or mental hospital, a public health clinic, or a
27 rehabilitation hospital, as such terms are defined in the Health Care
28 Facility Licensure Act, or a diagnostic, laboratory, or imaging center.

29 (c) This subsection does not apply to (i) a state-owned or state-
30 operated facility or (ii) an assisted-living facility, a nursing
31 facility, or a skilled nursing facility, as such terms are defined in the

1 Health Care Facility Licensure Act.

2 (d) Any connection established by July 1, 2021, between a health
3 care facility and the designated health information exchange to
4 facilitate such participation shall be at no cost to the participating
5 health care facility.

6 ~~(e) A health care facility may apply to the board for a waiver from~~
7 ~~the requirement to participate under this subsection due to a~~
8 ~~technological burden. The board shall review the application and~~
9 ~~determine whether to waive the requirement. If the board waives the~~
10 ~~requirement for a health care facility, the board shall review the waiver~~
11 ~~annually to determine if the health care facility continues to qualify~~
12 ~~for the waiver.~~

13 (e) ~~(f)~~ The board shall not require a health care facility to
14 purchase or contract for an electronic records management system or
15 service.

16 (4)(a) On or before January 1, 2022, each health insurance plan
17 shall participate in the designated health information exchange through
18 sharing of information. Subject to subsection (6) ~~(5)~~ of this section,
19 such information shall be determined by rules and regulations ~~policies~~
20 adopted by the Health Information Technology Board and shall be provided
21 in accordance with the privacy and security provisions set forth in the
22 federal Health Insurance Portability and Accountability Act of 1996 and
23 regulations adopted under the act.

24 (b) For purposes of this subsection:

25 (i) Health insurance plan includes any group or individual sickness
26 and accident insurance policy, health maintenance organization contract,
27 subscriber contract, employee medical, surgical, or hospital care benefit
28 plan, or self-funded employee benefit plan to the extent not preempted by
29 federal law; and

30 (ii) Health insurance plan does not include (A) accident-only,
31 disability-income, hospital confinement indemnity, dental, hearing,

1 vision, or credit insurance, (B) coverage issued as a supplement to
2 liability insurance, (C) insurance provided as a supplement to medicare,
3 (D) insurance arising from workers' compensation provisions, (E)
4 automobile medical payment insurance, (F) insurance policies that provide
5 coverage for a specified disease or any other limited benefit coverage,
6 or (G) insurance under which benefits are payable with or without regard
7 to fault and which is statutorily required to be contained in any
8 liability insurance policy.

9 (5) The designated health information exchange shall not require a
10 health care facility or health insurance plan to submit data or
11 information except that required by rules and regulations adopted by the
12 Health Information Technology Board.

13 (6) ~~(5)~~ The designated health information exchange and the
14 department shall enter into an agreement to allow the designated health
15 information exchange to collect, aggregate, analyze, report, and release
16 de-identified data, as defined by the federal Health Insurance
17 Portability and Accountability Act of 1996, that is derived from the
18 administration of the medical assistance program. Such written agreement
19 shall be executed no later than September 30, 2021.

20 (7) ~~(6)~~ In addition to the right to opt out as provided in section
21 71-2454, an individual shall have the right to opt out of the designated
22 health information exchange or the sharing of information required under
23 subsections (3) and (4) of this section. The designated health
24 information exchange shall adopt a patient opt-out policy consistent with
25 the federal Health Insurance Portability and Accountability Act of 1996
26 and other applicable federal requirements. Such policy shall not apply to
27 mandatory public health reporting requirements.

28 **Sec. 3.** Section 81-6,127, Reissue Revised Statutes of Nebraska, is
29 amended to read:

30 81-6,127 (1) The Health Information Technology Board is created. The
31 board shall have seventeen members. Except for members designated in

1 subdivision (2)(o) of this section, the members shall be appointed by the
2 Governor with the approval of a majority of the members of the
3 Legislature. The members may begin to serve immediately following
4 appointment and prior to approval by the Legislature. The members shall
5 be appointed by February 1, 2021, and the board shall begin meeting on or
6 before April 1, 2021.

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

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

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

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

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

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

24 (f) ~~Two~~ One hospital administrators ~~administrator~~ appointed from a
25 list of hospital administrators provided by a statewide organization
26 representing hospital administrators, only one of which shall represent
27 critical access hospitals as defined in section 71-409;

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

31 (h) One nurse practitioner who is in active practice and in good

1 standing with the department authorized to prescribe medication appointed
2 from a list of nurse practitioners authorized to prescribe medication
3 provided by a statewide organization representing such nurse
4 practitioners;

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

8 (j) Two representatives ~~One representative~~ of the Department of
9 Health and Human Services including one representative from the Division
10 of Medicaid and Long-Term Care of the Department of Health and Human
11 Services;

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

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

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

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

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

23 (p) One representative of an insurer, as defined in section 44-103,
24 who offers at least one health insurance plan as defined in section
25 81-6,125; and

26 (q) One individual with experience in the electronic exchange of
27 sensitive information.

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

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

1 (b) Each member shall be appointed for a five-year term ~~beginning on~~
2 ~~April 1, 2021,~~ and may serve for any number of such terms; and

3 ~~(c) Any member appointed prior to April 1, 2021, shall begin to~~
4 ~~serve immediately upon appointment and continue serving for the term~~
5 ~~beginning on April 1, 2021; and~~

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

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

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

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

19 **Sec. 4.** Section 81-6,128, Reissue Revised Statutes of Nebraska, is
20 amended to read:

21 81-6,128 (1) The Health Information Technology Board shall:

22 (a) Establish criteria for data collection and disbursement by the
23 statewide health information exchange described in section 71-2455 and
24 the prescription drug monitoring program created under section 71-2454 to
25 improve the quality of information provided to clinicians. Such data
26 shall not include proprietary or confidential financial information
27 maintained by a health care provider or health care entity;

28 (b) Establish the framework and standards necessary to ensure the
29 secure and seamless exchange of health information in real-time between
30 health care providers and health care entities through the statewide
31 health information exchange;

1 (c) ~~(b)~~ Evaluate and ensure that the statewide health information
2 exchange is meeting technological standards for reporting of data for the
3 prescription drug monitoring program, including the data to be collected
4 and reported and the frequency of data collection and disbursement;

5 (d) ~~(c)~~ Provide the governance oversight necessary to ensure that
6 any health information in the statewide health information exchange and
7 the prescription drug monitoring program may be accessed, used, or
8 disclosed only in accordance with the privacy and security protections
9 set forth in the federal Health Insurance Portability and Accountability
10 Act of 1996, Public Law 104-191, and regulations promulgated thereunder.
11 All protected health information is privileged, is not a public record,
12 and may be withheld from the public pursuant to section 84-712.05; and

13 (e) ~~(d)~~ Provide recommendations to the statewide health information
14 exchange on any other matters referred to the board.

15 (2) The board shall adopt and promulgate rules and regulations
16 ~~policies and procedures~~ necessary to carry out the Population Health
17 Information Act ~~its duties~~.

18 (3) The authority of the board to direct the use or release of data
19 under this section or section 71-2454 shall apply only to requests
20 submitted to the board after September 1, 2021.

21 (4) The board may hold meetings by telecommunication or electronic
22 communication subject to the Open Meetings Act. Any official action or
23 vote of the members of the board shall be preserved in the records of the
24 board.

25 (5) By November 15, 2021, and November 15 of each year thereafter,
26 the board shall develop and submit an annual report to the Governor and
27 the Health and Human Services Committee of the Legislature regarding
28 considerations undertaken, decisions made, accomplishments, and other
29 relevant information. The report submitted to the Legislature shall be
30 submitted electronically.

31 **Sec. 5.** Original sections 81-6,123, 81-6,125, 81-6,127, and

1 81-6,128, Reissue Revised Statutes of Nebraska, are repealed.