

LEGISLATURE OF NEBRASKA  
ONE HUNDRED SIXTH LEGISLATURE  
SECOND SESSION

**LEGISLATIVE BILL 1183**

FINAL READING

Introduced by Arch, 14; Blood, 3.

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 adopt the Population Health  
4 Information Act; to create the Health Information Technology Board;  
5 to provide powers and duties; to change provisions relating to the  
6 prescription drug monitoring system and the statewide health  
7 information exchange; to harmonize provisions; to repeal the  
8 original sections; and to declare an emergency.  
9 Be it enacted by the people of the State of Nebraska,

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

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

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

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

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

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

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

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

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

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

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

31          (3) Collect and analyze data for purposes of informing the

1 Legislature, the department, health care providers, and health care  
2 entities as to the cost of, access to, and quality of health care in  
3 Nebraska;

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

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

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

23 (2) Nothing in the Population Health Information Act shall preclude  
24 the department from working collaboratively with other entities for  
25 purposes of collecting and analyzing data to inform the Legislature, the  
26 department, health care providers, and health care entities regarding the  
27 cost of, access to, and quality of health care in Nebraska.

28 Sec. 5. (1) The Health Information Technology Board is created. The  
29 board shall have seventeen members. Except for members designated in  
30 subdivision (2)(o) of this section, the members shall be appointed by the  
31 Governor with the approval of a majority of the members of the

1 Legislature. The members may begin to serve immediately following  
2 appointment and prior to approval by the Legislature. The members shall  
3 be appointed by February 1, 2021, and the board shall begin meeting on or  
4 before April 1, 2021.

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

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

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

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

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

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

22 (f) One hospital administrator appointed from a list of hospital  
23 administrators provided by a statewide organization representing hospital  
24 administrators;

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

28 (h) One nurse practitioner who is in active practice and in good  
29 standing with the department authorized to prescribe medication appointed  
30 from a list of nurse practitioners authorized to prescribe medication  
31 provided by a statewide organization representing such nurse

1 practitioners;

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

5 (j) One representative of the Department of Health and Human  
6 Services;

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

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

10 (m) One credentialed health information management professional  
11 appointed from a list of such professionals provided by a statewide  
12 organization representing such professionals;

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

15 (o) The chairperson of the Health and Human Services Committee of  
16 the Legislature and the chairperson of the Appropriations Committee of  
17 the Legislature, both of whom are nonvoting, ex officio members.

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

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

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

24 (c) Any member appointed prior to April 1, 2021, shall begin to  
25 serve immediately upon appointment and continue serving for the term  
26 beginning on April 1, 2021; and

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

30 (4) If, after appointment, the classification of a member's  
31 credential changes or a member's credential classification is terminated

1 and if such credential was a qualification for appointment, the member  
2 shall be permitted to continue to serve as a member of the board until  
3 the expiration of the term for which appointed unless the member loses  
4 the credential due to disciplinary action.

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

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

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

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

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

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

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

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

30 (3) The board may hold meetings by telecommunication or electronic  
31 communication subject to the Open Meetings Act. Any official action or

1 vote of the members of the board shall be preserved in the records of the  
2 board.

3 (4) By November 15, 2021, and November 15 of each year thereafter,  
4 the board shall develop and submit an annual report to the Governor and  
5 the Health and Human Services Committee of the Legislature regarding  
6 considerations undertaken, decisions made, accomplishments, and other  
7 relevant information. The report submitted to the Legislature shall be  
8 submitted electronically.

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

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

20 (2) Such system of prescription drug monitoring shall be implemented  
21 as follows: Except as provided in subsection (4) of this section, all  
22 prescription drug information shall be reported to the prescription drug  
23 monitoring system. The prescription drug monitoring system shall include,  
24 but not be limited to, provisions that:

25 (a) Prohibit any patient from opting out of the prescription drug  
26 monitoring system;

27 (b) Require any prescription drug that is dispensed in this state or  
28 to an address in this state to be entered into the system by the  
29 dispenser or his or her delegate no less frequently than ~~designee~~ daily  
30 after such prescription drug is sold ~~dispensed~~, including prescription  
31 drugs for patients paying cash or otherwise not relying on a third-party

1 payor for payment;

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

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

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

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

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

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

28 (c) The name and address of the pharmacy dispensing the prescription  
29 drug;

30 (d) The date the prescription is issued;

31 (e) The date the prescription is filled;



- 1        (f) The date the prescription is sold to the patient;  
2        (g) ~~(f)~~ The number of refills authorized;  
3        (h) ~~(g)~~ The prescription number of the prescription drug;  
4        (i) ~~(h)~~ The National Drug Code number as published by the federal  
5 Food and Drug Administration of the prescription drug;  
6        (j) ~~(i)~~ The strength of the prescription drug prescribed;  
7        (k) ~~(j)~~ The quantity of the prescription drug prescribed and the  
8 number of days' supply; ~~and~~  
9        (l) ~~(k)~~ The prescriber's name and National Provider Identifier  
10 number or Drug Enforcement Administration number when reporting a  
11 controlled substance; ~~and~~ -  
12        (m) Additional information as determined by the Health Information  
13 Technology Board and as published in the submitter guide for the  
14 prescription drug monitoring system.

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

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

25        (b) Reporting status;

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

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

31        (e) The date the prescription is written and the date the

1 prescription is filled;

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

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

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

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

19 (c) All other data is for the confidential use of the department and  
20 the statewide health information exchange described in section 71-2455  
21 and its participants. The department, or the statewide health information  
22 exchange in accordance with policies adopted by the Health Information  
23 Technology Board and in collaboration with the department, may release  
24 such information in accordance with the privacy and security provisions  
25 set forth in the federal Health Insurance Portability and Accountability  
26 Act of 1996, Public Law 104-191, and regulations promulgated thereunder,  
27 as Class I, Class II, or Class IV data in accordance with section 81-667,  
28 except for purposes in accordance with subsection (9) or (10) of this  
29 section, to the private or public persons or entities that the department  
30 or the statewide health information exchange, in accordance with policies  
31 adopted by the Health Information Technology Board, determines may view

1 such records as provided in sections 81-663 to 81-675. In addition, the  
2 department, or the statewide health information exchange in accordance  
3 with policies adopted by the Health Information Technology Board and in  
4 collaboration with the department, may release such information as  
5 provided in subsection (9) or (10) of this section.

6 (6) The statewide health information exchange described in section  
7 71-2455, in accordance with policies adopted by the Health Information  
8 Technology Board and in collaboration with the department, shall  
9 establish the minimum administrative, physical, and technical safeguards  
10 necessary to protect the confidentiality, integrity, and availability of  
11 prescription drug information.

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

20 (a) Other state prescription drug monitoring programs;

21 (b) State and regional health information exchanges;

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

24 (d) The medical directors and pharmacy directors of medicaid-managed  
25 care entities, the state's medicaid drug utilization review board, and  
26 any other state-administered health insurance program or its designee if  
27 any such entities have a current data-sharing agreement with the  
28 statewide health information exchange described in section 71-2455, and  
29 if such release is in accordance with the privacy and security provisions  
30 of the federal Health Insurance Portability and Accountability Act of  
31 1996, Public Law 104-191, and all regulations promulgated thereunder;

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

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

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

17 (9) In accordance with the privacy and security provisions set forth  
18 in the federal Health Insurance Portability and Accountability Act of  
19 1996, Public Law 104-191, and regulations promulgated thereunder, the The  
20 department, or the statewide health information exchange described in  
21 section 71-2455 under policies adopted by in collaboration with the  
22 Health Information Technology Board department, may release data  
23 collected pursuant to this section for statistical, public research,  
24 public policy, or educational purposes after removing information which  
25 identifies or could reasonably be used to identify the patient,  
26 prescriber, dispenser, or other person who is the subject of the  
27 information, except as otherwise provided in subsection (10) of this  
28 section.

29 (10) In accordance with the privacy and security provisions set  
30 forth in the federal Health Insurance Portability and Accountability Act  
31 of 1996, Public Law 104-191, and regulations promulgated thereunder, the

1 department, or statewide health information exchange described in section  
2 71-2455 under policies adopted by the Health Information Technology  
3 Board, may release data collected pursuant to this section for quality  
4 measures as approved or regulated by state or federal agencies or for  
5 patient quality improvement or research initiatives approved by the  
6 Health Information Technology Board.

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

15       (12) ~~(11)~~ The statewide health information exchange described in  
16 section 71-2455, in collaboration with the department, shall implement  
17 technological improvements to facilitate the secure collection of, and  
18 access to, prescription drug information in accordance with this section.

19       (13) ~~(12)~~ Before accessing the prescription drug monitoring system,  
20 any user shall undergo training on the purpose of the system, access to  
21 and proper usage of the system, and the law relating to the system,  
22 including confidentiality and security of the prescription drug  
23 monitoring system. Such training shall be administered by the statewide  
24 health information exchange described in section 71-2455 or the  
25 department. The statewide health information exchange described in  
26 section 71-2455 which shall have access to the prescription drug  
27 monitoring system for training operations, maintenance, and  
28 administrative purposes. Users who have been trained prior to May 10,  
29 2017, or who are granted access by an entity receiving prescription drug  
30 information pursuant to subsection (7) of this section, are deemed to be  
31 in compliance with the training requirement of this subsection.

1           (14) ~~(13)~~ For purposes of this section:

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

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

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

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

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

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

1 and

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

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

6 71-2455 Subject to sections 5 and 6 of this act, the The Department  
7 of Health and Human Services, in collaboration with the Nebraska Health  
8 Information Initiative or any successor public-private statewide health  
9 information exchange, shall enhance or establish technology for  
10 prescription drug monitoring to carry out the purposes of section  
11 71-2454. The department may use state funds and accept grants, gifts, or  
12 other funds in order to implement and operate the technology. The  
13 department may adopt and promulgate rules and regulations to authorize  
14 use of electronic health information, if necessary to carry out the  
15 purposes of sections 71-2454 and 71-2455. The department shall contract  
16 with the statewide health information exchange for the administration of  
17 the Health Information Technology Board, and such contract shall specify  
18 that the health information exchange is responsible for the  
19 administration of the Health Information Technology Board, including, but  
20 not limited to, providing meeting notices, recording and distributing  
21 meeting minutes, administrative tasks related to the same, and funding  
22 such activities. The contract shall also include provisions for the  
23 statewide health information exchange to reimburse the expenses of the  
24 members of the board pursuant to subsection (5) of section 5 of this act.  
25 Such reimbursement shall be paid using a process essentially similar to  
26 sections 81-1174 to 81-1177. No state funds, including General Funds,  
27 cash funds, and federal funds, shall be used to carry out the  
28 administrative duties of the Health Information Technology Board nor for  
29 reimbursement of the expenses of the board members.

30 Sec. 9. Original section 71-2455, Reissue Revised Statutes of  
31 Nebraska, and section 71-2454, Revised Statutes Supplement, 2019, are

1 repealed.

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