

LEGISLATIVE BILL 471

Approved by the Governor February 24, 2016

Introduced by Howard, 9; Lindstrom, 18; Mello, 5; Nordquist, 7; Garrett, 3; Kuehn, 38; McCollister, 20; Morfeld, 46; Hansen, 26.

A BILL FOR AN ACT relating to health and human services; to amend section 84-712.05, Reissue Revised Statutes of Nebraska, and section 71-2454, Revised Statutes Cumulative Supplement, 2014; to change provisions relating to prescription drug monitoring; to create a task force; to provide powers and duties; to provide that certain prescription information, data, and reports are not a public record; to harmonize provisions; to repeal the original sections; and to declare an emergency.
Be it enacted by the people of the State of Nebraska,

Section 1. Section 71-2454, Revised Statutes Cumulative Supplement, 2014, is amended to read:

71-2454 ~~(1) An It is the intent of the Legislature that an entity described in section 71-2455 shall establish a system of prescription drug monitoring for the purposes of (a 1) preventing the misuse of controlled substances that are prescribed in an efficient and cost-effective manner and (b 2) allowing prescribers and dispensers doctors and pharmacists to monitor the care and treatment of patients for whom such a prescription drug is prescribed to ensure that such prescription drugs are used for medically appropriate purposes and that the State of Nebraska remains on the cutting edge of medical information technology.~~

~~(2) Such system of prescription drug monitoring shall be implemented as follows: Except as provided in subsection (4) of this section, beginning January 1, 2017, all dispensed prescriptions of controlled substances shall be reported; and beginning January 1, 2018, all prescription information shall be reported to the prescription drug monitoring system. The prescription drug monitoring system shall include, but not be limited to, provisions that:~~

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

~~(b) Require all prescriptions dispensed in this state or to an address in this state to be entered into the system by the dispenser or his or her designee daily after such prescription is dispensed, including those for patients paying cash for such prescription drug or otherwise not relying on a third-party payor for payment for the prescription drug;~~

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

~~(d) Ensure that such system includes information relating to all payors, including, but not limited to, the medical assistance program established pursuant to the Medical Assistance Act.~~

~~Dispensers may begin on the effective date of this act to report dispensing of prescriptions to the entity described in section 71-2455 which is responsible for establishing the system of prescription drug monitoring.~~

~~(3) Prescription information that shall be submitted electronically to the prescription drug monitoring system shall be determined by the entity described in section 71-2455 and shall include, but not be limited to:~~

~~(a) The patient's name, address, and date of birth;~~

~~(b) The name and address of the pharmacy dispensing the prescription;~~

~~(c) The date the prescription is issued;~~

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

~~(e) The name of the drug dispensed or the National Drug Code number as published by the federal Food and Drug Administration of the drug dispensed;~~

~~(f) The strength of the drug prescribed;~~

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

~~(h) The prescriber's name and National Provider Identifier number or Drug Enforcement Administration number when reporting a controlled substance.~~

~~(4) Beginning January 1, 2018, a veterinarian licensed under the Veterinary Medicine and Surgery Practice Act shall be required to report a dispensed prescription of controlled substances listed on Schedule II, Schedule III, or Schedule IV pursuant to section 28-405.~~

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

~~(6) For purposes of this section:~~

~~(a) Designee means any licensed or registered health care professional designated by a dispenser to act as an agent of the dispenser for purposes of submitting or accessing data in the prescription drug monitoring system and who is directly supervised by such dispenser;~~

~~(b) Dispenser means a person authorized in the jurisdiction in which he or she is practicing to deliver a prescription to the ultimate user by or pursuant to the lawful order of a prescriber but does not include (i) the delivery of such prescription drug for immediate use for purposes of inpatient hospital~~

care or emergency department care, (ii) the administration of a prescription drug by an authorized person upon the lawful order of a prescriber, (iii) a wholesale distributor of a prescription drug monitored by the prescription drug monitoring system, or (iv) through December 31, 2017, a veterinarian licensed under the Veterinary Medicine and Surgery Practice Act when dispensing prescriptions for animals in the usual course of providing professional services; and

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

Sec. 2. (1) The Veterinary Prescription Monitoring Program Task Force is created. The task force shall conduct a study to develop recommendations of which controlled substances shall be reported by a veterinarian to the prescription drug monitoring program created under section 71-2454 when dispensing drugs from a veterinarian's office or an animal shelter. The study shall include appropriate methods and procedures of reporting by the veterinarians with the necessary data base field information. The task force shall utilize nationally available resources afforded by the American Association of Veterinary State Boards and the Department of State Legislative and Regulatory Affairs of the American Veterinary Medical Association in development of the recommendations.

(2) The task force shall consist of at least ten members appointed by the chairperson of the Health and Human Services Committee of the Legislature as follows: One member of the Health and Human Services Committee; two at-large members of the Legislature; three members selected from a list of six veterinarians provided by the Board of Veterinary Medicine and Surgery, one of whom is employed by or provides services at an animal shelter; one pharmacist nominated by the Nebraska Pharmacists Association or its successor organization; and two members nominated by the Nebraska Veterinary Medical Association or its successor organization. The task force shall also include a representative of the prescription drug monitoring program who shall be a nonvoting member and serve in an advisory capacity only.

(3) The members of the task force shall be appointed within one hundred twenty days after the effective date of this act. The initial meeting of the task force shall be convened within one hundred eighty days after the effective date of this act. The task force shall elect a chairperson and may elect any additional officers from among its members. All task force members shall serve without compensation.

(4) The task force shall report its findings and recommendations to the Health and Human Services Committee of the Legislature on or before December 1, 2016.

(5) For purposes of this section, animal shelter has the definition found in section 54-626.

Sec. 3. Section 84-712.05, Reissue Revised Statutes of Nebraska, is amended to read:

84-712.05 The following records, unless publicly disclosed in an open court, open administrative proceeding, or open meeting or disclosed by a public entity pursuant to its duties, may be withheld from the public by the lawful custodian of the records:

(1) Personal information in records regarding a student, prospective student, or former student of any educational institution or exempt school that has effectuated an election not to meet state approval or accreditation requirements pursuant to section 79-1601 when such records are maintained by and in the possession of a public entity, other than routine directory information specified and made public consistent with 20 U.S.C. 1232g, as such section existed on February 1, 2013, and regulations adopted thereunder;

(2) Medical records, other than records of births and deaths and except as provided in subdivision (5) of this section, in any form concerning any person; records of elections filed under section 44-2821; and patient safety work product under the Patient Safety Improvement Act;

(3) Trade secrets, academic and scientific research work which is in progress and unpublished, and other proprietary or commercial information which if released would give advantage to business competitors and serve no public purpose;

(4) Records which represent the work product of an attorney and the public body involved which are related to preparation for litigation, labor negotiations, or claims made by or against the public body or which are confidential communications as defined in section 27-503;

(5) Records developed or received by law enforcement agencies and other public bodies charged with duties of investigation or examination of persons, institutions, or businesses, when the records constitute a part of the examination, investigation, intelligence information, citizen complaints or inquiries, informant identification, or strategic or tactical information used in law enforcement training, except that this subdivision shall not apply to records so developed or received relating to the presence of and amount or concentration of alcohol or drugs in any body fluid of any person;

(6) Appraisals or appraisal information and negotiation records concerning the purchase or sale, by a public body, of any interest in real or personal property, prior to completion of the purchase or sale;

(7) Personal information in records regarding personnel of public bodies other than salaries and routine directory information;

(8) Information solely pertaining to protection of the security of public property and persons on or within public property, such as specific, unique vulnerability assessments or specific, unique response plans, either of which

is intended to prevent or mitigate criminal acts the public disclosure of which would create a substantial likelihood of endangering public safety or property; computer or communications network schema, passwords, and user identification names; guard schedules; lock combinations; or public utility infrastructure specifications or design drawings the public disclosure of which would create a substantial likelihood of endangering public safety or property, unless otherwise provided by state or federal law;

(9) The security standards, procedures, policies, plans, specifications, diagrams, access lists, and other security-related records of the Lottery Division of the Department of Revenue and those persons or entities with which the division has entered into contractual relationships. Nothing in this subdivision shall allow the division to withhold from the public any information relating to amounts paid persons or entities with which the division has entered into contractual relationships, amounts of prizes paid, the name of the prize winner, and the city, village, or county where the prize winner resides;

(10) With respect to public utilities and except as provided in sections 43-512.06 and 70-101, personally identified private citizen account payment and customer use information, credit information on others supplied in confidence, and customer lists;

(11) Records or portions of records kept by a publicly funded library which, when examined with or without other records, reveal the identity of any library patron using the library's materials or services;

(12) Correspondence, memoranda, and records of telephone calls related to the performance of duties by a member of the Legislature in whatever form. The lawful custodian of the correspondence, memoranda, and records of telephone calls, upon approval of the Executive Board of the Legislative Council, shall release the correspondence, memoranda, and records of telephone calls which are not designated as sensitive or confidential in nature to any person performing an audit of the Legislature. A member's correspondence, memoranda, and records of confidential telephone calls related to the performance of his or her legislative duties shall only be released to any other person with the explicit approval of the member;

(13) Records or portions of records kept by public bodies which would reveal the location, character, or ownership of any known archaeological, historical, or paleontological site in Nebraska when necessary to protect the site from a reasonably held fear of theft, vandalism, or trespass. This section shall not apply to the release of information for the purpose of scholarly research, examination by other public bodies for the protection of the resource or by recognized tribes, the Unmarked Human Burial Sites and Skeletal Remains Protection Act, or the federal Native American Graves Protection and Repatriation Act;

(14) Records or portions of records kept by public bodies which maintain collections of archaeological, historical, or paleontological significance which reveal the names and addresses of donors of such articles of archaeological, historical, or paleontological significance unless the donor approves disclosure, except as the records or portions thereof may be needed to carry out the purposes of the Unmarked Human Burial Sites and Skeletal Remains Protection Act or the federal Native American Graves Protection and Repatriation Act;

(15) Job application materials submitted by applicants, other than finalists, who have applied for employment by any public body as defined in section 84-1409. For purposes of this subdivision, (a) job application materials means employment applications, resumes, reference letters, and school transcripts and (b) finalist means any applicant (i) who reaches the final pool of applicants, numbering four or more, from which the successful applicant is to be selected, (ii) who is an original applicant when the final pool of applicants numbers less than four, or (iii) who is an original applicant and there are four or fewer original applicants;

(16) Records obtained by the Public Employees Retirement Board pursuant to section 84-1512;

(17) Social security numbers; credit card, charge card, or debit card numbers and expiration dates; and financial account numbers supplied to state and local governments by citizens; ~~and~~

(18) Information exchanged between a jurisdictional utility and city pursuant to section 66-1867; ~~and -~~

(19) All prescription drug information submitted pursuant to section 71-2454, all data contained in the prescription drug monitoring system, and any report obtained from data contained in the prescription drug monitoring system.

Sec. 4. Original section 84-712.05, Reissue Revised Statutes of Nebraska, and section 71-2454, Revised Statutes Cumulative Supplement, 2014, are repealed.

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