

## LEGISLATIVE BILL 411

Approved by the Governor May 24, 2021

Introduced by Lathrop, 12.

A BILL FOR AN ACT relating to health information; to amend sections 81-6,125 and 81-6,128, Revised Statutes Cumulative Supplement, 2020; to require the provision and sharing of information by health care facilities and health insurance plans; to change provisions relating to the Health Information Technology Board; to repeal the original sections; and to declare an emergency.

Be it enacted by the people of the State of Nebraska,

Section 1. Section 81-6,125, Revised Statutes Cumulative Supplement, 2020, is amended to read:

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

(2) The designated health information exchange shall:

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

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

(c) (3) Collect and analyze data for purposes of informing the Legislature, the department, health care providers, and health care entities as to the cost of, access to, and quality of health care in Nebraska;

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

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

(3)(a) On or before September 30, 2021, each health care facility listed in subdivision (b) of this subsection shall participate in the designated health information exchange through sharing of clinical information. Such clinical information shall include the clinical data that the health care facility captured in its existing electronic health record as permitted by state and federal laws, rules, and regulations. Any patient health information shared with the designated health information exchange as determined by policies adopted by the Health Information Technology Board shall be provided in accordance with the privacy and security provisions set forth in the federal Health Insurance Portability and Accountability Act of 1996 and regulations adopted under the act.

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

(c) This subsection does not apply to (i) a state-owned or state-operated facility or (ii) an assisted-living facility, a nursing facility, or a skilled nursing facility, as such terms are defined in the Health Care Facility Licensure Act.

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

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

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

(4)(a) On or before January 1, 2022, each health insurance plan shall participate in the designated health information exchange through sharing of information. Subject to subsection (5) of this section, such information shall be determined by policies adopted by the Health Information Technology Board.

(b) For purposes of this subsection:

(i) Health insurance plan includes any group or individual sickness and accident insurance policy, health maintenance organization contract, subscriber contract, employee medical, surgical, or hospital care benefit plan, or self-

funded employee benefit plan to the extent not preempted by federal law; and

(ii) Health insurance plan does not include (A) accident-only, disability-income, hospital confinement indemnity, dental, hearing, vision, or credit insurance, (B) coverage issued as a supplement to liability insurance, (C) insurance provided as a supplement to medicare, (D) insurance arising from workers' compensation provisions, (E) automobile medical payment insurance, (F) insurance policies that provide coverage for a specified disease or any other limited benefit coverage, or (G) insurance under which benefits are payable with or without regard to fault and which is statutorily required to be contained in any liability insurance policy.

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

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

Sec. 2. Section 81-6,128, Revised Statutes Cumulative Supplement, 2020, is amended to read:

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

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

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

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

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

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

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

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

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

Sec. 3. Original sections 81-6,125 and 81-6,128, Revised Statutes Cumulative Supplement, 2020, are repealed.

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