

LEGISLATURE OF NEBRASKA

ONE HUNDRED SECOND LEGISLATURE

FIRST SESSION

LEGISLATIVE BILL 574

Introduced by Price, 3.

Read first time January 19, 2011

Committee: Health and Human Services

A BILL

1 FOR AN ACT relating to prescriptions; to amend section 38-2870,
2 Reissue Revised Statutes of Nebraska; to adopt the
3 Electronic Prescription Transmission Act; to harmonize
4 provisions; and to repeal the original section.
5 Be it enacted by the people of the State of Nebraska,

1 Section 1. Sections 1 to 5 of this act shall be known and
2 may be cited as the Electronic Prescription Transmission Act.

3 Sec. 2. The Electronic Prescription Transmission Act
4 applies to (1) all electronic prescribing devices and all
5 requirements for prior authorization requests used in Nebraska, other
6 than those used by prescribing practitioners who are employees of the
7 State of Nebraska, and (2) all software and hardware vendors and
8 content managers with respect to such electronic prescribing devices
9 and electronic prior authorization requests, regardless of location.

10 Sec. 3. (1) A prescription drug order transmitted by
11 electronic transmission to a pharmacy or pharmacist shall:

12 (a) Be transmitted by the practitioner or the
13 practitioner's agent directly to a pharmacist or pharmacist intern in
14 a licensed pharmacy of the patient's choice. No intervening person
15 shall be permitted access to the medical order to alter such order or
16 the licensed pharmacy chosen by the patient. Such medical order may
17 be transmitted through a third-party intermediary who shall
18 facilitate the transmission of the order from the practitioner or
19 practitioner's agent to the pharmacy;

20 (b) Identify the transmitter's telephone number or other
21 suitable information necessary to contact the transmitter for written
22 or oral confirmation, the time and date of the transmission, the
23 identity of the pharmacy intended to receive the transmission, and
24 other information as required by law; and

25 (c) Serve as the original medical order if all other

1 requirements of this subsection are satisfied.

2 (2) An electronic prescription transmission device used
3 to transmit a prescription drug order to a pharmacist shall:

4 (a) Allow any legal prescription to be written and
5 entered into the electronic prescription transmission device without
6 interference or limitations prior to transmission to the pharmacist;

7 (b) Allow the prescription to be transmitted through a
8 neutral and open platform that does not use any means, program, or
9 device, including, but not limited to, advertising, instant
10 messaging, or pop-up messaging, to influence or attempt to influence,
11 through economic incentives or otherwise, the prescribing decision of
12 a prescribing practitioner at the point of care if such means,
13 program, or device is triggered by, initiated by, or in specific
14 response to the input, selection, or act of a prescribing
15 practitioner or his or her agent prescribing an outpatient drug
16 covered by a plan formulary or selecting a pharmacy for a patient;
17 and

18 (c) Make available information regarding a plan's
19 specific formulary according to the following conditions:

20 (i) All available outpatient drugs covered by the
21 formulary shall be readily disclosed to the prescribing practitioner;

22 (ii) All available pharmacies, both in-network and out-
23 of-network, shall be readily disclosed to the prescribing
24 practitioner;

25 (iii) Nothing is designed to preclude or make more

1 difficult the prescribing practitioner's or patient's selection of
2 any particular pharmacy or outpatient drug covered by the formulary;

3 (iv) Copayment and cost-sharing data specific to the
4 patient's plan's formulary and entitled benefits are accessible to
5 the prescribing practitioner electronically for reference; and

6 (v) An electronic prior authorization process for
7 allowing approval of an exception to the plan formulary or other
8 restriction is available on the device as described in subsection (4)
9 of this section, providing real-time adjudication.

10 (3) Alerts and messages to the prescribing practitioner
11 and his or her staff related to the plan formulary shall support
12 better clinical decisionmaking, including, but not limited to, alerts
13 to adverse events and access to formulary information. Such messages
14 or alerts shall be substantially supported by scientific, accurate,
15 up-to-date, and fact-based evidence, including a fair and balanced
16 presentation of risks and benefits. Such information shall:

17 (a) Be consistent with the regulations of the federal
18 Food and Drug Administration for advertising pharmaceutical products
19 and not be selectively or competitively pushed to the prescribing
20 practitioner;

21 (b) Be categorized or prioritized based on clinical
22 importance, including severity and likelihood of any adverse events;

23 (c) Be individually suppressible by the prescribing
24 practitioner;

25 (d) Be able to be overridden by the prescribing

1 practitioner so that he or she can prescribe his or her medication of
2 choice for the patient; and

3 (e) Provide access to the decision support rules
4 underlying each alert or message, including the date of last update
5 and the source of any financial support received in connection with
6 the development of such rules.

7 (4) An electronic prior authorization process for
8 allowing approval of an exception to the plan formulary or other
9 restriction shall:

10 (a) Be required as a part of all electronic medical
11 record systems that facilitate electronic transmission of
12 prescriptions sold within Nebraska;

13 (b) Utilize a universal format for prior authorization
14 requests to be developed by the Department of Health and Human
15 Services on or before June 30, 2012;

16 (c) Provide specific feedback to the prescribing
17 practitioner on acceptable and approvable reasons for approval of a
18 prior authorization request for a drug prescribed for a patient; and

19 (d) Provide real-time adjudication of the prior
20 authorization request that facilitates an explanation of benefits for
21 the patient with information on how to appeal the denial of the
22 requested medication.

23 Sec. 4. An advisory committee to the Department of Health
24 and Human Services shall be established to provide input on the
25 design of the universal prior authorization format standard,

1 including a comparable paper form when an electronic prescribing
2 device is not used. Members of the advisory committee shall include:
3 Two physicians; one retail pharmacist; one hospital pharmacist; two
4 patient advocates; and one representative of the insurance industry.
5 Members of the advisory committee shall be appointed by the chief
6 executive officer of the department.

7 Sec. 5. The Department of Health and Human Services may
8 adopt and promulgate rules and regulations to carry out the
9 Electronic Prescription Transmission Act.

10 Sec. 6. Section 38-2870, Reissue Revised Statutes of
11 Nebraska, is amended to read:

12 38-2870 (1) All medical orders shall be valid for the
13 period stated in the medical order, except that (a) if the medical
14 order is for a controlled substance listed in section 28-405, such
15 period shall not exceed six months from the date of issuance at which
16 time the medical order shall expire and (b) if the medical order is
17 for a drug or device which is not a controlled substance listed in
18 section 28-405 or is an order issued by a practitioner for
19 pharmaceutical care, such period shall not exceed twelve months from
20 the date of issuance at which time the medical order shall expire.

21 (2) Prescription drugs or devices may only be dispensed
22 by a pharmacist or pharmacist intern pursuant to a medical order, by
23 an individual dispensing pursuant to a delegated dispensing permit,
24 or as otherwise provided in section 38-2850. Notwithstanding any
25 other provision of law to the contrary, a pharmacist or a pharmacist

1 intern may dispense drugs or devices pursuant to a medical order or
2 an individual dispensing pursuant to a delegated dispensing permit
3 may dispense drugs or devices pursuant to a medical order. The
4 Pharmacy Practice Act shall not be construed to require any
5 pharmacist or pharmacist intern to dispense any drug or device
6 pursuant to any medical order. A pharmacist or pharmacist intern
7 shall retain the professional right to refuse to dispense.

8 (3) Except as otherwise provided in section 28-414, a
9 practitioner or the practitioner's agent may transmit a medical order
10 to a pharmacist or pharmacist intern by the following means: (a) In
11 writing, (b) orally, (c) by facsimile or ~~electronic transmission~~
12 email of a medical order signed by the practitioner, or (d) by
13 facsimile or ~~electronic transmission~~ email of a medical order which
14 is not signed by the practitioner. Such order shall be treated the
15 same as an oral medical order.

16 (4) Except as otherwise provided in section 28-414, any
17 medical order transmitted by facsimile or ~~electronic transmission~~
18 email shall (a) be transmitted by the practitioner or the
19 practitioner's agent directly to a pharmacist or pharmacist intern in
20 a licensed pharmacy of the patient's choice. No intervening person
21 shall be permitted access to the medical order to alter such order or
22 the licensed pharmacy chosen by the patient. Such medical order may
23 be transmitted through a third-party intermediary who shall
24 facilitate the transmission of the order from the practitioner or
25 practitioner's agent to the pharmacy, (b) identify the transmitter's

1 telephone number or other suitable information necessary to contact
2 the transmitter for written or oral confirmation, the time and date
3 of the transmission, the identity of the pharmacy intended to receive
4 the transmission, and other information as required by law, and (c)
5 serve as the original medical order if all other requirements of this
6 subsection are satisfied. Medical orders transmitted by ~~electronic~~
7 ~~transmission~~ email shall be signed by the practitioner either with an
8 electronic signature or a digital signature.

9 (5) The pharmacist shall exercise professional judgment
10 regarding the accuracy, validity, and authenticity of any medical
11 order transmitted by facsimile or ~~electronic transmission.~~ email.

12 Sec. 7. Original section 38-2870, Reissue Revised
13 Statutes of Nebraska, is repealed.