

LEGISLATIVE BILL 254

Approved by the Governor April 21, 2014

Introduced by Adams, 24; Coash, 27.

FOR AN ACT relating to public health and welfare; to amend section 44-7,104, Revised Statutes Cumulative Supplement, 2012; to eliminate a termination date relating to insurance coverage for certain anticancer medications; to provide requirements for insurance coverage for autism spectrum disorder; to provide for the establishment of a program for the distribution of funds for amino acid-based elemental formulas; to appropriate funds; to provide operative dates; to repeal the original section; and to declare an emergency.

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

Section 1. Section 44-7,104, Revised Statutes Cumulative Supplement, 2012, is amended to read:

44-7,104 (1) Notwithstanding section 44-3,131, (a) any individual or group sickness and accident insurance policy, certificate, or subscriber contract delivered, issued for delivery, or renewed in this state and any hospital, medical, or surgical expense-incurred policy, except for policies that provide coverage for a specified disease or other limited-benefit coverage, and (b) any self-funded employee benefit plan to the extent not preempted by federal law that provides coverage for cancer treatment shall provide coverage for a prescribed, orally administered anticancer medication that is used to kill or slow the growth of cancerous cells on a basis no less favorable than intravenously administered or injected anticancer medications that are covered as medical benefits by the policy, certificate, contract, or plan.

(2) This section does not prohibit such policy, certificate, contract, or plan from requiring prior authorization for a prescribed, orally administered anticancer medication. If such medication is authorized, the cost to the covered individual shall not exceed the coinsurance or copayment that would be applied to any other cancer treatment involving intravenously administered or injected anticancer medications.

(3) A policy, certificate, contract, or plan provider shall not reclassify any anticancer medication or increase a coinsurance, copayment, deductible, or other out-of-pocket expense imposed on any anticancer medication to achieve compliance with this section. Any change that otherwise increases an out-of-pocket expense applied to any anticancer medication shall also be applied to the majority of comparable medical or pharmaceutical benefits under the policy, certificate, contract, or plan.

(4) This section does not prohibit a policy, certificate, contract, or plan provider from increasing cost-sharing for all benefits, including cancer treatments.

(5) This section shall apply to any policy, certificate, contract, or plan that is delivered, issued for delivery, or renewed in this state on or after October 1, 2012.

~~(6) This section terminates on December 31, 2015.~~

Sec. 2. (1) For purposes of this section:

(a) Applied behavior analysis means the design, implementation, and evaluation of environmental modifications, using behavioral stimuli and consequences, to produce socially significant improvement in human behavior, including the use of direct observation, measurement, and functional analysis of the relationship between environment and behavior;

(b) Autism spectrum disorder means any of the pervasive developmental disorders or autism spectrum disorder as defined by the Diagnostic and Statistical Manual of Mental Disorders, as the most recent edition of such manual existed on the operative date of this section;

(c) Behavioral health treatment means counseling and treatment programs, including applied behavior analysis, that are: (i) Necessary to develop, maintain, or restore, to the maximum extent practicable, the functioning of an individual; and (ii) provided or supervised, either in person or by telehealth, by a behavior analyst certified by a national certifying organization or a licensed psychologist if the services performed are within the boundaries of the psychologist's competency;

(d) Diagnosis means a medically necessary assessment, evaluation, or test to diagnose if an individual has an autism spectrum disorder;

(e) Pharmacy care means a medication that is prescribed by a licensed physician and any health-related service deemed medically necessary

to determine the need or effectiveness of the medication;

(f) Psychiatric care means a direct or consultative service provided by a psychiatrist licensed in the state in which he or she practices;

(g) Psychological care means a direct or consultative service provided by a psychologist licensed in the state in which he or she practices;

(h) Therapeutic care means a service provided by a licensed speech-language pathologist, occupational therapist, or physical therapist; and

(i) Treatment means evidence-based care, including related equipment, that is prescribed or ordered for an individual diagnosed with an autism spectrum disorder by a licensed physician or a licensed psychologist, including:

(i) Behavioral health treatment;

(ii) Pharmacy care;

(iii) Psychiatric care;

(iv) Psychological care; and

(v) Therapeutic care.

(2) Notwithstanding section 44-3,131, (a) any individual or group sickness and accident insurance policy or subscriber contract delivered, issued for delivery, or renewed in this state and any hospital, medical, or surgical expense-incurred policy, except for policies that provide coverage for a specified disease or other limited-benefit coverage, and (b) any self-funded employee benefit plan to the extent not preempted by federal law, including any such plan provided for employees of the State of Nebraska, shall provide coverage for the screening, diagnosis, and treatment of an autism spectrum disorder in an individual under twenty-one years of age. To the extent that the screening, diagnosis, and treatment of autism spectrum disorder are not already covered by such policy or contract, coverage under this section shall be included in such policies or contracts that are delivered, issued for delivery, amended, or renewed in this state or outside this state if the policy or contract insures a resident of Nebraska on or after January 1, 2015. No insurer shall terminate coverage or refuse to deliver, issue for delivery, amend, or renew coverage of the insured as a result of an autism spectrum disorder diagnosis or treatment. Nothing in this subsection applies to non-grandfathered plans in the individual and small group markets that are required to include essential health benefits under the federal Patient Protection and Affordable Care Act or to medicare supplement, accident-only, specified disease, hospital indemnity, disability income, long-term care, or other limited benefit hospital insurance policies.

(3) Except as provided in subsection (4) of this section, coverage for an autism spectrum disorder shall not be subject to any limits on the number of visits an individual may make for treatment of an autism spectrum disorder, nor shall such coverage be subject to dollar limits, deductibles, copayments, or coinsurance provisions that are less favorable to an insured than the equivalent provisions that apply to a general physical illness under the policy.

(4) Coverage for behavioral health treatment, including applied behavior analysis, shall be subject to a maximum benefit of twenty-five hours per week until the insured reaches twenty-one years of age. Payments made by an insurer on behalf of a covered individual for treatment other than behavioral health treatment, including applied behavior analysis, shall not be applied to any maximum benefit established under this section.

(5) Except in the case of inpatient service, if an individual is receiving treatment for an autism spectrum disorder, an insurer shall have the right to request a review of that treatment not more than once every six months unless the insurer and the individual's licensed physician or licensed psychologist execute an agreement that a more frequent review is necessary. Any such agreement regarding the right to review a treatment plan more frequently shall apply only to a particular individual being treated for an autism spectrum disorder and shall not apply to all individuals being treated for autism spectrum disorder by a licensed physician or licensed psychologist. The cost of obtaining a review under this subsection shall be borne by the insurer.

(6) This section shall not be construed as limiting any benefit that is otherwise available to an individual under a hospital, surgical, or medical expense-incurred policy or health maintenance organization contract. This section shall not be construed as affecting any obligation to provide services to an individual under an individualized family service plan, individualized education program, or individualized service plan.

Sec. 3. The Department of Health and Human Services shall establish a program to provide amino acid-based elemental formulas for the diagnosis and treatment of Immunoglobulin E and non-Immunoglobulin E mediated allergies

to multiple food proteins, food-protein-induced enterocolitis syndrome, eosinophilic disorders, and impaired absorption of nutrients caused by disorders affecting the absorptive surface, functional length, and motility of the gastrointestinal tract, when the ordering physician has issued a written order stating that the amino acid-based elemental formula is medically necessary for the treatment of a disease or disorder. Up to fifty percent of the actual out-of-pocket cost, not to exceed twelve thousand dollars, for amino acid-based elemental formulas shall be available to an individual without fees each twelve-month period. The department shall distribute funds on a first-come, first-served basis. Nothing in this section is deemed to be an entitlement. The maximum total General Fund expenditures per year for amino acid-based elemental formulas shall not exceed two hundred fifty thousand dollars each fiscal year in FY2014-15 and FY2015-16. The Department of Health and Human Services shall provide an electronic report on the program to the Legislature annually on or before December 15 of each year.

Sec. 4. There is hereby appropriated (1) \$362,500 from the General Fund for FY2014-15 and (2) \$725,000 from the General Fund for FY2015-16 to the Board of Regents of the University of Nebraska, for Program 781, to aid in carrying out the provisions of this legislative bill.

Sec. 5. There is hereby appropriated (1) \$250,000 from the General Fund for FY2014-15 and (2) \$250,000 from the General Fund for FY2015-16 to the Department of Health and Human Services, for Program 514, to aid in carrying out the provisions of this legislative bill.

No expenditures for permanent and temporary salaries and per diems for state employees shall be made from funds appropriated in this section.

Sec. 6. There is hereby appropriated (1) \$10,000 from the General Fund for FY2014-15 and (2) \$10,000 from the General Fund for FY2015-16 to the Department of Health and Human Services, for Program 33, to aid in carrying out the provisions of this legislative bill.

Total expenditures for permanent and temporary salaries and per diems from funds appropriated in this section shall not exceed \$10,000 for FY2014-15 or \$10,000 for FY2015-16.

Sec. 7. Sections 1, 2, and 8 of this act become operative three calendar months after the adjournment of this legislative session. Section 3 of this act becomes operative on July 1, 2014. The other sections of this act become operative on their effective date.

Sec. 8. Original section 44-7,104, Revised Statutes Cumulative Supplement, 2012, is repealed.

Sec. 9. Since an emergency exists, this act takes effect when passed and approved according to law.