

LEGISLATURE OF NEBRASKA
ONE HUNDREDTH LEGISLATURE
SECOND SESSION

LEGISLATIVE BILL 830

Introduced by Lathrop, 12.

Read first time January 10, 2008

Committee: Health and Human Services

A BILL

1 FOR AN ACT relating to prescriptions; to amend section 68-901,
2 Revised Statutes Cumulative Supplement, 2006; to adopt
3 the Prescription Drug Cost Savings Act; to state intent
4 regarding appropriations; to provide a duty for the
5 Department of Health and Human Services; to harmonize
6 provisions; to provide an operative date; to provide
7 severability; to repeal the original section; and to
8 declare an emergency.
9 Be it enacted by the people of the State of Nebraska,

1 Section 1. Sections 1 to 20 of this act shall be known
2 and may be cited as the Prescription Drug Cost Savings Act.

3 Sec. 2. The Legislature finds that:

4 (1) Affordability is critical in providing Nebraska
5 residents with access to prescription drugs;

6 (2) Making prescription drugs more affordable for
7 qualified Nebraska residents increases the overall health of
8 Nebraska residents, promotes healthy communities, and protects the
9 public health and welfare; and

10 (3) The Healthy Nebraska Rx Card Program should be
11 integrated as much as possible with other state health programs and
12 is not intended to discourage employers from offering to pay or
13 from paying for prescription drug benefits for their employees or
14 to supplant employer-sponsored prescription drug benefit plans.

15 Sec. 3. For purposes of the Prescription Drug Cost
16 Savings Act:

17 (1) Chief executive officer means the chief executive
18 officer of the department or his or her designee;

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

21 (3) Healthy Nebraska Rx Card Program means the program
22 established under section 8 of this act;

23 (4) Labeler means an entity or person that receives
24 prescription drugs from a manufacturer or wholesaler and repackages
25 those drugs for retail sale and that has a labeler code from the

1 federal Food and Drug Administration under 21 C.F.R. 207.20, as
2 such regulation existed on January 1, 2008;

3 (5) Manufacturer means a manufacturer of prescription
4 drugs as defined in 42 U.S.C. 1396r-8(k)(5), as such section
5 existed on January 1, 2008, including a subsidiary or affiliate of
6 a manufacturer;

7 (6) Participating retail pharmacy means a retail pharmacy
8 or other business licensed to dispense prescription drugs in this
9 state that (a) participates in the state medicaid program or (b)
10 voluntarily agrees to participate in the Healthy Nebraska Rx Card
11 Program;

12 (7) State medicaid program means the medical assistance
13 program established under the Medical Assistance Act; and

14 (8) Wholesaler means a wholesale drug distributor
15 licensed under the Wholesale Drug Distributor Licensing Act to
16 distribute prescription drugs in this state.

17 Sec. 4. The chief executive officer shall negotiate
18 discount prices or rebates for prescription drugs from
19 manufacturers and labelers. A manufacturer or labeler that sells
20 prescription drugs in this state may voluntarily elect to negotiate
21 (1) supplemental rebates for the federal medicaid drug rebate
22 program greater than those required under 42 U.S.C. 1396r-8, as
23 such section existed on January 1, 2008, (2) discount prices or
24 rebates for the Healthy Nebraska Rx Card Program, and (3) discount
25 prices or rebates for any other state program that pays for or

1 acquires prescription drugs.

2 Sec. 5. In negotiating rebate terms pursuant to section
3 4 of this act, the chief executive officer shall take into
4 consideration the rebate calculated under the federal medicaid drug
5 rebate program pursuant to 42 U.S.C. 1396r-8, as such section
6 existed on January 1, 2008, the price provided to covered entities
7 under 42 U.S.C. 256b, as such section existed on January 1, 2008,
8 and any other available information on prescription drug prices,
9 discounts, and rebates.

10 Sec. 6. (1) The chief executive officer shall establish a
11 preferred drug list for the Healthy Nebraska Rx Card Program that
12 includes, but is not limited to:

13 (a) Drugs listed on the state medicaid preferred drug
14 list;

15 (b) Chemotherapy;

16 (c) Antiretroviral drugs;

17 (d) Immunosuppressive drugs; and

18 (e) Any other drugs as determined by the chief executive
19 officer, except that antipsychotic drugs and antidepressant drugs
20 shall not be included on the preferred drug list.

21 (2) In determining whether to add other drugs to the
22 preferred drug list, the chief executive officer may take into
23 consideration any of the following factors:

24 (a) Therapeutic value for the disease or condition under
25 treatment;

1 (b) Clinical efficacy;
2 (c) Safety;
3 (d) Cost; and
4 (e) Other relevant factors as determined by the chief
5 executive officer.

6 (3) The chief executive officer may consult with
7 physicians and other health care professionals with specialized
8 clinical knowledge and expertise in this area.

9 (4) The determination of a drug's safety and efficacy
10 shall be consistent with the standards set forth in the
11 peer-reviewed literature and other available sources, including,
12 but not limited to:

13 (a) The American Hospital Formulary Service Drug
14 Information;

15 (b) The United States Pharmacopeia-Drug Information;

16 (c) The DRUGDEX System; and

17 (d) Other sources deemed appropriate by the chief
18 executive officer.

19 Sec. 7. (1) The chief executive officer shall consider
20 whether to place a manufacturer's or labeler's prescription drugs
21 on the prior authorization list for the state medicaid program and
22 take similar actions involving prior authorization or formularies
23 for any other state-funded or state-operated prescription drug
24 program if:

25 (a) The chief executive officer and a manufacturer or

1 labeler fail to reach agreement on the terms of a supplemental
2 medicaid rebate or a price discount or rebate for the Healthy
3 Nebraska Rx Card Program; and

4 (b) The price discounts or rebates offered by the
5 manufacturer or labeler are not as favorable to the state as
6 the prices provided to covered entities under 42 U.S.C. 256b, as
7 such section existed on January 1, 2008.

8 (2) Any prior authorization shall meet the requirements
9 of 42 U.S.C. 1396r-8(d)(5), as such section existed on January 1,
10 2008, and shall be done in accordance with rules and regulations of
11 the department.

12 (3) The names of manufacturers and labelers that do
13 not enter into rebate agreements shall be public information,
14 and the department shall release the information to the public
15 and actively distribute it to doctors, pharmacists, and other
16 health-care professionals.

17 Sec. 8. The department shall establish the Healthy
18 Nebraska Rx Card Program as a state pharmaceutical assistance
19 program under 42 U.S.C. 1396r-8(c)(1)(C)(i)(III), as such section
20 existed on January 1, 2008, to provide price discounts to
21 participants for drugs covered by a rebate agreement. Using
22 funds from negotiated rebates, the department shall contract with
23 wholesalers and participating retail pharmacies to provide such
24 price discounts.

25 Sec. 9. The price discounts received by Healthy Nebraska

1 Rx Card Program participants shall be calculated by the chief
2 executive officer on a quarterly basis. The calculation shall
3 provide price discounts approximately equal to the average amount
4 of the negotiated drug rebate minus an amount to cover the
5 reasonable administrative costs of the Healthy Nebraska Rx Card
6 Program.

7 Sec. 10. (1) An individual is eligible to participate in
8 the Healthy Nebraska Rx Card Program if he or she is a resident of
9 Nebraska and is eligible for medicare or has a net family income
10 which is less than three hundred percent of the federal poverty
11 level.

12 (2) An individual is ineligible to participate in the
13 Healthy Nebraska Rx Card Program if he or she is eligible for
14 assistance under the state medicaid program or is covered by an
15 insurance policy that provides benefits for prescription drugs
16 equal to or greater than the benefits provided under the Healthy
17 Nebraska Rx Card Program.

18 Sec. 11. The department shall establish simple procedures
19 for enrolling participants in the Healthy Nebraska Rx Card Program
20 and shall undertake outreach efforts to build public awareness of
21 the program and maximize enrollment by eligible residents.

22 Sec. 12. (1) A participating retail pharmacy shall
23 disclose to each participant in the Healthy Nebraska Rx Card
24 Program the amount of his or her savings as a result of the
25 price discounts provided by the program pursuant to rules and

1 regulations of the department. The rules and regulations shall
2 protect information that is proprietary in nature.

3 (2) A participating retail pharmacy shall verify to
4 the department the amounts charged to Healthy Nebraska Rx Card
5 Program participants and nonparticipants and shall provide the
6 department with utilization data necessary to calculate rebates
7 from manufacturers and labelers. The department shall protect
8 the confidentiality of all information subject to confidentiality
9 protection under state or federal laws, rules, or regulations.
10 The department may not impose transaction charges on wholesalers
11 or participating retail pharmacies submitting claims or receiving
12 payments under the program.

13 Sec. 13. (1) The department shall either pay wholesalers
14 or participating retail pharmacies in advance for Healthy Nebraska
15 Rx Card Program discounts or shall reimburse such wholesalers or
16 participating retail pharmacies weekly.

17 (2) The department may require a wholesaler or
18 participating retail pharmacy to separate its inventory of
19 prescription drugs under the Healthy Nebraska Rx Card Program
20 from the rest of such wholesaler's or participating retail
21 pharmacy's drug inventory and to maintain records of acquisition
22 and disposition of prescription drugs under the program separately
23 from its other records.

24 Sec. 14. (1) Disputes or discrepancies in rebate amounts
25 shall be resolved using the process established in this section.

1 (2) (a) If there is a discrepancy in favor of the
2 manufacturer or labeler between the amount claimed by a wholesaler
3 or a participating retail pharmacy and the amount rebated by the
4 manufacturer or labeler, the department, at its own expense, may
5 hire a mutually agreed-upon independent auditor. If a discrepancy
6 still exists following the audit, the manufacturer or labeler shall
7 justify the reason for the discrepancy or pay the department any
8 additional amount due.

9 (b) If there is a discrepancy against the interest
10 of the manufacturer or labeler in the information provided by
11 the department to the manufacturer or labeler regarding the
12 manufacturer's or labeler's rebate, the manufacturer or labeler,
13 at the manufacturer's or labeler's expense, may hire a mutually
14 agreed-upon independent auditor to verify the accuracy of the
15 data supplied to the department. If a discrepancy still exists
16 following the audit, the department shall justify the reason for
17 the discrepancy or provide a refund to the manufacturer or labeler.

18 (3) Following the procedures established in subsection
19 (2) of this section, the department on its own motion may, or at
20 the request of the manufacturer or labeler shall, hold a hearing.
21 Supporting documentation shall accompany any request for a hearing
22 under this section.

23 Sec. 15. The department shall report the enrollment and
24 financial status of the Healthy Nebraska Rx Card Program and report
25 savings from supplemental medicaid rebates to the Clerk of the

1 Legislature by February 1 each year.

2 Sec. 16. The chief executive officer may combine drug
3 pricing negotiations for the Healthy Nebraska Rx Card Program and
4 one or more other state programs to maximize drug rebates if he or
5 she finds that it is beneficial to do so.

6 Sec. 17. The department may seek any waivers of federal
7 law, rule, or regulation necessary to implement the Prescription
8 Drug Cost Savings Act.

9 Sec. 18. The department may adopt and promulgate rules
10 and regulations to carry out the Healthy Nebraska Rx Card Program
11 Act.

12 The chief executive officer shall administer the act in
13 a manner that benefits the largest number of Nebraska residents
14 while preventing the act from being preempted by federal law or
15 regulation, including, if necessary, but not limited to, separating
16 medicaid from nonmedicaid negotiations and prior authorization
17 or formulary decisions or limiting participation in the Healthy
18 Nebraska Rx Card Program to a smaller segment of Nebraska
19 residents. The department shall conduct ongoing quality assurance
20 activities similar to those used in the state medicaid program.

21 Sec. 19. Price discounts to participants in the Healthy
22 Nebraska Rx Card Program shall begin on January 1, 2009.

23 Sec. 20. The Healthy Nebraska Rx Fund is created. The
24 fund shall consist of money collected by the department pursuant to
25 the Prescription Drug Cost Savings Act and any funds appropriated

1 by the Legislature. Any money in the fund available for investment
2 shall be invested by the state investment officer pursuant to
3 the Nebraska Capital Expansion Act and the Nebraska State Funds
4 Investment Act.

5 Sec. 21. It is the intent of the Legislature to
6 appropriate one million dollars for FY2008-09 to carry out the
7 Prescription Drug Cost Savings Act.

8 Sec. 22. In addition to the Healthy Nebraska Rx Card
9 Program established pursuant to section 8 of this act, the
10 department shall seek a medicaid waiver to establish a pharmacy
11 discount program modeled after the Healthy Maine Prescriptions
12 Program. If the waiver is approved, the department shall implement
13 such program following consultation with the Health and Human
14 Services Committee of the Legislature.

15 Sec. 23. Section 68-901, Revised Statutes Cumulative
16 Supplement, 2006, is amended to read:

17 68-901 Sections 68-901 to 68-949 and section 22 of this
18 act shall be known and may be cited as the Medical Assistance Act.

19 Sec. 24. This act becomes operative on July 1, 2008.

20 Sec. 25. If any section in this act or any part of any
21 section is declared invalid or unconstitutional, the declaration
22 shall not affect the validity or constitutionality of the remaining
23 portions.

24 Sec. 26. Original section 68-901, Revised Statutes
25 Cumulative Supplement, 2006, is repealed.

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1 Sec. 27. Since an emergency exists, this act takes effect
2 when passed and approved according to law.