

LEGISLATIVE BILL 830

Approved by the Governor April 17, 2008

Introduced by Lathrop, 12; Gay, 14.

FOR AN ACT relating to public health and welfare; to amend section 68-901, Revised Statutes Cumulative Supplement, 2006, and section 71-7611, Revised Statutes Supplement, 2007, as amended by section 2, Legislative Bill 480, One Hundredth Legislature, Second Session, 2008, and section 5, Legislative Bill 961, One Hundredth Legislature, Second Session, 2008; to adopt the Medicaid Prescription Drug Act; to harmonize provisions; to change provisions relating to use of the Nebraska Health Care Cash Fund; and to repeal the original sections.

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

Section 1. Section 68-901, Revised Statutes Cumulative Supplement, 2006, is amended to read:

68-901 Sections 68-901 to 68-949 and sections 2 to 8 of this act shall be known and may be cited as the Medical Assistance Act.

Sec. 2. Sections 2 to 8 of this act shall be known and may be cited as the Medicaid Prescription Drug Act.

Sec. 3. The purpose of the Medicaid Prescription Drug Act is to provide appropriate pharmaceutical care to medicaid recipients in a cost-effective manner by requiring the establishment of a preferred drug list and other activities as prescribed. The preferred drug list and other activities mandated by the act shall not be construed to replace, prohibit, or limit other lawful activities of the department not specifically permitted or required by the act.

Sec. 4. For purposes of the Medicaid Prescription Drug Act:

(1) Labeler means a person or entity that repackages prescription drugs for retail sale and has a labeler code from the federal Food and Drug Administration under 21 C.F.R. 207.20, as such regulation existed on January 1, 2008;

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

(3) Multistate purchasing pool means an entity formed by an agreement between two or more states to negotiate for supplemental rebates on prescription drugs;

(4) Pharmacy benefit manager means a person or entity that negotiates prescription drug price and rebate arrangements with manufacturers or labelers;

(5) Preferred drug list means a list of prescription drugs that may be prescribed for medicaid recipients without prior authorization by the department; and

(6) Prescription drug has the definition found in section 38-2841.

Sec. 5. (1) No later than July 1, 2010, the department shall establish and maintain a preferred drug list for the medical assistance program. The department shall establish a pharmaceutical and therapeutics committee to advise the department on all matters relating to the establishment and maintenance of such list.

(2) The pharmaceutical and therapeutics committee shall include at least fifteen but no more than twenty members. The committee shall consist of at least (a) eight physicians, (b) four pharmacists, (c) a university professor of pharmacy or a person with a doctoral degree in pharmacology, and (d) two public members. No more than twenty-five percent of the committee shall be state employees.

(3) The physician members of the committee, so far as practicable, shall include physicians practicing in the areas of (a) family medicine, (b) internal medicine, (c) pediatrics, (d) cardiology, (e) psychiatry or neurology, (f) obstetrics or gynecology, (g) endocrinology, and (h) oncology.

(4) Members of the committee shall submit conflict of interest disclosure statements to the department and shall have an ongoing duty to disclose conflicts of interest not included in the original disclosure.

(5) The committee shall elect a chairperson and a vice chairperson from among its members. Members of the committee shall be reimbursed for their actual and necessary expenses as provided in sections 81-1174 to 81-1177.

(6) The department, in consultation with the committee, shall adopt and publish policies and procedures relating to the preferred drug list, including (a) guidelines for the presentation and review of drugs for

inclusion on the preferred drug list, (b) the manner and frequency of audits of the preferred drug list for appropriateness of patient care and cost effectiveness, (c) an appeals process for the resolution of disputes, and (d) such other policies and procedures as the department deems necessary and appropriate.

Sec. 6. (1) The department and the pharmaceutical and therapeutics committee shall consider all therapeutic classes of prescription drugs for inclusion on the preferred drug list, except that antidepressant, antipsychotic, and anticonvulsant prescription drugs shall not be subject to consideration for inclusion on the preferred drug list.

(2) (a) The department shall include a prescription drug on the preferred drug list if the prescription drug is therapeutically equivalent to or superior to a prescription drug on the list and the net cost of the new prescription drug is equal to or less than the net cost of the listed drug, after consideration of applicable rebates or discounts negotiated by the department.

(b) If the department finds that two or more prescription drugs under consideration for inclusion on the preferred drug list are therapeutically equivalent, the department shall include the more cost-effective prescription drug or drugs on the preferred drug list, after consideration of applicable rebates or discounts negotiated by the department.

(3) The department shall maintain an updated preferred drug list in electronic format and shall make the list available to the public on the department's Internet web site.

Sec. 7. (1) A health care provider may prescribe a prescription drug not on the preferred drug list to a medicaid recipient if (a) the prescription drug is medically necessary, (b) (i) the provider certifies that the preferred drug has not been therapeutically effective, or with reasonable certainty is not expected to be therapeutically effective, in treating the recipient's condition or (ii) the preferred drug causes or is reasonably expected to cause adverse or harmful reactions in the recipient, and (c) the department authorizes coverage for the prescription drug prior to the dispensing of the drug. The department shall respond to a prior authorization request no later than twenty-four hours after receiving such request.

(2) A health care provider may prescribe a prescription drug not on the preferred drug list to a medicaid recipient without prior authorization by the department if the provider certifies that (a) the recipient is achieving therapeutic success with a course of antidepressant, antipsychotic, or anticonvulsant medication or medication for human immunodeficiency virus, multiple sclerosis, epilepsy, cancer, or immunosuppressant therapy or (b) the recipient has experienced a prior therapeutic failure with a medication.

Sec. 8. The department shall: (1) Enter into a multistate purchasing pool; (2) negotiate directly with manufacturers or labelers; or (3) contract with a pharmacy benefit manager for negotiated discounts or rebates for all prescription drugs under the medical assistance program in order to achieve the lowest available price for such drugs under such program.

Sec. 9. Section 71-7611, Revised Statutes Supplement, 2007, as amended by section 2, Legislative Bill 480, One Hundredth Legislature, Second Session, 2008, and section 5, Legislative Bill 961, One Hundredth Legislature, Second Session, 2008, is amended to read:

71-7611 (1) The Nebraska Health Care Cash Fund is created. The State Treasurer shall transfer (a) fifty-six million four hundred thousand dollars no later than July 30, 2008, and (b) fifty-five million seven hundred thousand dollars annually thereafter no later than July 15 from the Nebraska Medicaid Intergovernmental Trust Fund and the Nebraska Tobacco Settlement Trust Fund to the Nebraska Health Care Cash Fund, except that such amount shall be reduced by the amount of the unobligated balance in the Nebraska Health Care Cash Fund at the time the transfer is made. On or before May 1, 2008, the State Treasurer shall transfer from the Nebraska Medicaid Intergovernmental Trust Fund and the Nebraska Tobacco Settlement Trust Fund an additional two hundred fifty thousand dollars to the Nebraska Health Care Cash Fund. The state investment officer upon consultation with the Nebraska Investment Council shall advise the State Treasurer on the amounts to be transferred from the Nebraska Medicaid Intergovernmental Trust Fund and from the Nebraska Tobacco Settlement Trust Fund under this section in order to sustain such transfers in perpetuity. The state investment officer shall report to the Legislature on or before October 1 of every even-numbered year on the sustainability of such transfers. Except as otherwise provided by law, no more than ~~fifty-five million seven hundred thousand dollars~~ the amount specified in subdivisions (1) (a) and (b) of this subsection may be appropriated or transferred from the Nebraska Health Care Cash Fund in any fiscal year.

(2) Any money in the Nebraska Health Care Cash Fund available for

investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act.

(3) One million dollars in the Nebraska Health Care Cash Fund is designated each year for the Autism Treatment Program Act for five fiscal years beginning in fiscal year 2007-08 and shall be distributed in each fiscal year as follows: (a) First, to the Department of Health and Human Services for costs related to application and implementation of the waiver; (b) second, to the department for other medical costs for children who would not otherwise qualify for medicaid except for the waiver; and (c) third, the balance to the Autism Treatment Program Cash Fund. The State Treasurer shall transfer the balance of the funding to the Autism Treatment Program Cash Fund based on the estimated costs of administrative and other medical costs as determined by the Legislature through the appropriation process. The transfers to the Autism Treatment Program Cash Fund in any fiscal year shall be contingent upon the receipt of private matching funds under the Autism Treatment Program Act, with no less than one dollar of private funds received for every two dollars transferred from the Nebraska Health Care Cash Fund to the Autism Treatment Program Cash Fund.

(4) The University of Nebraska and postsecondary educational institutions having colleges of medicine in Nebraska and their affiliated research hospitals in Nebraska, as a condition of receiving any funds appropriated or transferred from the Nebraska Health Care Cash Fund, shall not discriminate against any person on the basis of sexual orientation.

(5) The State Treasurer shall transfer two hundred thousand dollars from the Nebraska Health Care Cash Fund to the University of Nebraska Medical Center Cash Fund for the Nebraska Regional Poison Center within fifteen days after each July 1.

Sec. 10. Original section 68-901, Revised Statutes Cumulative Supplement, 2006, and section 71-7611, Revised Statutes Supplement, 2007, as amended by section 2, Legislative Bill 480, One Hundredth Legislature, Second Session, 2008, and section 5, Legislative Bill 961, One Hundredth Legislature, Second Session, 2008, are repealed.