

## LEGISLATIVE BILL 27

Approved by the Governor May 26, 2009

Introduced by Pahls, 31; Fulton, 29; Howard, 9.

FOR AN ACT relating to the Medical Assistance Act; to amend sections 85-1,138, 85-1,139, 85-1,140, 85-1,141, and 85-1,142, Reissue Revised Statutes of Nebraska, and sections 68-901 and 71-7611, Revised Statutes Cumulative Supplement, 2008; to change and transfer provisions relating to the Autism Treatment Program Act, the Autism Treatment Program Cash Fund, and the administration of the Autism Treatment Program; to provide powers and duties for the Department of Health and Human Services; to harmonize provisions; to repeal the original sections; and to declare an emergency.

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

Section 1. Section 68-901, Revised Statutes Cumulative Supplement, 2008, is amended to read:

68-901 Sections 68-901 to 68-956 and sections 2 to 6 of this act shall be known and may be cited as the Medical Assistance Act.

Sec. 2. Section 85-1,138, Reissue Revised Statutes of Nebraska, is amended to read:

~~85-1,138~~ Sections ~~85-1,138~~ to 85-1,142 2 to 6 of this act shall be known and may be cited as the Autism Treatment Program Act.

Sec. 3. Section 85-1,139, Reissue Revised Statutes of Nebraska, is amended to read:

~~85-1,139~~ The purposes purpose of the Autism Treatment Program Act are is to (1) create the Autism Treatment Program administered by the Center for Autism Spectrum Disorders at the University of Nebraska Medical Center and (2) provide for the development and administration of a waiver or an amendment to an existing waiver under the medical assistance program established in section 68-903.

Sec. 4. Section 85-1,140, Reissue Revised Statutes of Nebraska, is amended to read:

~~85-1,140~~ The Autism Treatment Program is created. The program shall be administered by the department. ~~Center for Autism Spectrum Disorders at the University of Nebraska Medical Center.~~ The program shall provide or coordinate the provision of statewide intensive early intervention services based on behavioral principles for children with a medical diagnosis of an autism spectrum disorder or an educational verification of autism. The program shall utilize private funds and funds transferred by the Legislature from the Nebraska Health Care Cash Fund to the Autism Treatment Program Cash Fund. ~~Transfers from the Nebraska Health Care Cash Fund in any fiscal year shall be contingent upon the receipt of private matching funds for such program, with no less than one dollar of private funds received for every two dollars transferred from the Nebraska Health Care Cash Fund. Transfers from the Nebraska Health Care Cash Fund under this section and section 71-7611 shall be utilized as the state match for the waiver established under section 85-1,142 upon the approval of such waiver.~~

Sec. 5. Section 85-1,141, Reissue Revised Statutes of Nebraska, is amended to read:

~~85-1,141~~ (1) The Autism Treatment Program Cash Fund is created. The fund shall include revenue transferred from the Nebraska Health Care Cash Fund and revenue received from gifts, grants, bequests, donations, other similar donation arrangements, or other contributions from public or private sources. ~~The Autism Treatment Program Cash Fund shall be administered by the Center for Autism Spectrum Disorders at the University of Nebraska Medical Center for purposes of the Autism Treatment Program created in section 85-1,140. The department shall administer the fund. The Autism Treatment Program Cash Fund shall be used as the state's matching share for the waiver established under section 6 of this act and for expenses incurred in the administration of the Autism Treatment Program. Any money in the 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.~~

(2) The program shall utilize private funds deposited in the Autism Treatment Program Cash Fund and funds transferred by the Legislature from the Nebraska Health Care Cash Fund to the Autism Treatment Program Cash Fund. Transfers from the Nebraska Health Care Cash Fund in any fiscal year shall be contingent upon the receipt of private matching funds for such program, with no less than one dollar of private funds received for every two dollars transferred from the Nebraska Health Care Cash Fund. No donations from a

provider of services under Title XIX of the federal Social Security Act shall be deposited into the Autism Treatment Program Cash Fund.

Sec. 6. Section 85-1,142, Reissue Revised Statutes of Nebraska, is amended to read:

~~85-1,142~~ (1) The Department of Health and Human Services department shall apply for a waiver or an amendment to an existing waiver under the medical assistance program established in section 68-903 for the purpose of providing medical assistance for intensive early intervention services based on behavioral principles for children with a medical diagnosis of an autism spectrum disorder or an educational verification of autism. Such waiver shall not be construed to create an entitlement to services provided under such waiver.

(2) It is the intent of the Legislature that such waiver (a) require means testing for and cost-sharing by recipient families, (b) limit eligibility only to children for whom such services have been initiated prior to the age of nine years, (c) limit the number of children served according to available funding, (d) require demonstrated progress toward the attainment of treatment goals as a condition for continued receipt of medical assistance benefits for such treatment, (e) be developed in consultation with the Health and Human Services Committee of the Legislature and the federal Centers for Medicare and Medicaid Services and with the input of parents and families of children with autism spectrum disorders and organizations advocating on behalf of such persons, and (f) be submitted to the federal Centers for Medicare and Medicaid Services as soon as practicable, but no later than ~~July 1, 2008~~ September 1, 2009.

Sec. 7. Section 71-7611, Revised Statutes Cumulative Supplement, 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 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 shall be transferred each year for to the Autism Treatment Program Act Cash Fund for five fiscal years beginning in fiscal year 2007-08 on a date determined by the Department of Health and Human Services but no later than ninety days after a waiver under section 6 of this act has been approved and shall be distributed with matching private funds from the Autism Treatment Program Cash Fund and matching funds from Title XIX of the federal Social Security Act in each fiscal year as follows: (a) First, to the Department of Health and Human Services for costs related to application, and implementation, and administration of the a waiver pursuant to section 6 of this act; (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 fund services pursuant to the waiver. ~~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. 8. Original sections 85-1,138, 85-1,139, 85-1,140, 85-1,141, and 85-1,142, Reissue Revised Statutes of Nebraska, and sections 68-901 and 71-7611, Revised Statutes Cumulative Supplement, 2008, are repealed.

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