

LEGISLATIVE BILL 1119

Approved by the Governor April 13, 2018

Introduced by Riepe, 12; Geist, 25; Hilgers, 21; Hughes, 44; Kolterman, 24;
Stinner, 48.

A BILL FOR AN ACT relating to insurance; to amend sections 44-361 and 84-1613, Reissue Revised Statutes of Nebraska; to adopt the Direct Primary Care Pilot Program Act; to adopt the Nebraska Right to Shop Act; to harmonize provisions; and to repeal the original sections.
Be it enacted by the people of the State of Nebraska,

Section 1. Sections 1 to 10 of this act shall be known and may be cited as the Direct Primary Care Pilot Program Act.

Sec. 2. For purposes of the Direct Primary Care Pilot Program Act:

(1) Department means the Department of Administrative Services;

(2) Direct primary care health plan means a health plan which includes primary care services provided by a participating provider, pharmaceutical care as defined in section 38-2831 provided by a licensed pharmacist, and health care coverage for medical specialists, hospitals, pharmacy, and other medical coverage the department deems appropriate;

(3) Direct provider has the same meaning as in section 71-9503;

(4) Enrollee means a state employee or his or her dependent who is enrolled in the pilot program;

(5) Nebraska State Insurance Program means the health insurance offered to state employees and their dependents under sections 84-1601 to 84-1615;

(6) Participating provider means a direct provider who is participating in the pilot program;

(7) Pilot program means the Direct Primary Care Pilot Program established under the Direct Primary Care Pilot Program Act;

(8) Plan administrator means the entity with which the department contracts to administer the direct primary care health plan;

(9) Primary care has the same meaning as in section 71-9503; and

(10) State employee means an employee participating in the Nebraska State Insurance Program.

Sec. 3. The Direct Primary Care Pilot Program is established within the Nebraska State Insurance Program. The pilot program shall begin in fiscal year 2019-20 and continue through fiscal year 2022-23. Through the pilot program the Nebraska State Insurance Program shall include direct primary care health plans. Thereafter the department may continue to offer the direct primary care health plans.

Sec. 4. For the pilot program, the department shall provide enrollees at least two different direct primary care health plans including a high-deductible option and a low-deductible option for health care coverage outside of primary care. The department may include wellness incentives in the direct primary care health plans.

Sec. 5. A state employee may participate at open enrollment in the pilot program on a first-come, first-served basis dependent on participation by participating providers and limitations on enrollees served per participating providers.

Sec. 6. Any plan administrator for health care plans offered under the Nebraska State Insurance Program shall cooperate with the implementation of the pilot program and shall share real-time claims data for state employees participating in the pilot program with participating providers.

Sec. 7. (1) To qualify for participation in the pilot program, a direct provider shall:

(a) Provide primary care to an enrollee;

(b) Coordinate care across all care settings;

(c) Oversee transitions in care between settings; and

(d) Minimize the risk of gaps in care.

(2) The participating providers shall receive a monthly payment of a per-member, per-month fee for each enrollee for any month or portion of a month in which he or she is enrolled in the pilot program.

Sec. 8. A participating provider shall continuously monitor care quality in accordance with a standardized set of care quality and patient satisfaction measurements. Such care quality measurements shall include, but not be limited to, the following:

(1) Patient engagement measurement, including, but not limited to, the percentage of enrollees who have:

(a) Completed a health risk assessment; and

(b) Completed a face-to-face visit to the enrollee's participating provider;

(2) Prevention measurement, including, but not limited to, the percentage of enrollees who have received appropriate screenings for their age or gender; and

(3) Chronic disease management.

Sec. 9. Beginning in fiscal year 2021-22, the department shall provide a report to the Governor and the Legislature by September 1 of each year. The

report shall evaluate the clinical and financial performance of the pilot program. The report shall be submitted to the Legislature electronically.

Sec. 10. The department may adopt and promulgate rules and regulations as necessary to implement the Direct Primary Care Pilot Program Act.

Sec. 11. Sections 11 to 24 of this act shall be known and may be cited as the Nebraska Right to Shop Act.

Sec. 12. For purposes of the Nebraska Right to Shop Act:

(1) Allowed amount means the contractually agreed upon amount paid by an insurance carrier to a health care entity participating in the insurance carrier's network or the amount the health plan is required to pay under the health plan policy or certificate of insurance for out-of-network covered benefits provided to the patient;

(2) Department means the Department of Insurance;

(3) Director means the Director of Insurance;

(4) Enrollee means an individual receiving health insurance coverage from an insurance carrier;

(5) Health care entity means:

(a) A facility licensed under the Health Care Facility Licensure Act;

(b) A health care professional licensed under the Uniform Credentialing Act; and

(c) An organization or association of health care professionals licensed under the Uniform Credentialing Act;

(6) Incentive payment means a payment described in section 17 of this act that is made by an insurance carrier to an enrollee;

(7) Insurance carrier means any entity that provides health insurance in this state. Insurance carrier includes (a) an insurance company, (b) a fraternal benefit society, (c) a health maintenance organization, and (d) any other entity providing a plan of health insurance or health benefits subject to state insurance regulation;

(8) Shared savings incentive payment program means a program established by an insurance carrier pursuant to section 17 of this act to provide incentive payments to enrollees; and

(9) Shoppable health care service means a health care service for which an insurance carrier offers incentive payments under a shared savings incentive payment program established by the insurance carrier. Shoppable health care service includes, at a minimum, health care services in the following categories:

(a) Physical and occupational therapy services;

(b) Obstetrical and gynecological services;

(c) Radiology and imaging services;

(d) Laboratory services;

(e) Infusion therapy;

(f) Inpatient or outpatient surgical procedures; and

(g) Outpatient nonsurgical diagnostic tests or procedures.

Sec. 13. The Nebraska Right to Shop Act shall apply to any insurance carrier that elects to be subject to the act. An insurance carrier making such election shall file a notice of the election with the department.

Sec. 14. (1) Prior to a nonemergency admission, procedure, or service and upon request by a patient or prospective patient, a health care entity within the patient's or prospective patient's insurer network shall, within three working days, disclose the allowed amount of the nonemergency admission, procedure, or service, including the amount for any facility fees required, to the patient or prospective patient.

(2) Prior to a nonemergency admission, procedure, or service and upon request by a patient or prospective patient, a health care entity outside the patient's or prospective patient's insurer network shall, within three working days, disclose the amount that will be charged for the nonemergency admission, procedure, or service, including the amount for any facility fees required, to the patient or prospective patient.

(3) If a health care entity is unable to quote a specific amount under subsection (1) or (2) of this section in advance due to the health care entity's inability to predict the specific treatment or diagnostic code, the health care entity shall disclose what is known for the estimated amount for a proposed nonemergency admission, procedure, or service, including the amount for any facility fees required. A health care entity shall disclose the incomplete nature of the estimate and shall inform the patient or prospective patient of his or her ability to obtain an updated estimate once additional information is determined.

(4) If a patient or prospective patient is covered by insurance, a health care entity that participates in an insurance carrier's network shall, upon request of a patient or prospective patient, provide, based on the information available to the health care entity at the time of the request, sufficient information regarding the proposed nonemergency admission, procedure, or service for the patient or prospective patient to receive a cost estimate from his or her insurance carrier to identify out-of-pocket costs, which could be through an insurance carrier's toll-free telephone number or web site. A health care entity may assist a patient or prospective patient in using an insurance carrier's toll-free telephone number or web site.

Sec. 15. An insurance carrier shall establish an interactive mechanism on its publicly accessible web site that enables an enrollee to request and obtain from the insurance carrier information on the payments made by the insurance carrier to network providers for health care services. The interactive mechanism must allow an enrollee seeking information about the cost of a

particular health care service to compare costs among network providers.

Sec. 16. (1) Within two working days of an enrollee's request, an insurance carrier shall provide a good faith estimate of the amount the enrollee will be responsible to pay out-of-pocket for a proposed nonemergency procedure or service that is a medically necessary covered benefit from an insurance carrier's network provider, including any copayment, deductible, coinsurance, or other out-of-pocket amount for any covered benefit, based on the information available to the insurance carrier at the time the request is made.

(2) Nothing in this section shall prohibit an insurance carrier from imposing cost-sharing requirements disclosed in the enrollee's certificate of coverage for unforeseen health care services that arise out of the nonemergency procedure or service or for a procedure or service provided to an enrollee that was not included in the original estimate.

(3) An insurance carrier shall notify the enrollee that the amounts provided under subsection (1) of this section are estimated costs and that the actual amount the enrollee will be responsible to pay may vary due to unforeseen services that arise out of the proposed nonemergency procedure or service.

Sec. 17. (1) An insurance carrier shall develop and implement a shared savings incentive payment program that provides incentive payments for enrollees in a health plan who elect to receive shoppable health care services that are covered by the plan from providers that charge less than the average price paid by that insurance carrier for that shoppable health care service.

(2) Incentive payments may be calculated as a percentage of the difference in price, as a flat dollar amount, or by some other reasonable methodology approved by the director. The insurance carrier must provide the incentive payment as a cash payment to the enrollee.

(3) The shared savings incentive payment program must provide enrollees with at least fifty percent of the insurance carrier's saved costs for each shoppable health care service or category of shoppable health care service resulting from shopping by enrollees. An insurance carrier is not required to provide an incentive payment or credit to an enrollee when the insurance carrier's saved cost is fifty dollars or less.

(4) An insurance carrier shall base the average price on the average amount paid to an in-network provider for the procedure or service under the enrollee's health plan within a reasonable timeframe not to exceed one year. An insurance carrier may determine an alternate methodology for calculating the average price if approved by the director.

Sec. 18. An insurance carrier shall make the shared savings incentive payment program available as a component of all health plans offered by the insurance carrier in this state. Annually at enrollment or renewal, an insurance carrier shall provide notice about the availability of the program to any enrollee who is enrolled in a health plan eligible for the program.

Sec. 19. Prior to offering the shared savings incentive payment program to any enrollee, an insurance carrier shall file a description of the program with the department in the manner determined by the director. The department may review the filing made by the insurance carrier to determine if the insurance carrier's program complies with the requirements of the Nebraska Right to Shop Act. Filings and any supporting documentation submitted pursuant to this section are confidential until the filing has been reviewed by the department.

Sec. 20. If an enrollee elects to receive a shoppable health care service from an out-of-network provider that results in an incentive payment, the insurance carrier shall apply the amount paid for the shoppable health care service toward the enrollee's member cost sharing as specified in the enrollee's health plan as if the health care services were provided by an in-network provider.

Sec. 21. An incentive payment made by an insurance carrier in accordance with the Nebraska Right to Shop Act is not an administrative expense of the insurance carrier for rate development or rate filing purposes.

Sec. 22. (1) On or before March 31 each year, each insurance carrier shall file with the department the following information for the most recent calendar year:

(a) The total number of incentive payments made pursuant to the insurance carrier's shared savings incentive payment program;

(b) The use of shoppable health care services by category of service for which incentive payments are made;

(c) The total amount of incentive payments made to enrollees;

(d) The average amount of incentive payments made by category of shoppable health care service;

(e) The total savings achieved below the average prices by category of shoppable health care service; and

(f) The total number and percentage of an insurance carrier's enrollees that participated in the shared savings incentive payment program.

(2) On or before July 1, 2019, and on or before July 1 of each year thereafter, the department shall electronically submit an aggregate report for all insurance carriers filing the information required by subsection (1) of this section to the Legislature.

Sec. 23. (1) The personnel division of the Department of Administrative Services, in its discretion, may develop and implement a program for state employees receiving health insurance coverage under sections 84-1601 to 84-1615 that is similar to the shared savings incentive payment program described in

section 17 of this act. If the division develops and implements such a program, the division may use the State Employees Insurance Fund to make incentive payments to state employees pursuant to such program.

(2) If a program for state employees is developed and implemented pursuant to this section, then on or before July 1 of each year after implementation of such program, the personnel division of the Department of Administrative Services shall electronically report to the Legislature the following information for the most recent calendar year:

(a) The total number of incentive payments made pursuant to the program;

(b) The use of shoppable health care services by category of service for which incentive payments are made;

(c) The total amount of incentive payments made to state employees;

(d) The average amount of incentive payments made by category of shoppable health care service;

(e) The total savings achieved below the average prices by category of shoppable health care service; and

(f) The total number and percentage of state employees that participated in the program.

Sec. 24. The department may adopt and promulgate rules and regulations as necessary to carry out the Nebraska Right to Shop Act.

Sec. 25. Section 44-361, Reissue Revised Statutes of Nebraska, is amended to read:

44-361 No insurance company, by itself or any other party, and no insurance agent or broker, personally or by any other party, shall offer, promise, allow, give, set off, or pay, directly or indirectly, any rebate of, or part of, the premium payable on the policy, or of any policy, or agent's commission thereon, or earnings, profits, dividends, or other benefits founded, arising, accruing or to accrue thereon or therefrom, or any paid employment or contract for service, or for advice of any kind, or any other valuable consideration or inducement to, or for insurance, on any risk authorized to be taken under section 44-201 now or hereafter to be written, which is not specified in the policy contract of insurance; nor shall any such company, agent, or broker, personally or otherwise, offer, promise, give, sell or purchase any stock, bonds, securities or property, or any dividends or profits accruing or to accrue thereon, or other things of value whatsoever, as inducement to insurance or in connection therewith, which is not specified in the policy. No insured person or party shall receive or accept, directly or indirectly, any rebate of premium, or part thereof, or agent's or broker's commission thereon, payable on the policy, or on any policy of insurance, or any favor or advantage or share in the dividends or other benefits to accrue on, or any valuable consideration or inducement not specified in the policy contract of insurance. Extending of interest-free credit on life and liability insurance premiums or interest-free credit on crop hail insurance premiums shall not be a rebate of the premium. Payments made pursuant to the Nebraska Right to Shop Act shall not be considered a rebate of the premium for purposes of this section.

Sec. 26. Section 84-1613, Reissue Revised Statutes of Nebraska, is amended to read:

84-1613 The State Employees Insurance Fund is established. The fund shall be administered by the personnel division of the Department of Administrative Services. All funds appropriated to pay the state's share of the cost of the coverages provided by sections 84-1601 to 84-1615 and all payroll deductions made under sections 84-1601 to 84-1615 shall be credited to the fund. The division shall make premium payments to the carrier, carriers, or combinations of carriers selected under section 84-1603 from this fund. The division may also use the fund to make incentive payments to state employees pursuant to section 23 of this act.

Any funds in the State Employees Insurance 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.

On or before October 1, 2001, the State Treasurer shall transfer one million five hundred thousand dollars from the excess state share of life insurance history money of the State Employees Insurance Fund to the Workers' Compensation Claims Revolving Fund.

Sec. 27. Original sections 44-361 and 84-1613, Reissue Revised Statutes of Nebraska, are repealed.