

LEGISLATURE OF NEBRASKA
ONE HUNDRED SIXTH LEGISLATURE
FIRST SESSION

LEGISLATIVE BILL 645

Introduced by McDonnell, 5.

Read first time January 23, 2019

Committee: Health and Human Services

1 A BILL FOR AN ACT relating to the Medical Assistance Act; to amend
2 sections 44-32,180, 44-4726, 68-978, 68-979, 68-981, 68-982, 68-983,
3 68-985, 68-986, 68-987, 68-988, and 71-8506, Reissue Revised
4 Statutes of Nebraska; to define and eliminate terms; to change
5 references to intergovernmental transfer program and capitation
6 payments and provide for a certified public expenditure program; to
7 change department duties and powers as prescribed; to decrease an
8 administration fee; to update federal references; to change a
9 provision relating to managed care contracts; to harmonize
10 provisions; to repeal the original sections; and to declare an
11 emergency.
12 Be it enacted by the people of the State of Nebraska,

1 Section 1. Section 44-32,180, Reissue Revised Statutes of Nebraska,
2 is amended to read:

3 44-32,180 (1) Any health maintenance organization subject to the
4 Health Maintenance Organization Act shall also be subject to (a) the
5 premium taxation provisions of Chapter 77, article 9, to the extent that
6 the direct writing premiums are not otherwise subject to taxation under
7 such article and (b) the retaliatory taxation provisions of section
8 44-150.

9 (2) Any expenditure ~~capitation payment~~ made in accordance with the
10 Medical Assistance Act shall be excluded from computation of any tax
11 obligation imposed by subsection (1) of this section.

12 Sec. 2. Section 44-4726, Reissue Revised Statutes of Nebraska, is
13 amended to read:

14 44-4726 (1) The same taxes provided for in section 44-32,180 shall
15 be imposed upon each prepaid limited health service organization, and
16 such organizations also shall be entitled to the same tax deductions,
17 reductions, abatements, and credits that health maintenance organizations
18 are entitled to receive.

19 (2) Any expenditure ~~capitation payment~~ made in accordance with the
20 Medical Assistance Act shall be excluded from computation of any tax
21 obligation imposed by subsection (1) of this section.

22 Sec. 3. Section 68-978, Reissue Revised Statutes of Nebraska, is
23 amended to read:

24 68-978 For purposes of the Ground Emergency Medical Transport Act:

25 (1) Advanced life support means special services designed to provide
26 definitive prehospital emergency medical care, including, but not limited
27 to, cardiopulmonary resuscitation, cardiac monitoring, cardiac
28 defibrillation, advanced airway management, intravenous therapy,
29 administration with drugs and other medicinal preparations, and other
30 specified techniques and procedures;

31 (2) Basic life support means emergency first aid and cardiopulmonary

1 resuscitation procedures to maintain life without invasive techniques;

2 (3) Certified public expenditure means an expenditure for which
3 there is certification that public funds for services provided have been
4 expended as necessary for federal financial participation pursuant to the
5 requirements of section 1903(w) of the federal Social Security Act and 42
6 C.F.R. part 433.51, as such act and regulation existed on January 1,
7 2019;

8 ~~(3) Capitation payment means a payment the state makes periodically~~
9 ~~to a contractor on behalf of each beneficiary enrolled under a contract~~
10 ~~and based on the actuarially sound capitation rate for the provision of~~
11 ~~services under the state plan and which the state makes regardless of~~
12 ~~whether the particular beneficiary receives services during the period~~
13 ~~covered by the payment;~~

14 (4) Dry run means ground emergency medical transport services
15 provided by an eligible ground emergency medical transport services
16 provider to an individual who is released on the scene without
17 transportation by ambulance to a medical facility;

18 (5) Ground emergency medical transport means the act of transporting
19 an individual from any point of origin to the nearest medical facility
20 capable of meeting the emergency medical needs of the patient, including
21 dry runs;

22 (6) Ground emergency medical transport services means advanced life
23 support, limited advanced life support, and basic life support services
24 provided to an individual by ground emergency medical transport services
25 providers before or during ground emergency medical transport;

26 (7) Limited advanced life support means special services to provide
27 prehospital emergency medical care limited to techniques and procedures
28 that exceed basic life support but are less than advanced life support
29 services; and

30 (8) Medical transport means transportation to secure medical
31 examinations and treatment for an individual.

1 Sec. 4. Section 68-979, Reissue Revised Statutes of Nebraska, is
2 amended to read:

3 68-979 It is the intent of the Legislature that no General Funds be
4 used in carrying out the Ground Emergency Medical Transport Act.

5 Revenue from the certified public expenditure ~~intergovernmental~~
6 ~~transfer~~ program created under the Ground Emergency Medical Transport Act
7 shall be deposited into the Health and Human Services Cash Fund.

8 Sec. 5. Section 68-981, Reissue Revised Statutes of Nebraska, is
9 amended to read:

10 68-981 Participation in the supplemental reimbursement program by an
11 eligible provider is voluntary. A provider is eligible for supplemental
12 reimbursement only if the provider has all of the following
13 characteristics continuously during a fiscal year of the state:

14 (1) Provides ground emergency medical transport services to medicaid
15 beneficiaries;

16 (2) Is enrolled as a medicaid provider for the period being claimed;

17 (3) Is owned or operated by the state or a city, county, rural or
18 suburban fire protection district, hospital district, federally
19 recognized Indian tribe, or another unit of government; and

20 (4) Participates in the certified public expenditure
21 ~~intergovernmental transfer~~ program created pursuant to section 68-983.

22 Sec. 6. Section 68-982, Reissue Revised Statutes of Nebraska, is
23 amended to read:

24 68-982 (1) An eligible provider's supplemental reimbursement
25 pursuant to the Ground Emergency Medical Transport Act shall be
26 calculated and paid as follows:

27 (a) The supplemental reimbursement shall equal the amount of federal
28 financial participation received as a result of the claims submitted
29 pursuant to the act; and

30 (b) In no instance may the amount certified pursuant to section
31 68-985, when combined with the amount received from all other sources of

1 reimbursement from the medical assistance program, exceed one hundred
2 percent of actual costs, as determined pursuant to the medicaid state
3 plan, for ground emergency medical transport services.

4 (2) The supplemental reimbursement shall be distributed exclusively
5 to eligible providers under a payment method based on ground emergency
6 medical transport services provided to medicaid beneficiaries by eligible
7 providers on the a per-transport basis of actual and allowable costs that
8 are or other federally permissible basis.

9 Sec. 7. Section 68-983, Reissue Revised Statutes of Nebraska, is
10 amended to read:

11 68-983 (1) The department shall design and implement, in
12 consultation with eligible providers as described in section 68-981, a
13 certified public expenditure an intergovernmental transfer program
14 relating to medicaid ~~managed care~~ ground emergency medical transport
15 services, including services provided by emergency medical technicians at
16 the basic, advanced, and paramedic levels in prestabilization and
17 preparation for transport, in order to increase ~~capitation payments for~~
18 ~~the purpose of increasing~~ reimbursement to eligible providers.

19 (2) Effective on the approval date of a state plan amendment
20 pursuant to section 68-986, expenditures for medicaid ground emergency
21 medical transport services made by the department shall be paid on a fee-
22 for-service basis and may not be paid under any medicaid managed care
23 program.

24 ~~(2)(a) To the extent intergovernmental transfers are voluntarily~~
25 ~~made by, and accepted from, an eligible provider described in section~~
26 ~~68-981 or a governmental entity affiliated with an eligible provider, the~~
27 ~~department shall make increased capitation payments to applicable~~
28 ~~medicaid managed care plans.~~

29 ~~(b) The increased capitation payments made pursuant to this section~~
30 ~~shall be in actuarially determined amounts at least to the extent~~
31 ~~permissible under federal law.~~

1 ~~(c) Except as provided in subsection (6) of this section, all funds~~
2 ~~associated with intergovernmental transfers made and accepted pursuant to~~
3 ~~this section shall be used to fund additional payments to medicaid~~
4 ~~managed care plans.~~

5 ~~(d) Medicaid managed care plans shall enter into contracts or~~
6 ~~contract amendments with providers for the disbursement of any amount of~~
7 ~~increased capitation payments made pursuant to this section.~~

8 (3) The certified public expenditure ~~intergovernmental transfer~~
9 program developed pursuant to this section shall be implemented on the
10 date federal approval is obtained and only to the extent certified public
11 expenditures ~~intergovernmental transfers~~ from the eligible provider or
12 the governmental entity with which it is affiliated are provided for this
13 purpose.

14 (4) To the extent permitted by federal law, the department may
15 implement the certified public expenditure ~~intergovernmental transfer~~
16 program and ~~increased capitation payments~~ pursuant to this section
17 retroactive to the date that the state plan amendment is approved by
18 ~~submitted to~~ the Centers for Medicare and Medicaid Services of the United
19 States Department of Health and Human Services pursuant to section
20 68-986.

21 (5) Participation in certified public expenditures ~~intergovernmental~~
22 ~~transfers~~ under this section is voluntary on the part of the
23 participating transferring entities for purposes of all applicable
24 federal laws.

25 (6)(a) As a condition of participation under this section, each
26 eligible provider or the governmental entity affiliated with an eligible
27 provider shall agree to reimburse the department for any costs associated
28 with implementing such program.

29 (b) Certified public expenditures ~~Intergovernmental transfers~~
30 described in this section are subject to a five ~~twenty~~ percent
31 administration fee of the nonfederal share paid to the department and are

1 allowed to count as a cost of providing the services.

2 (7) As a condition of participation under this section, ~~medicaid~~
3 ~~managed care plans,~~ eligible providers, and governmental entities
4 affiliated with eligible providers shall agree to comply with any
5 requests for information or similar data requirements imposed by the
6 department for purposes of obtaining supporting documentation necessary
7 to claim federal funds or to obtain federal approval.

8 Sec. 8. Section 68-985, Reissue Revised Statutes of Nebraska, is
9 amended to read:

10 68-985 If a governmental entity elects to seek supplemental
11 reimbursement pursuant to the Ground Emergency Medical Transport Act on
12 behalf of an eligible provider owned or operated by the entity, the
13 governmental entity shall:

14 (1) Certify, in conformity with the requirements of 42 C.F.R. part
15 433.51, as such regulation existed on January 1, 2019, and with any other
16 applicable federal requirements, that the claimed expenditures for ground
17 emergency medical transport services are eligible for federal financial
18 participation;

19 (2) Provide evidence supporting the certification as specified by
20 the department;

21 (3) Submit data as specified by the department to determine the
22 appropriate amounts to claim as expenditures qualifying for federal
23 financial participation; and

24 (4) Keep, maintain, and have readily retrievable any records
25 specified by the department to fully disclose reimbursement amounts to
26 which the eligible provider is entitled and any other records required by
27 the federal Centers for Medicare and Medicaid Services.

28 Sec. 9. Section 68-986, Reissue Revised Statutes of Nebraska, is
29 amended to read:

30 68-986 (1) On or before July 1, 2019 ~~January 1, 2018,~~ the department
31 shall submit an application to the Centers for Medicare and Medicaid

1 Services of the United States Department of Health and Human Services
2 amending the medicaid state plan to provide for the supplemental
3 reimbursement rate for ground emergency medical transport services as
4 specified in the Ground Emergency Medical Transport Act.

5 (2) The department shall ~~may~~ limit the program to those costs that
6 are allowable expenditures under Title XIX of the federal Social Security
7 Act, 42 U.S.C. 1396 et seq., as such act and sections existed on January
8 1, 2019 ~~April 1, 2017~~. Without such federal approval, the Ground
9 Emergency Medical Transport Act may not be implemented.

10 (3) The certified public expenditure ~~intergovernmental transfer~~
11 program authorized in section 68-983 shall be implemented only if and to
12 the extent federal financial participation is available and is not
13 otherwise jeopardized and any necessary federal approval has been
14 obtained.

15 (4) To the extent that the chief executive officer of the department
16 determines that the certified public expenditures ~~payments~~ made pursuant
17 to section 68-983 do not comply with federal medicaid requirements, the
18 chief executive officer may ~~return or~~ not accept a certified public
19 expenditure ~~an intergovernmental transfer~~ and may adjust certified public
20 expenditures ~~payments~~ as necessary to comply with federal medicaid
21 requirements.

22 Sec. 10. Section 68-987, Reissue Revised Statutes of Nebraska, is
23 amended to read:

24 68-987 (1) The department shall submit claims for federal financial
25 participation for the expenditures for the services described in
26 subsection (2) of section 68-986 that are allowable expenditures under
27 federal law.

28 (2) The department shall annually submit any necessary materials to
29 the federal government to provide assurances that claims for federal
30 financial participation will include only those expenditures that are
31 allowable under federal law.

1 (3) If either a final judicial determination is made by any court of
2 appellate jurisdiction or a final determination is made by the
3 administrator of the federal Centers for Medicare and Medicaid Services
4 that the supplemental reimbursement provided for in the act shall be made
5 to any provider not described in this section, the chief executive
6 officer of the department shall execute a declaration stating that the
7 determination has been made and such supplemental reimbursement becomes
8 inoperative on the date of such determination.

9 Sec. 11. Section 68-988, Reissue Revised Statutes of Nebraska, is
10 amended to read:

11 68-988 To the extent federal approval is obtained, the increased
12 certified public expenditures ~~capitation payments~~ under section 68-983
13 may commence for dates of service on or after January 1, 2019 ~~2018~~.

14 Sec. 12. Section 71-8506, Reissue Revised Statutes of Nebraska, is
15 amended to read:

16 71-8506 (1) In-person contact between a health care practitioner and
17 a patient shall not be required under the medical assistance program
18 established pursuant to the Medical Assistance Act and Title XXI of the
19 federal Social Security Act, as amended, for health care services
20 delivered through telehealth that are otherwise eligible for
21 reimbursement under such program and federal act. Such services shall be
22 subject to reimbursement policies developed pursuant to such program and
23 federal act. This section also applies to managed care plans which
24 contract with the department pursuant to the Medical Assistance Act only
25 to the extent that:

26 (a) Health care services delivered through telehealth are covered by
27 and reimbursed under the medicaid fee-for-service program; and

28 (b) Managed care contracts with managed care plans are amended to
29 add coverage of health care services delivered through telehealth ~~and any~~
30 ~~appropriate capitation rate adjustments are incorporated.~~

31 (2) The reimbursement rate for a telehealth consultation shall, as a

1 minimum, be set at the same rate as the medical assistance program rate
2 for a comparable in-person consultation, and the rate shall not depend on
3 the distance between the health care practitioner and the patient.

4 (3) The department shall establish rates for transmission cost
5 reimbursement for telehealth consultations, considering, to the extent
6 applicable, reductions in travel costs by health care practitioners and
7 patients to deliver or to access health care services and such other
8 factors as the department deems relevant. Such rates shall include
9 reimbursement for all two-way, real-time, interactive communications,
10 unless provided by an Internet service provider, between the patient and
11 the physician or health care practitioner at the distant site which
12 comply with the federal Health Insurance Portability and Accountability
13 Act of 1996 and rules and regulations adopted thereunder and with
14 regulations relating to encryption adopted by the federal Centers for
15 Medicare and Medicaid Services and which satisfy federal requirements
16 relating to efficiency, economy, and quality of care.

17 Sec. 13. Original sections 44-32,180, 44-4726, 68-978, 68-979,
18 68-981, 68-982, 68-983, 68-985, 68-986, 68-987, 68-988, and 71-8506,
19 Reissue Revised Statutes of Nebraska, are repealed.

20 Sec. 14. Since an emergency exists, this act takes effect when
21 passed and approved according to law.