

LEGISLATURE OF NEBRASKA
ONE HUNDRED NINTH LEGISLATURE
FIRST SESSION

LEGISLATIVE BILL 109

Introduced by Bostar, 29.

Read first time January 10, 2025

Committee:

- 1 A BILL FOR AN ACT relating to insurance; to amend sections 44-4606 and
- 2 44-4610, Revised Statutes Cumulative Supplement, 2024; to prohibit
- 3 certain provisions in insurance policies and health plans relating
- 4 to clinician-administered drugs; to prohibit pharmacy benefit
- 5 managers from taking certain actions; to change provisions relating
- 6 to a pharmacy benefit manager's specialty pharmacy network; to
- 7 provide severability; and to repeal the original sections.
- 8 Be it enacted by the people of the State of Nebraska,

1 **Section 1.** (1) Notwithstanding section 44-3,131, any individual or
2 group sickness and accident insurance policy, certificate, or subscriber
3 contract delivered, issued for delivery, or renewed in this state and any
4 hospital, medical, or surgical expense-incurred policy, except for
5 policies that provide coverage for a specified disease or other limited-
6 benefit coverage, any self-funded employee benefit plan to the extent not
7 preempted by federal law, and any pharmacy benefit manager as defined in
8 section 44-4603, shall not:

9 (a) Refuse to authorize, approve, or pay a participating provider
10 for providing covered clinician-administered drugs and related services
11 to covered persons;

12 (b) Impose coverage or benefit limitations or require an enrollee to
13 pay an additional fee, higher copay, higher coinsurance, second copay,
14 second coinsurance, or other penalty when obtaining clinician-
15 administered drugs from a health care provider authorized under the laws
16 of this state to administer clinician-administered drugs or a pharmacy;

17 (c) Interfere with the right of a patient to choose to obtain a
18 clinician-administered drug from such patient's provider such as through
19 inducement, steering, or offering financial or other incentives;

20 (d) Require clinician-administered drugs to be dispensed by a
21 pharmacy selected by the insurer;

22 (e) Limit or exclude coverage for a clinician-administered drug when
23 such drug is not dispensed by a pharmacy selected by the health plan if
24 such drug would otherwise be covered;

25 (f) Reimburse at a lesser amount a clinician-administered drug
26 dispensed by a pharmacy not selected by the insurer or acquired from an
27 entity not selected by the insurer;

28 (g) Condition, deny, restrict, refuse to authorize or approve, or
29 reduce payment to a participating provider for providing covered
30 clinician-administered drugs and related services to covered persons when
31 the participating provider obtains clinician-administered drugs from a

1 wholesaler, a distributor, an entity, or a pharmacy that is not a
2 participating provider in the insurer's network, if all criteria for
3 medical necessity are met;

4 (h) Require an enrollee to pay an additional fee, higher copay,
5 higher coinsurance, second copay, second coinsurance, or any other form
6 of price increase for clinician-administered drugs when not dispensed by
7 a pharmacy selected by the insurer; or

8 (i) Require a specialty pharmacy to dispense a clinician-
9 administered medication directly to a patient with the intention that the
10 patient will transport the medication to a health care provider for
11 administration.

12 (2) Notwithstanding section 44-3,131, any individual or group
13 sickness and accident insurance policy, certificate, or subscriber
14 contract delivered, issued for delivery, or renewed in this state and any
15 hospital, medical, or surgical expense-incurred policy, except for
16 policies that provide coverage for a specified disease or other limited-
17 benefit coverage, any self-funded employee benefit plan to the extent not
18 preempted by federal law, and any pharmacy benefit manager as defined in
19 section 44-4603, may offer, but shall not require:

20 (a) The use of a home infusion pharmacy to dispense clinician-
21 administered drugs to patients in their homes; or

22 (b) The use of an infusion site external to a patient's provider
23 office or clinic.

24 (3) For purposes of this section, clinician-administered drug means
25 an outpatient prescription drug other than a vaccine that:

26 (a) Cannot reasonably be self-administered to a patient by such
27 patient or by an individual assisting the patient with the self-
28 administration; and

29 (b) Is typically administered:

30 (i) By a health care provider authorized under the laws of this
31 state to administer the drug, including when acting under a physician's

1 delegation and supervision, or by a pharmacist; and
2 (ii) In a physician's office, hospital outpatient infusion center,
3 pharmacy, or other clinical setting.

4 **Sec. 2.** Section 44-4606, Revised Statutes Cumulative Supplement,
5 2024, is amended to read:

6 44-4606 (1) A participation contract between a pharmacy benefit
7 manager and any pharmacist or pharmacy providing prescription drug
8 coverage for a health benefit plan shall not prohibit or restrict any
9 pharmacy or pharmacist from or penalize any pharmacy or pharmacist for
10 disclosing to any covered person any health care information that the
11 pharmacy or pharmacist deems appropriate regarding:

12 (a) The nature of treatment, risks, or an alternative to such
13 treatment;

14 (b) The availability of an alternate therapy, consultation, or test;

15 (c) The decision of a utilization reviewer or similar person to
16 authorize or deny a service;

17 (d) The process that is used to authorize or deny a health care
18 service or benefit; or

19 (e) Information on any financial incentive or structure used by the
20 health carrier.

21 (2) A pharmacy benefit manager shall not prohibit a pharmacy or
22 pharmacist from discussing information regarding the total cost for a
23 pharmacist service for a prescription drug or from selling a more
24 affordable alternative to the covered person if a more affordable
25 alternative is available.

26 (3) A pharmacy benefit manager contract with a participating
27 pharmacist or pharmacy shall not prohibit, restrict, or limit disclosure
28 of information to the director, law enforcement, or a state or federal
29 governmental official, provided that:

30 (a) The recipient of the information represents that such recipient
31 has the authority, to the extent provided by state or federal law, to

1 maintain proprietary information as confidential; and

2 (b) Prior to disclosure of information designated as confidential,
3 the pharmacist or pharmacy:

4 (i) Marks as confidential any document in which the information
5 appears; or

6 (ii) Requests confidential treatment for any oral communication of
7 the information.

8 (4) A pharmacy benefit manager shall not terminate the contract with
9 or penalize a pharmacist or pharmacy due to the pharmacist or pharmacy:

10 (a) Disclosing information about a pharmacy benefit manager
11 practice, except information determined to be a trade secret, as
12 determined by state law or the director; or

13 (b) Sharing any portion of the pharmacy benefit manager contract
14 with the director pursuant to a complaint or a query regarding whether
15 the contract is in compliance with the Pharmacy Benefit Manager Licensure
16 and Regulation Act.

17 (5)(a) A pharmacy benefit manager shall not require a covered person
18 purchasing a covered prescription drug to pay an amount greater than the
19 lesser of the covered person's cost-sharing amount under the terms of the
20 health benefit plan or the amount the covered person would pay for the
21 drug if the covered person were paying the cash price.

22 (b) Any amount paid by a covered person under subdivision (5)(a) of
23 this section shall be attributable toward any deductible or, to the
24 extent consistent with section 2707 of the federal Public Health Service
25 Act, 42 U.S.C. 300gg-6, as such section existed on January 1, 2022, the
26 annual out-of-pocket maximum under the covered person's health benefit
27 plan.

28 (6)(a) A pharmacy benefit manager shall not restrict a covered
29 person's ability to choose how a retail community pharmacy may dispense
30 or deliver prescription drugs.

31 (b) A pharmacy benefit manager shall not prohibit a retail community

1 pharmacy from shipping, mailing, or any manner of delivering dispensed
2 prescription drugs to a covered person at any location requested by the
3 covered person if such shipping, mailing, or delivery is otherwise
4 allowed by law.

5 (c) A pharmacy benefit manager shall not require a retail community
6 pharmacy to participate in a mail-order contract or a contract with terms
7 that are substantially similar to a mail-order contract to ship, mail, or
8 deliver a prescription drug to a covered person.

9 (d) For purposes of this subsection, retail community pharmacy has
10 the same meaning as in 42 U.S.C. 1396r-8(k)(10).

11 (7) A pharmacy benefit manager shall not violate section 1 of this
12 act.

13 **Sec. 3.** Section 44-4610, Revised Statutes Cumulative Supplement,
14 2024, is amended to read:

15 44-4610 A pharmacy benefit manager shall not exclude a Nebraska
16 pharmacy from participation in the pharmacy benefit manager's specialty
17 pharmacy network if:

18 (1) The pharmacy holds a specialty pharmacy accreditation from a
19 nationally recognized independent accrediting organization; and

20 (2) The pharmacy is willing to accept reasonable ~~the~~ terms and
21 conditions of the pharmacy benefit manager's agreement with the pharmacy
22 benefit manager's specialty pharmacies. Such reasonable terms and
23 conditions shall not:

24 (a) Exceed reporting requirements and frequency that are required
25 for specialty pharmacy accreditation from a nationally recognized
26 independent accrediting organization;

27 (b) Exceed performance requirements that are required for specialty
28 pharmacy accreditation from a nationally recognized independent
29 accrediting organization; or

30 (c) Include excessive or punitive fees.

31 **Sec. 4.** If any section in this act or any part of any section is

1 declared invalid or unconstitutional, the declaration shall not affect
2 the validity or constitutionality of the remaining portions.

3 **Sec. 5.** Original sections 44-4606 and 44-4610, Revised Statutes
4 Cumulative Supplement, 2024, are repealed.