

LEGISLATURE OF NEBRASKA  
ONE HUNDRED NINTH LEGISLATURE  
FIRST SESSION

**LEGISLATIVE BILL 252**

Introduced by Bostar, 29.

Read first time January 14, 2025

Committee:

- 1 A BILL FOR AN ACT relating to drugs; to amend section 68-901, Revised
- 2 Statutes Cumulative Supplement, 2024; to prohibit disadvantaging or
- 3 discouraging medicaid and commercial insurance coverage for non-
- 4 opioid drugs as prescribed; and to repeal the original section.
- 5 Be it enacted by the people of the State of Nebraska,

1           **Section 1.** Section 68-901, Revised Statutes Cumulative Supplement,  
2 2024, is amended to read:

3           68-901 Sections 68-901 to 68-9,111 and section 2 of this act shall  
4 be known and may be cited as the Medical Assistance Act.

5           **Sec. 2.** (1) In establishing and maintaining the formulary and  
6 preferred drug list, the Department of Health and Human Services shall  
7 ensure that no non-opioid drug approved by the federal Food and Drug  
8 Administration for the treatment or management of pain shall be  
9 disadvantaged or discouraged with respect to medicaid coverage for any  
10 opioid or narcotic drug for the treatment or management of pain on such  
11 formulary and preferred drug list. For purposes of this section,  
12 impermissible disadvantaging or discouragement includes, but is not  
13 limited to, (a) designating a non-opioid drug as a nonpreferred drug if  
14 an opioid or narcotic drug is designated as a preferred drug or (b)  
15 establishing more restrictive or more extensive utilization controls,  
16 including, but not limited to, more restrictive or more extensive prior  
17 authorization or step therapy requirements, for a non-opioid drug than  
18 the least restrictive or extensive utilization controls for an opioid or  
19 narcotic drug. Nothing in this section shall preclude one opioid drug  
20 from being preferred over another opioid drug or one non-opioid drug from  
21 being preferred over another non-opioid drug.

22           (2) This section shall apply to a non-opioid drug immediately upon  
23 approval by the federal Food and Drug Administration for the treatment or  
24 management of pain, regardless of whether such drug has been reviewed by  
25 the department for inclusion on the formulary and preferred drug list.  
26 This section also applies to drugs being provided under a contract  
27 between the department and any managed care organization.

28           **Sec. 3.** (1) In establishing and maintaining its formulary, any  
29 commercial insurance policy, certificate, or contract, delivered, issued  
30 for delivery, or renewed in this state, or any self-funded employee  
31 benefit plan, to the extent not preempted by federal law, shall ensure

1 that no non-opioid drug approved by the federal Food and Drug  
2 Administration for the treatment or management of pain shall be  
3 disadvantaged or discouraged, with respect to coverage or cost sharing,  
4 for an opioid or narcotic drug for the treatment or management of pain on  
5 such formulary. For purposes of this section, impermissible  
6 disadvantaging or discouragement includes, but is not limited to, (a)  
7 imposing more restrictive coverage criteria on a non-opioid drug than the  
8 least restrictive coverage criteria imposed on an opioid or narcotic  
9 drug, (b) establishing more restrictive or more extensive utilization  
10 controls, including, but not limited to, more restrictive or more  
11 extensive prior authorization or step therapy requirements, for a non-  
12 opioid drug than the least restrictive or extensive utilization controls  
13 applicable to an opioid or narcotic drug, or (c) if such commercial  
14 insurance policy, certificate, or contract, delivered, issued for  
15 delivery, or renewed in this state, or any self-funded employee benefit  
16 plan, to the extent not preempted by federal law, maintains a formulary  
17 grouped into tiers for the purposes of determining cost-sharing, placing  
18 a non-opioid drug on a tier that requires a cost-sharing responsibility  
19 that exceeds the lowest cost-sharing responsibility required for an  
20 opioid or narcotic drug on such formulary.

21 (2) This section shall apply to a non-opioid drug immediately upon  
22 its approval by the federal Food and Drug Administration for the  
23 treatment or management of pain.

24 (3) If any commercial insurance policy, certificate, or contract,  
25 delivered, issued for delivery, or renewed in this state, or any self-  
26 funded employee benefit plan, to the extent not preempted by federal law,  
27 restricts coverage of a non-opioid prescription drug for the treatment or  
28 management of pain, including through utilization management policies  
29 such as prior authorization or step therapy, the prescribing health care  
30 provider shall be granted an exception to such restriction if the  
31 prescribing health care provider confirms that, based on the provider's

1 professional judgment, the non-opioid prescription drug is appropriate  
2 for the treatment of the patient.

3 **Sec. 4.** (1) Nebraska has acted proactively to combat opioid  
4 addiction and overdose deaths from opioids; however, work remains to be  
5 done to decrease and prevent opioid addiction. Patients, especially those  
6 with risk factors for opioid misuse, addiction, and overdose, should have  
7 equal access to non-opioid drugs and prescribers should not be prevented  
8 from prescribing either a non-opioid or opioid drug.

9 (2) Formulary placement and utilization management barriers are used  
10 to limit prescribers and patients from accessing pain management  
11 treatment alternatives. Therefore, it is the intent of the Legislature to  
12 ensure prescribers and patients have the necessary tools available to  
13 comprehensively approach pain management by equalizing access between  
14 non-opioid and opioid prescriptions and preventing systems that  
15 disadvantage non-opioid pain management prescription drugs.

16 **Sec. 5.** Original section 68-901, Revised Statutes Cumulative  
17 Supplement, 2024, is repealed.