

LEGISLATIVE BILL 1063

Approved by the Governor April 13, 1998

Introduced by Beutler, 28; Bohlke, 33; Bromm, 23; Brown, 6; Coordsen, 32; Crosby, 29; Dierks, 40; Elmer, 44; Engel, 17; Hartnett, 45; Hilgert, 7; Hillman, 48; Janssen, 15; Kiel, 9; Landis, 46; Lynch, 13; Matzke, 47; Dw. Pedersen, 39; D. Pederson, 42; C. Peterson, 35; Freister, 5; Raikes, 25; Robak, 22; Schellpeper, 18; Schimek, 27; Schmitt, 41; Schrock, 38; Suttle, 10; Thompson, 14; Vrtiska, 1; Wehrbein, 2; Wesely, 26; Wickersham, 49; Willhoft, 34; at the request of the Governor

AN ACT relating to health and human services; to amend sections 44-710.01, 44-4227, 44-4235, 68-1019, 68-1020, 68-1021, 68-1037, and 71-529, Reissue Revised Statutes of Nebraska, and section 44-4221, Revised Statutes Supplement, 1997; to change provisions relating to the Comprehensive Health Insurance Pool, medical assistance, children's health services availability, and immunization information exchanges; to create a committee; to change eligibility requirements; to change premium rates; to provide a penalty; to provide a fee; to provide powers and duties; to provide operative dates; and to repeal the original sections.

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

Section 1. Section 44-710.01, Reissue Revised Statutes of Nebraska, is amended to read:

44-710.01. No policy of sickness and accident insurance shall be delivered or issued for delivery to any person in this state unless (1) the entire money and other considerations therefor are expressed therein, (2) the time at which the insurance takes effect and terminates is expressed therein, (3) it purports to insure only one person, except that a policy may insure, originally or by subsequent amendment, upon the application of an adult member of a family who shall be deemed the policyholder, any two or more eligible members of that family, including husband, wife, dependent children, any children enrolled on a full-time basis in any college, university, or trade school, or any children under a specified age which shall not exceed twenty-three years and any other person dependent upon the policyholder; any individual policy hereinafter delivered or issued for delivery in this state which provides that coverage of a dependent child shall terminate upon the attainment of the limiting age for dependent children specified in the policy shall also provide in substance that attainment of such limiting age shall not operate to terminate the coverage of such child during the continuance of such policy and while the child is and continues to be both (a) incapable of self-sustaining employment by reason of mental retardation or physical handicap and (b) chiefly dependent upon the policyholder for support and maintenance, if proof of such incapacity and dependency is furnished to the insurer by the policyholder within thirty-one days of the child's attainment of the limiting age and subsequently as may be required by the insurer but not more frequently than annually after the two-year period following the child's attainment of the limiting age; such insurer may charge an additional premium for and with respect to any such continuation of coverage beyond the limiting age of the policy with respect to such child, which premium shall be determined by the insurer on the basis of the class of risks applicable to such child, (4) it contains a title on the face of the policy correctly describing the policy, (5) the exceptions and reductions of indemnity are set forth in the policy and, except those which are set forth in sections 44-710.03 and 44-710.04, are printed, at the insurer's option, either included with the benefit provision to which they apply or under an appropriate caption such as EXCEPTIONS, OR EXCEPTIONS AND REDUCTIONS; if an exception or reduction specifically applies only to a particular benefit of the policy, a statement of such exception or reduction shall be included with the benefit provision to which it applies, (6) each such form, including riders and endorsements, shall be identified by a form number in the lower left-hand corner of the first page thereof, and (7) it contains no provision purporting to make any portion of the charter, rules, constitution, or bylaws of the insurer a part of the policy unless such portion is set forth in full in the policy, except in the case of the incorporation of, or reference to, a statement of rates or classification of risks, or short-rate table filed with the Director of Insurance, and (8) on or after January 1, 1999, any restrictive rider contains a notice of the existence of the Comprehensive Health Insurance Pool if the

policy provides health insurance as defined in section 44-4209.

Sec. 2. Section 44-4221, Revised Statutes Supplement, 1997, is amended to read:

44-4221. (1) To be eligible to purchase health insurance from the pool, a person shall:

(a) Be a resident of the state for a period of at least six months and shall:

(i) Have received, within six months prior to application to the pool, a rejection in writing, for reasons of health, from an insurer;

(ii) Currently have, or have been offered within six months prior to application to the pool, health insurance coverage by an insurer which includes a restrictive rider which limits insurance coverage for a preexisting medical condition; ~~for a period of time exceeding twelve months;~~ or

(iii) Have been refused health insurance coverage comparable to the pool, or have been offered such coverage at a rate exceeding the premium rate for pool coverage, within six months prior to application to the pool; or

(b) Be a resident of the state for any length of time and be an individual:

(i) For whom, as of the date the individual seeks coverage under this section, the aggregate of the periods of creditable coverage is eighteen or more months and whose most recent prior creditable coverage was under a group health plan, governmental plan, or church plan;

(ii) Who is not eligible for coverage under a group health plan, Part A or Part B of Title XVIII of the Social Security Act, or a state plan under Title XIX of the Social Security Act, or any successor program, and who does not have any other health insurance coverage;

(iii) With respect to whom the most recent coverage was not terminated for factors relating to nonpayment of premiums or fraud; and

(iv) Who had been offered the option of continuation coverage under COBRA or under a similar program, who elected such continuation coverage, and who has exhausted such continuation coverage or who had been offered the option of continuation coverage under COBRA or under a similar program at a premium rate higher than that available from the pool.

(2) The board may adopt and promulgate a list of medical or health conditions for which a person would be eligible for pool coverage without applying for health insurance pursuant to this section. Persons who can demonstrate the existence or history of any medical or health conditions on the list adopted and promulgated by the board shall be eligible to apply directly to the pool for insurance coverage.

Sec. 3. Section 44-4227, Reissue Revised Statutes of Nebraska, is amended to read:

44-4227. Premium rates charged for pool coverage may not be unreasonable in relation to the benefits provided, the risk experience, and the reasonable expenses of providing the coverage. Rates shall directly relate to the coverage provided, risk experience, and expenses of providing the coverage. Rates and rate schedules may be adjusted for appropriate risk factors such as age, sex, and area variation in claim costs in accordance with established actuarial and underwriting practices. Special rates shall be provided for children under eighteen years of age.

The pool shall determine the standard risk rate by calculating the average individual rate charged by the five insurers writing the largest amount of individual health insurance coverage in the state actuarially adjusted to be comparable with the pool coverage. In the event five insurers do not offer comparable coverage, the standard risk rate shall be established using reasonable actuarial techniques and shall reflect anticipated risk experience and expenses for such coverage. The annual premium rate established for pool coverage shall be one hundred thirty-five percent of rates established as applicable for individual standard risks, except that the annual premium rate established for pool coverage for children under eighteen years of age shall be sixty-seven and five-tenths percent of rates established as applicable for individual standard risks. The board shall not adjust or increase pool rates more than one time during any calendar year. All rates and rate schedules shall be submitted to the director for approval. The director shall hold a public hearing pursuant to the Administrative Procedure Act prior to approving an adjustment to or increase in pool rates.

Sec. 4. Section 44-4235, Reissue Revised Statutes of Nebraska, is amended to read:

44-4235. Every insurer shall include a notice of the existence of the pool in (1) any rejection of an application for health insurance coverage for reasons of the health of the applicant and (2) any restrictive health insurance rider issued on or after January 1, 1999.

Sec. 5. Section 68-1019, Reissue Revised Statutes of Nebraska, is

amended to read:

68-1019. (1) Medical assistance on behalf of recipients shall be paid directly to vendors.

(2) On behalf of recipients over sixty-five years of age, medical assistance shall include care in an institution for mental diseases.

(3) On behalf of all recipients, medical assistance shall include:

(a) Inpatient and outpatient hospital care;

(b) Laboratory and X-ray services;

(c) Nursing home services;

(d) Care home services;

(e) Home health care services;

(f) Nursing services;

(g) Clinic services;

(h) Services of practitioners licensed by the Department of Health and Human Services Regulation and Licensure; and

(i) Such drugs, appliances, and health aids as may be prescribed by practitioners licensed by the Department of Health and Human Services Regulation and Licensure.

(4) The Director of Finance and Support shall ~~may~~ adopt a schedule of premiums, copayments, and deductibles for goods and services provided under the medical assistance program as may be allowed by Title XIX or Title XXI of the federal Social Security Act, as amended as of the operative date of this section. The system of copayments and deductibles in the schedule shall discourage abuse of high-cost services and encourage the utilization of cost-effective services. Prior to the adoption of the schedule of copayments and deductibles, the director shall provide a report to the Governor and the Legislature outlining proposed copayments and deductibles. The report shall collect and summarize available data from other states concerning their experience with copayments and deductibles, determine if vendors may be reimbursed for copayments and deductibles resulting from a recipient's inability to pay, evaluate the collectability of copayments and deductibles, and assess the effect of copayments and deductibles on recipients, vendors, access to and availability of care, and utilization of affected medical assistance program services. The report shall include data from Nebraska as it becomes available. The report shall also provide information as to other cost-containment mechanisms which have been implemented or proposed by the Department of Health and Human Services Finance and Support for the fiscal year. The report shall be provided to the Governor and the Legislature by December 1 of each year. No schedule of copayments and deductibles shall be put into effect until July 1 following the report, except that for the first year the schedule shall be put into effect by April 1. A vendor shall be responsible for collecting any applicable copayment or deductible from the recipient.

(5) The Director of Finance and Support shall provide limits as to the amount, duration, and scope of services and goods recipients may receive under the medical assistance program. For purposes of providing limits as to the amount, duration, and scope of services and goods recipients may receive under the medical assistance program, the Department of Health and Human Services Finance and Support shall adopt and promulgate rules and regulations. The limits adopted shall in all respects comply with applicable provisions of Title XIX of the federal Social Security Act and the related federal regulations, as they may be amended from time to time. Prior to the adoption of such rules and regulations, the director shall provide a report to the Governor and the Legislature outlining proposed limits. Such report shall be provided to the Governor and the Legislature by December 1 of each year. No rules or regulations to implement such limits shall be put into effect until April 1 following the report.

(6) No vendor shall advertise or promote through newspapers, magazines, circulars, direct mail, directories, radio, television, or otherwise that such vendor will waive the collection of all or any portion of any copayment or deductible established pursuant to subsection (4) of this section.

Sec. 6. Section 68-1020, Reissue Revised Statutes of Nebraska, is amended to read:

68-1020. (1) Medical assistance shall be paid on behalf of dependent children, aged persons, blind individuals, and disabled individuals, as defined in sections 43-504 and 68-1002 to 68-1005, and on behalf of all individuals less than twenty-one years of age who are eligible under section 1905(a) of the federal Social Security Act, as amended.

(2) The Director of Finance and Support shall adopt and promulgate rules and regulations governing provision of such medical assistance benefits to qualified individuals:

(a) Who are presumptively eligible as allowed under 42 U.S.C. 1396a, as amended, and section 1920A of the federal Social Security Act, as amended;

(b) Who have income at or below one hundred fifty eight-five percent of the Office of Management and Budget income poverty guidelines line, as allowed under Title XIX and Title XXI of the federal Social Security Act, as amended, without regard to resources, including all children up to such under nineteen years of age and pregnant women as allowed under 42 U.S.C. 1396a, as amended, and section 2110 of the federal Social Security Act, as amended. Children described in this subdivision shall remain eligible for a twelve-month period of time from the date of eligibility prior to redetermination of eligibility; or

(c) Who are medically needy caretaker relatives as allowed under section 1905(a)(ii) of the federal Social Security Act, as amended, and who have children with allocated income as follows:

(i) At or below one hundred fifty percent of the Office of Management and Budget poverty line with eligible children one year of age or younger;

(ii) At or below one hundred thirty-three percent of the Office of Management and Budget poverty line with eligible children over one year of age and under six years of age; or

(iii) At or below one hundred percent of the Office of Management and Budget poverty line with eligible children six years of age or more and under fifteen years of age.

Sec. 7. Section 68-1021, Reissue Revised Statutes of Nebraska, is amended to read:

68-1021. For the purpose of paying medical assistance as defined in sections 68-1002, 68-1006, and 68-1018 to 68-1025, the State of Nebraska hereby accepts and assents to all applicable provisions of Title XIX of an Act of Congress identified as H.R. 6675, 89th Congress, approved July 30, 1965 the federal Social Security Act, as amended as of the operative date of this section, and, effective October 1, 1997, Title XXI of the federal Social Security Act, as amended as of the operative date of this section. The Director of Finance and Support is authorized to adopt and promulgate rules and regulations, to enter into agreements, to adopt fee schedules with regard to medical assistance benefits, rehabilitation services, and any other remedial services, and to adopt copayments and deductibles with respect to such benefits and services if the requirements of subsection (4) of section 68-1019 are met.

Sec. 8. Section 68-1037, Reissue Revised Statutes of Nebraska, is amended to read:

68-1037. The Legislature finds that it is in the best interests of the State of Nebraska to have health care services available to as many Nebraskans as possible. The Legislature further finds that the medical assistance program established in sections 68-1018 to 68-1025, also known as Medicaid, and Title XXI of the federal Social Security Act, as amended as of the operative date of this section, should be utilized to the extent possible under federal law in order to provide health care for low-income children and families in Nebraska. The Legislature further finds this goal can be met in part by providing prenatal care to pregnant women and care to infants at the maximum level allowed by federal law. Such persons qualify for care if the family income is less than or equal to one hundred fifty percent of the federal Office of Management and Budget income poverty guidelines. It is the intent of this section and section 68-1020 to provide such health care services.

Sec. 9. (1) A committee shall be appointed to study the implementation of the federal Title XXI program described in this legislative bill and other alternatives for implementing Title XXI, including the use of private health insurance. The committee may utilize staff and other resources of the Department of Health and Human Services Finance and Support and shall submit a report to the Legislature by September 1, 2000, based on the committee's study. The report shall include, but not be limited to:

(a) The number of children eligible for the Title XXI program;

(b) The number of children insured;

(c) The administrative cost of implementing the program;

(d) Descriptions of the services utilized by children under the

program;

(e) The number of children moving from private health insurance programs to the program;

(f) A comparison between the costs and coverages of the program proposed under this legislative bill and the private health insurance market in implementing Title XXI; and

(g) Recommendations by the committee regarding the continued funding and future provision of health insurance for the children eligible under this legislative bill.

(2) The committee shall consist of:

(a) Two representatives of the Department of Health and Human Services appointed by the Director of Health and Human Services;

(b) Two members of the Health and Human Services Committee of the Legislature appointed by the Chairperson of the Executive Board of the Legislative Council;

(c) Two members of the private health insurance industry appointed by the Governor;

(d) Two members of the medical community with experience in serving the health care needs of children appointed by the Governor; and

(e) Two representatives of child advocacy groups and families appointed by the Governor.

(3) The Governor shall appoint a chairperson. The appointments shall be made after January 15, 1999, and no later than February 15, 1999. The committee shall meet at the call of a chairperson or a majority of the members. The chairperson shall call such meetings as he or she determines necessary to fulfill the duties of the committee. A quorum shall be one-half the members.

Sec. 10. Each public school district shall annually, at the beginning of the school year, provide written information supplied by the Department of Health and Human Services and the Department of Health and Human Services Finance and Support to every student describing the availability of children's health services provided under the medical assistance program established under sections 68-1018 to 68-1025.

Each hospital shall provide the mother of every child born in such hospital, at the time of such birth, written information provided by the Director of Health and Human Services and the Director of Finance and Support describing the availability of children's health services provided under the medical assistance program established under sections 68-1018 to 68-1025.

The Director of Health and Human Services and the Director of Finance and Support shall develop and implement other activities designed to increase public awareness of the availability of children's health services provided under the program. These activities may include, but need not be limited to, public service announcements, the development and distribution of printed materials describing the program, periodically locating agency staff at public sites outside the Department of Health and Human Services offices for the purpose of receiving applications for the program, contracting with organizations in order to assist the public to apply for program benefits and to receive referrals for medical services as deemed necessary, and other activities deemed appropriate by the directors. These activities shall include materials and efforts designed to increase participation in the program by minority populations.

Sec. 11. It is the intent of the Legislature that sections 11 to 16 of this act provide for the exchange of immunization information between professionals, facilities, and departments for the purpose of protecting the public health by facilitating age-appropriate immunizations which will minimize the risk of outbreak of childhood diseases.

Sec. 12. A patient or, if the patient is a minor, the patient's parent or legal guardian may deny access under sections 11 to 16 of this act to the patient's immunization information by signing a nondisclosure form with the professional or entity which provided the immunization. The nondisclosure form shall be kept with the immunization information of the patient and such immunization information is considered restricted immunization information.

Sec. 13. A physician, a nurse practitioner, a physician assistant, a pharmacist, a licensed health care facility, a public immunization clinic, a local or district health department, the Department of Health and Human Services, the Department of Health and Human Services Regulation and Licensure, and the Department of Health and Human Services Finance and Support may share immunization information which is not restricted under section 12 of this act. The unrestricted immunization information shared may include, but is not limited to, the patient's name, date of birth, dates and vaccine types administered, and any immunization information obtained from other sources.

Sec. 14. (1) Immunization information which is not restricted under section 12 of this act concerning children enrolled in a child care program licensed pursuant to sections 71-1908 to 71-1917, a school, or a postsecondary educational institution may be accessed by the licensed child care program, school, or institution of higher education from any of the persons or entities described in section 13 of this act, subject to security provisions to be set by rule and regulation as provided in section 15 of this act. Such

immunization information is limited to the child's name, date of birth, immunization provider, and all dates of immunization by vaccine type documented in the immunization information. The access to immunization information by a licensed child care program, school, or a postsecondary educational institution under this section does not change a parent's or legal guardian's right to access medical information about his or her child or ward.

(2) Immunization information received under this section is confidential, except that a child's immunization information received under this section may be disclosed to the child's parents or legal guardian. Unauthorized public disclosure of such confidential information by an individual or an officer or employee of a child care program licensed pursuant to sections 71-1908 to 71-1917, a school, or an institution of higher education is a Class III misdemeanor.

(3) The person or entity described in section 13 of this act which provides immunization information to a licensed child care program, a school, or a postsecondary educational institution in accordance with this section may charge a reasonable fee to recover the cost of providing such immunization information.

Sec. 15. The Department of Health and Human Services, the Department of Health and Human Services Regulation and Licensure, and the Department of Health and Human Services Finance and Support may adopt and promulgate rules and regulations to implement sections 11 to 16 of this act, including procedures and methods for access to and security of the immunization information.

Sec. 16. Any person who receives or releases immunization information in the form and manner prescribed in sections 11 to 16 of this act and any rules and regulations which may be adopted and promulgated pursuant to sections 11 to 16 of this act is not civilly or criminally liable for such receipt or release.

Sec. 17. Section 71-529, Reissue Revised Statutes of Nebraska, is amended to read:

71-529. The Nebraska Department of Health and Human Services may participate in the national efforts described in sections 71-527 and 71-528 and may develop a statewide immunization action plan which is comprehensive in scope and reflects contributions from a broad base of providers and consumers. In order to implement the statewide immunization action plan, the department may:

(1) Actively seek the participation and commitment of the public, health care professionals and facilities, the educational community, and community organizations in a comprehensive program to ensure that the state's children are appropriately immunized;

(2) Apply for and receive public and private awards to purchase vaccines and to administer a statewide comprehensive program;

(3) Provide immunization information and education to the public, parents, health care providers, and educators to establish and maintain a high level of awareness and demand for immunization by parents;

(4) Assist parents, health care providers, and communities in developing systems, including demonstration and pilot projects, which emphasize well-child care and the use of private practitioners and which improve the availability of immunization and improve management of immunization delivery so as to ensure the adequacy of the vaccine delivery system;

(5) Evaluate the effectiveness of these statewide efforts, conduct ongoing measurement of children's immunization status, identify children at special risk for deficiencies in immunization, and report on the activities of the statewide immunization program annually to the Legislature and the citizens of Nebraska;

(6) Recognize persons who volunteer their efforts towards achieving the goal of providing immunization of the children of Nebraska and in meeting the Healthy People 2000 objective of series-complete immunization coverage for ninety percent or more of United States children by their second birthday;

(7) Establish a statewide program to immunize Nebraska children from birth up to six years of age against measles, mumps, rubella, poliomyelitis, diphtheria, pertussis, tetanus, hepatitis B, and haemophilus influenzae type B. The program shall serve children who are not otherwise eligible for childhood immunization coverage with medicaid or other federal funds or are not covered by private third-party payment; and

(8) Contract to provide vaccine under the statewide program authorized under subdivision (7) of this section without cost to health care providers subject to the following conditions:

(a) In order to receive vaccine without cost, health care providers shall not charge for the cost of the vaccine. Health care providers may

charge a fee for the administration of the vaccine but may not deny service because of the parent's or guardian's inability to pay such fee. Fees for administration of the vaccine shall be negotiated between the department and the health care provider, shall be uniform among participating providers, and shall be no more than the cost ceiling for the region in which Nebraska is included as set by the Secretary of the United States Department of Health and Human Services for the Vaccines for Children Program authorized by the Omnibus Budget Reconciliation Act of 1993;

(b) Health care providers shall administer vaccines according to the schedule recommended by the Advisory Committee on Immunization Practices of the Centers for Disease Control and Prevention or by the American Academy of Pediatrics unless in the provider's medical judgment, subject to accepted medical practice, such compliance is medically inappropriate; and

(c) Health care providers shall maintain records on immunizations as prescribed by this section for inspection and audit by the Nebraska Department of Health and Human Services or the Auditor of Public Accounts, including responses by parents or guardians to simple screening questions related to payment coverage by public or private third-party payors, identification of the administration fee as separate from any other cost charged for other services provided at the same time the vaccination service is provided, and other information as determined by the department to be necessary to comply with subdivision (5) of this section. Such immunization records may also be used for information exchange as provided in sections 11 to 16 of this act.

Sec. 18. Sections 5 to 10 and 19 of this act become operative on September 1, 1998. The other sections of this act become operative on their effective date.

Sec. 19. Original sections 68-1019, 68-1020, 68-1021, and 68-1037, Reissue Revised Statutes of Nebraska, are repealed.

Sec. 20. Original sections 44-710.01, 44-4227, 44-4235, and 71-529, Reissue Revised Statutes of Nebraska, and section 44-4221, Revised Statutes Supplement, 1997, are repealed.