

LEGISLATURE OF NEBRASKA

ONE HUNDREDTH LEGISLATURE

FIRST SESSION

**LEGISLATIVE BILL 699**

Introduced by Lathrop, 12; Flood, 19; Howard, 9; McGill, 26;  
Preister, 5

Read first time January 17, 2007

Committee: Health and Human Services

A BILL

1 FOR AN ACT relating to prescriptions; to amend section 68-901,  
2 Revised Statutes Cumulative Supplement, 2006; to adopt  
3 the Healthy Nebraska Rx Card Program Act; to state  
4 intent regarding appropriations; to provide a duty for  
5 the Department of Health and Human Services Finance and  
6 Support; to harmonize provisions; to provide an operative  
7 date; to provide severability; to repeal the original  
8 section; and to declare an emergency.  
9 Be it enacted by the people of the State of Nebraska,

1           Section 1. Sections 1 to 21 of this act shall be known  
2 and may be cited as the Healthy Nebraska Rx Card Program Act.

3           Sec. 2. The Legislature finds that:

4           (1) Affordability is critical in providing state  
5 residents with access to prescription drugs;

6           (2) Making prescription drugs more affordable for  
7 qualified state residents increases the overall health of state  
8 residents, promotes healthy communities, and protects the public  
9 health and welfare; and

10          (3) The Healthy Nebraska Rx Card Program should be  
11 integrated as much as possible with other state health programs and  
12 is not intended to discourage employers from offering to pay or  
13 from paying for prescription drug benefits for their employees or  
14 to supplant employer-sponsored prescription drug benefit plans.

15          Sec. 3. For purposes of the Healthy Nebraska Rx Card  
16 Program Act:

17          (1) Department means the Department of Health and Human  
18 Services Finance and Support;

19          (2) Healthy Nebraska Rx Card Program means the program  
20 established under section 8 of this act;

21          (3) Labeler means an entity or person that receives  
22 prescription drugs from a manufacturer or wholesaler and repackages  
23 those drugs for retail sale and that has a labeler code from the  
24 federal Food and Drug Administration under 21 C.F.R. 207.20, as  
25 such regulation existed on January 1, 2007;

1           (4) Manufacturer means a manufacturer of prescription  
2 drugs as defined in 42 U.S.C. 1396r-8(k)(5), as such section  
3 existed on January 1, 2007, including a subsidiary or affiliate of  
4 a manufacturer;

5           (5) Participating retail pharmacy means a retail pharmacy  
6 or other business licensed to dispense prescription drugs in this  
7 state that (a) participates in the state medicaid program or (b)  
8 voluntarily agrees to participate in the Healthy Nebraska Rx Card  
9 Program;

10           (6) Chief administrative officer means the chief  
11 administrative officer for the Nebraska Health and Human Services  
12 System or his or her designee;

13           (7) State medicaid program means the medical assistance  
14 program established under the Medical Assistance Act; and

15           (8) Wholesaler means a wholesale drug distributor  
16 licensed under the Wholesale Drug Distributor Licensing Act to  
17 distribute prescription drugs in this state.

18           Sec. 4. The chief administrative officer shall  
19 negotiate discount prices or rebates for prescription drugs from  
20 manufacturers and labelers. A manufacturer or labeler that sells  
21 prescription drugs in this state may voluntarily elect to negotiate  
22 (1) supplemental rebates for the federal medicaid rebate program  
23 greater than those required under 42 U.S.C. 1396r-8, as such  
24 section existed on January 1, 2007, (2) discount prices or rebates  
25 for the Healthy Nebraska Rx Card Program, and (3) discount prices

1 or rebates for any other state program that pays for or acquires  
2 prescription drugs.

3           Sec. 5. In negotiating rebate terms pursuant to section  
4 4 of this act, the chief administrative officer shall take into  
5 consideration the rebate calculated under the federal medicaid  
6 rebate program pursuant to 42 U.S.C. 1396r-8, as such section  
7 existed on January 1, 2007, the price provided to covered entities  
8 under 42 U.S.C. 256b, as such section existed on January 1, 2007,  
9 and any other available information on prescription drug prices,  
10 discounts, and rebates.

11           Sec. 6. (1) The chief administrative officer shall  
12 establish a preferred drug list for the Healthy Nebraska Rx  
13 Card Program that includes, but is not limited to:

14           (a) Drugs listed on the state medicaid preferred drug  
15 list;

16           (b) Antipsychotic drugs;

17           (c) Antidepressant drugs;

18           (d) Chemotherapy;

19           (e) Antiretroviral drugs;

20           (f) Immunosuppressive drugs; and

21           (g) Any other drugs as determined by the chief  
22 administrative officer.

23           (2) In determining whether to add other drugs to the  
24 preferred drug list, the chief administrative officer may take into  
25 consideration any of the following factors:

1           (a) Therapeutic value for the disease or condition under  
2 treatment;

3           (b) Clinical efficacy;

4           (c) Safety;

5           (d) Cost; and

6           (e) Other relevant factors as determined by the chief  
7 administrative officer.

8           (3) The chief administrative officer may consult with  
9 physicians and other health care professionals with specialized  
10 clinical knowledge and expertise in this area.

11           (4) The determination of a drug's safety and efficacy  
12 shall be consistent with the standards set forth in the  
13 peer-reviewed literature and other available sources, including,  
14 but not limited to:

15           (a) The American Hospital Formulary Service Drug  
16 Information;

17           (b) The United States Pharmacopeia Drug Information;

18           (c) The DRUGDEX System; and

19           (d) Other sources deemed appropriate by the chief  
20 administrative officer.

21           Sec. 7. (1) The chief administrative officer shall  
22 consider whether to place a manufacturer's or labeler's  
23 prescription drugs on the prior authorization list for the  
24 state medicaid program and take similar actions involving prior  
25 authorization or formularies for any other state-funded or

1 state-operated prescription drug program if:

2 (a) The chief administrative officer and a manufacturer  
3 or labeler fail to reach agreement on the terms of a supplemental  
4 medicaid rebate or a price discount or rebate for the Healthy  
5 Nebraska Rx Card Program; and

6 (b) The price discounts or rebates offered by the  
7 manufacturer or labeler are not as favorable to the state as  
8 the prices provided to covered entities under 42 U.S.C. 256b, as  
9 such section existed on January 1, 2007.

10 (2) Any prior authorization shall meet the requirements  
11 of 42 U.S.C. 1396r-8(d)(5), as such section existed on January 1,  
12 2007, and shall be done in accordance with rules and regulations of  
13 the department.

14 (3) The names of manufacturers and labelers that do  
15 not enter into rebate agreements shall be public information,  
16 and the department shall release the information to the public  
17 and actively distribute it to doctors, pharmacists, and other  
18 health-care professionals.

19 Sec. 8. The department shall establish the Healthy  
20 Nebraska Rx Card Program as a state pharmaceutical assistance  
21 program under 42 U.S.C. 1396r-8(c)(1)(C)(i)(III), as such section  
22 existed on January 1, 2007, to provide price discounts to  
23 participants for drugs covered by a rebate agreement. Using  
24 funds from negotiated rebates, the department shall contract with  
25 wholesalers and participating retail pharmacies to provide such

1 price discounts.

2           Sec. 9. The price discounts received by Healthy Nebraska  
3 Rx Card Program participants shall be calculated by the chief  
4 administrative officer on a quarterly basis. That calculation  
5 shall provide price discounts approximately equal to the average  
6 amount of the negotiated drug rebate minus an amount to cover the  
7 reasonable administrative costs of the Healthy Nebraska Rx Card  
8 Program.

9           Sec. 10. (1) An individual is eligible to participate in  
10 the Healthy Nebraska Rx Card Program if he or she is a resident of  
11 Nebraska and is eligible for medicare or has a net family income  
12 which is less than three hundred percent of the federal poverty  
13 level.

14           (2) An individual is ineligible to participate in the  
15 Healthy Nebraska Rx Card Program if he or she is eligible for  
16 assistance under the state medicaid program or is covered by an  
17 insurance policy that provides benefits for prescription drugs  
18 equal to or greater than the benefits provided under the Healthy  
19 Nebraska Rx Card Program.

20           Sec. 11. The department shall establish simple procedures  
21 for enrolling participants in the Healthy Nebraska Rx Card Program  
22 and shall undertake outreach efforts to build public awareness of  
23 the program and maximize enrollment by eligible residents.

24           Sec. 12. (1) Participating retail pharmacies shall  
25 disclose to participants in the Healthy Nebraska Rx Card Program

1 the amount of savings provided as a result of the price discounts  
2 provided by the program pursuant to rules and regulations of the  
3 department. The rules and regulations shall protect information  
4 that is proprietary in nature.

5 (2) A participating retail pharmacy shall verify to  
6 the department the amounts charged to Healthy Nebraska Rx Card  
7 Program participants and nonparticipants and shall provide the  
8 department with utilization data necessary to calculate rebates  
9 from manufacturers and labelers. The department shall protect  
10 the confidentiality of all information subject to confidentiality  
11 protection under state or federal laws, rules, or regulations.  
12 The department may not impose transaction charges on wholesalers  
13 or participating retail pharmacies submitting claims or receiving  
14 payments under the program.

15 Sec. 13. (1) The department shall either pay wholesalers  
16 or participating retail pharmacies in advance for Healthy Nebraska  
17 Rx Card Program discounts or shall reimburse such wholesalers or  
18 participating retail pharmacies weekly.

19 (2) The department may require a wholesaler or  
20 participating retail pharmacy to separate its inventory of  
21 prescription drugs under the Healthy Nebraska Rx Card Program  
22 from the rest of such wholesaler's or participating retail  
23 pharmacy's drug inventory and to maintain records of acquisition  
24 and disposition of prescription drugs under the program separately  
25 from its other records.



1           Sec. 14. (1) Disputes or discrepancies in rebate amounts  
2 shall be resolved using the process established in this section.

3           (2)(a) If there is a discrepancy in favor of the  
4 manufacturer or labeler between the amount claimed by a wholesaler  
5 or a participating retail pharmacy and the amount rebated by the  
6 manufacturer or labeler, the department, at its own expense, may  
7 hire a mutually agreed-upon independent auditor. If a discrepancy  
8 still exists following the audit, the manufacturer or labeler shall  
9 justify the reason for the discrepancy or pay the department any  
10 additional amount due.

11           (b) If there is a discrepancy against the interest  
12 of the manufacturer or labeler in the information provided by  
13 the department to the manufacturer or labeler regarding the  
14 manufacturer's or labeler's rebate, the manufacturer or labeler,  
15 at the manufacturer's or labeler's expense, may hire a mutually  
16 agreed-upon independent auditor to verify the accuracy of the  
17 data supplied to the department. If a discrepancy still exists  
18 following the audit, the department shall justify the reason for  
19 the discrepancy or provide a refund to the manufacturer or labeler.

20           (3) Following the procedures established in subsection  
21 (2) of this section, the department on its own motion may or at  
22 the request of the manufacturer or labeler shall hold a hearing.  
23 Supporting documentation shall accompany any request for a hearing  
24 under this section.

25           Sec. 15. The department shall report the enrollment and

1 financial status of the Healthy Nebraska Rx Card Program and report  
2 savings from supplemental medicaid rebates to the Clerk of the  
3 Legislature by February 1 each year.

4       Sec. 16. The chief administrative officer may combine  
5 drug pricing negotiations for the Healthy Nebraska Rx Card Program  
6 and one or more other state programs to maximize drug rebates if he  
7 or she finds that it is beneficial to do so.

8       Sec. 17. The department may seek any waivers of federal  
9 law, rule, or regulation necessary to implement the Healthy  
10 Nebraska Rx Card Program Act.

11       Sec. 18. The department may adopt and promulgate rules  
12 and regulations to carry out the Healthy Nebraska Rx Card Program  
13 Act.

14       The chief administrative officer shall administer the  
15 act in a manner that benefits the largest number of Nebraska  
16 residents while preventing the act from being preempted by federal  
17 law or regulation. This includes, if necessary, separating medicaid  
18 from nonmedicaid negotiations and prior authorization or formulary  
19 decisions or limiting participation in the Healthy Nebraska Rx Card  
20 Program to a smaller segment of Nebraska residents. The department  
21 shall conduct ongoing quality assurance activities similar to those  
22 used in the state medicaid program.

23       Sec. 19. Price discounts to participants in the Healthy  
24 Nebraska Rx Card Program shall begin on January 1, 2008.

25       Sec. 20. The Healthy Nebraska Rx Fund is created. The

1 fund shall consist of money collected by the department pursuant to  
2 the Healthy Nebraska Rx Card Program Act and any funds appropriated  
3 by the Legislature. Any money in the fund available for investment  
4 shall be invested by the state investment officer pursuant to  
5 the Nebraska Capital Expansion Act and the Nebraska State Funds  
6 Investment Act.

7           Sec. 21. The Legislature shall appropriate one million  
8 dollars for FY2007-08 to carry out the Healthy Nebraska Rx Card  
9 Program Act.

10           Sec. 22. In addition to the Healthy Nebraska Rx Card  
11 Program established pursuant to section 8 of this act, the  
12 Department of Health and Human Services Finance and Support shall  
13 seek a medicaid waiver to establish a pharmacy discount program  
14 modeled after the Healthy Maine Prescriptions Program. If the  
15 waiver is approved, the department shall implement such program  
16 following consultation with the Health and Human Services Committee  
17 of the Legislature.

18           Sec. 23. Section 68-901, Revised Statutes Cumulative  
19 Supplement, 2006, is amended to read:

20           68-901 Sections 68-901 to 68-949 and section 22 of this  
21 act shall be known and may be cited as the Medical Assistance Act.

22           Sec. 24. This act becomes operative on July 1, 2007.

23           Sec. 25. If any section in this act or any part of any  
24 section is declared invalid or unconstitutional, the declaration  
25 shall not affect the validity or constitutionality of the remaining

1 portions.

2           Sec. 26. Original section 68-901, Revised Statutes  
3 Cumulative Supplement, 2006, is repealed.

4           Sec. 27. Since an emergency exists, this act takes effect  
5 when passed and approved according to law.