LEGISLATURE OF NEBRASKA

ONE HUNDRED FIRST LEGISLATURE

SECOND SESSION

LEGISLATIVE BILL 1088

Introduced by Cornett, 45.

Read first time January 21, 2010

Committee: Banking, Commerce and Insurance

A BILL

FOR AN ACT relating to prescriptions; to adopt the Physician and Patient Prescription Protection Act.

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

Section 1. Sections 1 to 7 of this act shall be known and may be cited as the Physician and Patient Prescription Protection Act.

Sec. 2. For purposes of the Physician and Patient Prescription Protection Act:

(1) Generic equivalent means a drug with the same chemical compound as another drug;

(2) Health carrier means an entity subject to the insurance laws and regulations of this state or subject to the jurisdiction of the Department of Insurance which contracts or offers to contract for or enters into an agreement to provide, deliver, arrange for, pay for, or reimburse any of the costs of health care services, including a sickness and accident insurance company, a health maintenance organization, a provider-sponsored organization, a nonprofit hospital and health service corporation, or any other entity providing a plan of health insurance, health benefits, or health services. Health carrier does not include the Department of Health and Human Services;

(3) Notification of request for medication change means a written communication to a patient and to the patient's prescribing health care professional that recommends that a patient's medication prescribed by the original prescribing health care professional be changed to a different medication;

(4) Pharmacy benefit manager means a person or entity, other than a pharmacy or pharmacist, acting as an administrator in

connection with pharmacy benefits; and

(5) Therapeutic alternative means the dispensing of a chemically different drug in place of the drug originally prescribed by the patient's physician or other prescribing health care professional, including biologics and plasma-derived therapies.

Sec. 3. (1) A health carrier or pharmacy benefit manager shall send a notification of request for medication change to a patient and to his or her physician or other prescribing health care professional any time the health carrier or pharmacy benefit manager recommends changing the patient's medication to a different therapeutic agent, altering the treatment plan originally prescribed by the patient's prescribing health care professional.

(2) Such notification of request for medication change shall:

(a) Clearly identify the originally prescribed medication and the medication to which the patient would be changed;

(b) Provide information which is truthful, accurate, and nonmisleading, with appropriate fair balance, as required by the United States Food and Drug Administration for medications;

(c) Include current approved product labeling and information about risks associated with the recommended medication change;

(d) Explain any financial incentives that may be provided to or have been offered to the prescribing health care professional

by the health carrier, or the pharmacy benefit manager, or the agent of either in exchange for the prescribing health care professional's express permission to change such medication, including, but not limited to, cash or in-kind compensation payable to a prescribing health care professional or his or her professional practice group and incentives, if any, that are provided through general health care professional compensation programs used by the health carrier or pharmacy benefit manager;

(e) Explain any financial incentives that a health carrier or pharmacy benefit manager may receive to encourage the medication change;

(f) State that the patient has the right to discuss the proposed medication change before it takes place, including the right to discuss such change with his or her physician or other prescribing health care professional or to file a grievance with the health carrier or pharmacy benefit manager to prevent the medication change if it is based on a financial incentive or is of a different chemical makeup;

(g) Explain any cost-sharing changes for which the patient would be responsible if the change takes place; and

(h) Clearly acknowledge that no medication change shall be allowed without the express authorization of the original prescribing physician or other original prescribing health care professional.

Sec. 4. Health insurance premium payors and employers

responsible for paying the health care premium or portions thereof shall be notified of medication change programs adopted by health carriers and pharmacy benefit managers in any plan offered by such premium payor or employer. Such notification shall include any financial incentives a health carrier or pharmacy benefit manager may be utilizing to encourage or induce the medication change. Information contained in the notification shall be in the aggregate and shall not contain any personally identifiable information.

Sec. 5. The Department of Insurance shall create and provide forms for use in notifications of request for medication change.

Sec. 6. The Department of Insurance shall adopt and promulgate rules governing notifications of request for medication change. Such rules shall include, but not be limited to, the following:

(1) Procedures for verifying the accuracy of any notification of request for medication change from a health carrier or pharmacy benefit manager to ensure that such notification of request for medication change is truthful, accurate, and not misleading;

(2) A requirement that all notifications of request for medication change intended for patient review and any communications sent directly to the patient to educate him or her about alternatives to the medications prescribed by his or her physician or other prescribing health care professional bear a

prominent legend on the first page that states: "This is not a product safety notice. This is a promotional announcement from your health carrier or pharmacy benefit manager about one of your current prescribed medications."; and

(3) A requirement that the notification of request for medication change (a) expressly state that the change involves a therapeutic alternative, not a generic substitution, (b) explain the difference between therapeutic alternative and generic substitutions, and (c) provide a truthful, fair, and balanced explanation regarding the potential ramifications of the therapeutic alternative, including, but not limited to, that medications in the same therapeutic class are associated with different risks and benefits and may work differently in different patients.

Sec. 7. Issuing, delivering, or causing to be issued or delivered a notification of request for medication change that is not in compliance with the Physician and Patient Prescription Protection Act or that contains a misrepresentation or false statement is punishable by a fine not to exceed twenty-five thousand dollars.