

LEGISLATURE OF NEBRASKA

ONE HUNDRED SECOND LEGISLATURE

SECOND SESSION

LEGISLATIVE BILL 1063

Introduced by Cook, 13.

Read first time January 18, 2012

Committee: Health and Human Services

A BILL

1 FOR AN ACT relating to medical assistance; to amend section 68-912,
2 Reissue Revised Statutes of Nebraska, and section 68-901,
3 Revised Statutes Supplement, 2011; to adopt the
4 Children's Health and Treatment Act; to harmonize
5 provisions; to provide severability; and to repeal the
6 original sections.

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

1 Section 1. Sections 1 to 8 of this act shall be known and
2 may be cited as the Children's Health and Treatment Act.

3 Sec. 2. The purposes of the Children's Health and
4 Treatment Act are to:

5 (1) Clarify the meaning of the term medically necessary
6 for purposes of the medical assistance program for children under
7 twenty-one years of age, to ensure children obtain needed services;

8 (2) Prohibit certain diagnosis-based exclusions; and

9 (3) Preserve family unity by ensuring that children
10 eligible for the medical assistance program receive necessary health
11 care services and treatment.

12 Sec. 3. For purposes of the Children's Health and
13 Treatment Act:

14 (1) Department means the Department of Health and Human
15 Services;

16 (2) Medical assistance program means the program
17 established pursuant to section 68-903; and

18 (3) Medically necessary means necessary to correct or
19 ameliorate defects or physical or mental illnesses or conditions.

20 Sec. 4. (1) In accordance with 42 U.S.C. section 1396a(a)
21 (43) and 42 U.S.C. section 1396d(r), as such sections existed on
22 January 1, 2012, the department shall provide early and periodic
23 screening, diagnostic, and treatment services to all children under
24 twenty-one years of age who are eligible for coverage under the
25 medical assistance program.

1 (2) For children under twenty-one years of age, the
2 department shall provide or arrange for the provision of necessary
3 health care diagnostic and treatment screening and other measures
4 described in 42 U.S.C. 1396d(a), as such section existed on January
5 1, 2012, to correct or ameliorate defects or physical or mental
6 illnesses or conditions discovered by the screening process
7 regardless of whether such health care diagnostic and treatment
8 screening and other measures described in 42 U.S.C. 1396d(a), as such
9 section existed on January 1, 2012, are covered services under the
10 medicaid state plan. All such services and other measures shall be
11 provided or authorized when they are determined to be medically
12 necessary.

13 (3) In making a medical necessity determination:

14 (a) There shall be a presumption in favor of the medical
15 judgment of the treating physician or treating health care provider;
16 and

17 (b) Medical necessity shall be determined on an
18 individualized, case-by-case basis for each child.

19 Sec. 5. The Children's Health and Treatment Act does not
20 limit the authority of the department to limit coverage of treatments
21 or services that are unsafe, experimental, or not generally accepted
22 as treatment within the medical community.

23 Sec. 6. (1) The department may not arbitrarily deny or
24 reduce the amount, duration, or scope of a required service to an
25 otherwise eligible recipient solely because of the diagnosis, type of

1 illness, or condition.

2 (2) The department shall not deny or reduce the amount,
3 duration, or scope of a required service to an otherwise eligible
4 recipient under twenty-one years of age, based solely on the
5 recipient's age.

6 Sec. 7. The department shall adopt and promulgate rules
7 and regulations to carry out the Children's Health and Treatment Act.
8 On and after January 1, 2013, the department shall not apply clinical
9 criteria or guidelines, medical necessity criteria, or other similar
10 criteria to determine medical necessity that are inconsistent with
11 the Children's Health and Treatment Act or that have not been adopted
12 and promulgated pursuant to the Administrative Procedure Act.

13 Sec. 8. The Children's Health and Treatment Act shall be
14 interpreted to be consistent with 42 U.S.C. 1396a(a)(43) and 42
15 U.S.C. 1396d(r), as such sections existed on January 1, 2012, and
16 shall be reasonably and broadly construed in favor of providing
17 treatment and services rather than excluding or denying treatment or
18 services.

19 Sec. 9. Section 68-901, Revised Statutes Supplement,
20 2011, is amended to read:

21 68-901 Sections 68-901 to 68-971 and sections 1 to 8 of
22 this act shall be known and may be cited as the Medical Assistance
23 Act.

24 Sec. 10. Section 68-912, Reissue Revised Statutes of
25 Nebraska, is amended to read:

1 68-912 (1) Except as otherwise provided in the Children's
2 Health and Treatment Act:

3 (a) The department may establish ~~(a)~~-(i) premiums,
4 copayments, and deductibles for goods and services provided under the
5 medical assistance program, ~~(b)~~-(ii) limits on the amount, duration,
6 and scope of goods and services that recipients may receive under the
7 medical assistance program, and ~~(c)~~-(iii) requirements for recipients
8 of medical assistance as a necessary condition for the continued
9 receipt of such assistance, including, but not limited to, active
10 participation in care coordination and appropriate disease management
11 programs and activities; -

12 ~~(2)~~-(b) In establishing and limiting coverage for
13 services under the medical assistance program, the department shall
14 consider ~~(a)~~-(i) the effect of such coverage and limitations on
15 recipients of medical assistance and medical assistance expenditures,
16 ~~(b)~~-(ii) the public policy in section 68-905, ~~(c)~~-(iii) the
17 experience and outcomes of other states, ~~(d)~~-(iv) the nature and
18 scope of benchmark or benchmark-equivalent health insurance coverage
19 as recognized under federal law, and ~~(e)~~-(v) other relevant factors
20 as determined by the department; and -

21 ~~(3)~~-(c) Coverage for mandatory and optional services and
22 limitations on covered services as established by the department
23 prior to July 1, 2006, shall remain in effect until revised, amended,
24 repealed, or nullified pursuant to law. Any proposed reduction or
25 expansion of services or limitation of covered services by the

1 department under this section shall be subject to the reporting and
2 review requirements of section 68-909.

3 ~~(4)~~(2) Except as otherwise provided in this subsection,
4 proposed rules and regulations under this section relating to the
5 establishment of premiums, copayments, or deductibles for eligible
6 recipients or limits on the amount, duration, or scope of covered
7 services for eligible recipients shall not become effective until the
8 conclusion of the earliest regular session of the Legislature in
9 which there has been a reasonable opportunity for legislative
10 consideration of such rules and regulations. This subsection does not
11 apply to rules and regulations that are (a) required by federal or
12 state law, (b) related to a waiver in which recipient participation
13 is voluntary, or (c) proposed due to a loss of federal matching funds
14 relating to a particular covered service or eligibility category.
15 Legislative consideration includes, but is not limited to, the
16 introduction of a legislative bill, a legislative resolution, or an
17 amendment to pending legislation relating to such rules and
18 regulations.

19 Sec. 11. If any section in this act or any part of any
20 section is declared invalid or unconstitutional, the declaration
21 shall not affect the validity or constitutionality of the remaining
22 portions.

23 Sec. 12. Original section 68-912, Reissue Revised
24 Statutes of Nebraska, and section 68-901, Revised Statutes
25 Supplement, 2011, are repealed.