

LEGISLATURE OF NEBRASKA  
ONE HUNDRED THIRD LEGISLATURE  
SECOND SESSION  
**LEGISLATIVE BILL 254**

Final Reading

Introduced by Adams, 24; Coash, 27.

Read first time January 16, 2013

Committee: Education

A BILL

1 FOR AN ACT relating to public health and welfare; to amend section  
2 44-7,104, Revised Statutes Cumulative Supplement, 2012;  
3 to eliminate a termination date relating to insurance  
4 coverage for certain anticancer medications; to provide  
5 requirements for insurance coverage for autism spectrum  
6 disorder; to provide for the establishment of a program  
7 for the distribution of funds for amino acid-based  
8 elemental formulas; to appropriate funds; to provide  
9 operative dates; to repeal the original section; and to  
10 declare an emergency.  
11 Be it enacted by the people of the State of Nebraska,

1                   Section 1. Section 44-7,104, Revised Statutes Cumulative  
2 Supplement, 2012, is amended to read:

3                   44-7,104 (1) Notwithstanding section 44-3,131, (a) any  
4 individual or group sickness and accident insurance policy,  
5 certificate, or subscriber contract delivered, issued for delivery,  
6 or renewed in this state and any hospital, medical, or surgical  
7 expense-incurred policy, except for policies that provide coverage  
8 for a specified disease or other limited-benefit coverage, and (b)  
9 any self-funded employee benefit plan to the extent not preempted by  
10 federal law that provides coverage for cancer treatment shall provide  
11 coverage for a prescribed, orally administered anticancer medication  
12 that is used to kill or slow the growth of cancerous cells on a basis  
13 no less favorable than intravenously administered or injected  
14 anticancer medications that are covered as medical benefits by the  
15 policy, certificate, contract, or plan.

16                   (2) This section does not prohibit such policy,  
17 certificate, contract, or plan from requiring prior authorization for  
18 a prescribed, orally administered anticancer medication. If such  
19 medication is authorized, the cost to the covered individual shall  
20 not exceed the coinsurance or copayment that would be applied to any  
21 other cancer treatment involving intravenously administered or  
22 injected anticancer medications.

23                   (3) A policy, certificate, contract, or plan provider  
24 shall not reclassify any anticancer medication or increase a  
25 coinsurance, copayment, deductible, or other out-of-pocket expense

1 imposed on any anticancer medication to achieve compliance with this  
2 section. Any change that otherwise increases an out-of-pocket expense  
3 applied to any anticancer medication shall also be applied to the  
4 majority of comparable medical or pharmaceutical benefits under the  
5 policy, certificate, contract, or plan.

6 (4) This section does not prohibit a policy, certificate,  
7 contract, or plan provider from increasing cost-sharing for all  
8 benefits, including cancer treatments.

9 (5) This section shall apply to any policy, certificate,  
10 contract, or plan that is delivered, issued for delivery, or renewed  
11 in this state on or after October 1, 2012.

12 ~~(6) This section terminates on December 31, 2015.~~

13 Sec. 2. (1) For purposes of this section:

14 (a) Applied behavior analysis means the design,  
15 implementation, and evaluation of environmental modifications, using  
16 behavioral stimuli and consequences, to produce socially significant  
17 improvement in human behavior, including the use of direct  
18 observation, measurement, and functional analysis of the relationship  
19 between environment and behavior;

20 (b) Autism spectrum disorder means any of the pervasive  
21 developmental disorders or autism spectrum disorder as defined by the  
22 Diagnostic and Statistical Manual of Mental Disorders, as the most  
23 recent edition of such manual existed on the operative date of this  
24 section;

25 (c) Behavioral health treatment means counseling and

1 treatment programs, including applied behavior analysis, that are:  
2 (i) Necessary to develop, maintain, or restore, to the maximum extent  
3 practicable, the functioning of an individual; and (ii) provided or  
4 supervised, either in person or by telehealth, by a behavior analyst  
5 certified by a national certifying organization or a licensed  
6 psychologist if the services performed are within the boundaries of  
7 the psychologist's competency;

8 (d) Diagnosis means a medically necessary assessment,  
9 evaluation, or test to diagnose if an individual has an autism  
10 spectrum disorder;

11 (e) Pharmacy care means a medication that is prescribed  
12 by a licensed physician and any health-related service deemed  
13 medically necessary to determine the need or effectiveness of the  
14 medication;

15 (f) Psychiatric care means a direct or consultative  
16 service provided by a psychiatrist licensed in the state in which he  
17 or she practices;

18 (g) Psychological care means a direct or consultative  
19 service provided by a psychologist licensed in the state in which he  
20 or she practices;

21 (h) Therapeutic care means a service provided by a  
22 licensed speech-language pathologist, occupational therapist, or  
23 physical therapist; and

24 (i) Treatment means evidence-based care, including  
25 related equipment, that is prescribed or ordered for an individual

1 diagnosed with an autism spectrum disorder by a licensed physician or  
2 a licensed psychologist, including:

3 (i) Behavioral health treatment;

4 (ii) Pharmacy care;

5 (iii) Psychiatric care;

6 (iv) Psychological care; and

7 (v) Therapeutic care.

8 (2) Notwithstanding section 44-3,131, (a) any individual  
9 or group sickness and accident insurance policy or subscriber  
10 contract delivered, issued for delivery, or renewed in this state and  
11 any hospital, medical, or surgical expense-incurred policy, except  
12 for policies that provide coverage for a specified disease or other  
13 limited-benefit coverage, and (b) any self-funded employee benefit  
14 plan to the extent not preempted by federal law, including any such  
15 plan provided for employees of the State of Nebraska, shall provide  
16 coverage for the screening, diagnosis, and treatment of an autism  
17 spectrum disorder in an individual under twenty-one years of age. To  
18 the extent that the screening, diagnosis, and treatment of autism  
19 spectrum disorder are not already covered by such policy or contract,  
20 coverage under this section shall be included in such policies or  
21 contracts that are delivered, issued for delivery, amended, or  
22 renewed in this state or outside this state if the policy or contract  
23 insures a resident of Nebraska on or after January 1, 2015. No  
24 insurer shall terminate coverage or refuse to deliver, issue for  
25 delivery, amend, or renew coverage of the insured as a result of an

1 autism spectrum disorder diagnosis or treatment. Nothing in this  
2 subsection applies to non-grandfathered plans in the individual and  
3 small group markets that are required to include essential health  
4 benefits under the federal Patient Protection and Affordable Care Act  
5 or to medicare supplement, accident-only, specified disease, hospital  
6 indemnity, disability income, long-term care, or other limited  
7 benefit hospital insurance policies.

8 (3) Except as provided in subsection (4) of this section,  
9 coverage for an autism spectrum disorder shall not be subject to any  
10 limits on the number of visits an individual may make for treatment  
11 of an autism spectrum disorder, nor shall such coverage be subject to  
12 dollar limits, deductibles, copayments, or coinsurance provisions  
13 that are less favorable to an insured than the equivalent provisions  
14 that apply to a general physical illness under the policy.

15 (4) Coverage for behavioral health treatment, including  
16 applied behavior analysis, shall be subject to a maximum benefit of  
17 twenty-five hours per week until the insured reaches twenty-one years  
18 of age. Payments made by an insurer on behalf of a covered individual  
19 for treatment other than behavioral health treatment, including  
20 applied behavior analysis, shall not be applied to any maximum  
21 benefit established under this section.

22 (5) Except in the case of inpatient service, if an  
23 individual is receiving treatment for an autism spectrum disorder, an  
24 insurer shall have the right to request a review of that treatment  
25 not more than once every six months unless the insurer and the

1 individual's licensed physician or licensed psychologist execute an  
2 agreement that a more frequent review is necessary. Any such  
3 agreement regarding the right to review a treatment plan more  
4 frequently shall apply only to a particular individual being treated  
5 for an autism spectrum disorder and shall not apply to all  
6 individuals being treated for autism spectrum disorder by a licensed  
7 physician or licensed psychologist. The cost of obtaining a review  
8 under this subsection shall be borne by the insurer.

9 (6) This section shall not be construed as limiting any  
10 benefit that is otherwise available to an individual under a  
11 hospital, surgical, or medical expense-incurred policy or health  
12 maintenance organization contract. This section shall not be  
13 construed as affecting any obligation to provide services to an  
14 individual under an individualized family service plan,  
15 individualized education program, or individualized service plan.

16 Sec. 3. The Department of Health and Human Services shall  
17 establish a program to provide amino acid-based elemental formulas  
18 for the diagnosis and treatment of Immunoglobulin E and non-  
19 Immunoglobulin E mediated allergies to multiple food proteins, food-  
20 protein-induced enterocolitis syndrome, eosinophilic disorders, and  
21 impaired absorption of nutrients caused by disorders affecting the  
22 absorptive surface, functional length, and motility of the  
23 gastrointestinal tract, when the ordering physician has issued a  
24 written order stating that the amino acid-based elemental formula is  
25 medically necessary for the treatment of a disease or disorder. Up to

1 fifty percent of the actual out-of-pocket cost, not to exceed twelve  
2 thousand dollars, for amino acid-based elemental formulas shall be  
3 available to an individual without fees each twelve-month period. The  
4 department shall distribute funds on a first-come, first-served  
5 basis. Nothing in this section is deemed to be an entitlement. The  
6 maximum total General Fund expenditures per year for amino acid-based  
7 elemental formulas shall not exceed two hundred fifty thousand  
8 dollars each fiscal year in FY2014-15 and FY2015-16. The Department  
9 of Health and Human Services shall provide an electronic report on  
10 the program to the Legislature annually on or before December 15 of  
11 each year.

12           Sec. 4. There is hereby appropriated (1) \$362,500 from  
13 the General Fund for FY2014-15 and (2) \$725,000 from the General Fund  
14 for FY2015-16 to the Board of Regents of the University of Nebraska,  
15 for Program 781, to aid in carrying out the provisions of this  
16 legislative bill.

17           Sec. 5. There is hereby appropriated (1) \$250,000 from  
18 the General Fund for FY2014-15 and (2) \$250,000 from the General Fund  
19 for FY2015-16 to the Department of Health and Human Services, for  
20 Program 514, to aid in carrying out the provisions of this  
21 legislative bill.

22           No expenditures for permanent and temporary salaries and  
23 per diems for state employees shall be made from funds appropriated  
24 in this section.

25           Sec. 6. There is hereby appropriated (1) \$10,000 from the

1 General Fund for FY2014-15 and (2) \$10,000 from the General Fund for  
2 FY2015-16 to the Department of Health and Human Services, for Program  
3 33, to aid in carrying out the provisions of this legislative bill.

4 Total expenditures for permanent and temporary salaries  
5 and per diems from funds appropriated in this section shall not  
6 exceed \$10,000 for FY2014-15 or \$10,000 for FY2015-16.

7 Sec. 7. Sections 1, 2, and 8 of this act become operative  
8 three calendar months after the adjournment of this legislative  
9 session. Section 3 of this act becomes operative on July 1, 2014. The  
10 other sections of this act become operative on their effective date.

11 Sec. 8. Original section 44-7,104, Revised Statutes  
12 Cumulative Supplement, 2012, is repealed.

13 Sec. 9. Since an emergency exists, this act takes effect  
14 when passed and approved according to law.