LB252
2025

LEGISLATURE OF NEBRASKA

ONE HUNDRED NINTH LEGISLATURE

FIRST SESSION

LEGISLATIVE BILL 252

Introduced by Bostar, 29.

Read first time January 14, 2025

Committee: Banking, Commerce and Insurance

A BILL FOR AN ACT relating to drugs; to amend section 68-901, Revised Statutes Cumulative Supplement, 2024; to prohibit disadvantaging or discouraging medicaid and commercial insurance coverage for non-opioid drugs as prescribed; and to repeal the original section.

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

LB252
2025

Section 1. Section 68-901, Revised Statutes Cumulative Supplement, 2024, is amended to read:

68-901 Sections 68-901 to 68-9,111 and section 2 of this act shall be known and may be cited as the Medical Assistance Act.

Sec. 2. (1) In establishing and maintaining the formulary and preferred drug list, the Department of Health and Human Services shall ensure that no non-opioid drug approved by the federal Food and Drug Administration for the treatment or management of pain shall be disadvantaged or discouraged with respect to medicaid coverage for any opioid or narcotic drug for the treatment or management of pain on such formulary and preferred drug list. For purposes of this section, impermissible disadvantaging or discouragement includes, but is not limited to, (a) designating a non-opioid drug as a nonpreferred drug if an opioid or narcotic drug is designated as a preferred drug or (b) establishing more restrictive or more extensive utilization controls, including, but not limited to, more restrictive or more extensive prior authorization or step therapy requirements, for a non-opioid drug than the least restrictive or extensive utilization controls for an opioid or narcotic drug. Nothing in this section shall preclude one opioid drug from being preferred over another opioid drug or one non-opioid drug from being preferred over another non-opioid drug.

(2) This section shall apply to a non-opioid drug immediately upon approval by the federal Food and Drug Administration for the treatment or management of pain, regardless of whether such drug has been reviewed by the department for inclusion on the formulary and preferred drug list. This section also applies to drugs being provided under a contract between the department and any managed care organization.

Sec. 3. (1) In establishing and maintaining its formulary, any commercial insurance policy, certificate, or contract, delivered, issued for delivery, or renewed in this state, or any self-funded employee benefit plan, to the extent not preempted by federal law, shall ensure

LB252
2025

that no non-opioid drug approved by the federal Food and Drug Administration for the treatment or management of pain shall be disadvantaged or discouraged, with respect to coverage or cost sharing, for an opioid or narcotic drug for the treatment or management of pain on such formulary. For purposes of this section, impermissible disadvantaging or discouragement includes, but is not limited to, (a) imposing more restrictive coverage criteria on a non-opioid drug than the least restrictive coverage criteria imposed on an opioid or narcotic drug, (b) establishing more restrictive or more extensive utilization controls, including, but not limited to, more restrictive or more extensive prior authorization or step therapy requirements, for a non-opioid drug than the least restrictive or extensive utilization controls applicable to an opioid or narcotic drug, or (c) if such commercial insurance policy, certificate, or contract, delivered, issued for delivery, or renewed in this state, or any self-funded employee benefit plan, to the extent not preempted by federal law, maintains a formulary grouped into tiers for the purposes of determining cost-sharing, placing a non-opioid drug on a tier that requires a cost-sharing responsibility that exceeds the lowest cost-sharing responsibility required for an opioid or narcotic drug on such formulary.

(2) This section shall apply to a non-opioid drug immediately upon its approval by the federal Food and Drug Administration for the treatment or management of pain.

(3) If any commercial insurance policy, certificate, or contract, delivered, issued for delivery, or renewed in this state, or any self-funded employee benefit plan, to the extent not preempted by federal law, restricts coverage of a non-opioid prescription drug for the treatment or management of pain, including through utilization management policies such as prior authorization or step therapy, the prescribing health care provider shall be granted an exception to such restriction if the prescribing health care provider confirms that, based on the provider's

LB252
2025

professional judgment, the non-opioid prescription drug is appropriate for the treatment of the patient.

Sec. 4. (1) Nebraska has acted proactively to combat opioid addiction and overdose deaths from opioids; however, work remains to be done to decrease and prevent opioid addiction. Patients, especially those with risk factors for opioid misuse, addiction, and overdose, should have equal access to non-opioid drugs and prescribers should not be prevented from prescribing either a non-opioid or opioid drug.

(2) Formulary placement and utilization management barriers are used to limit prescribers and patients from accessing pain management treatment alternatives. Therefore, it is the intent of the Legislature to ensure prescribers and patients have the necessary tools available to comprehensively approach pain management by equalizing access between non-opioid and opioid prescriptions and preventing systems that disadvantage non-opioid pain management prescription drugs.

Sec. 5. Original section 68-901, Revised Statutes Cumulative Supplement, 2024, is repealed.