

LEGISLATURE OF NEBRASKA
ONE HUNDRED FIFTH LEGISLATURE
FIRST SESSION

LEGISLATIVE BILL 604

Introduced by Riepe, 12.

Read first time January 18, 2017

Committee:

- 1 A BILL FOR AN ACT relating to insurance; to amend section 44-361, Reissue
- 2 Revised Statutes of Nebraska; to adopt the Nebraska Right to Shop
- 3 Act; to harmonize provisions; and to repeal the original section.
- 4 Be it enacted by the people of the State of Nebraska,

1 Section 1. Sections 1 to 13 of this act shall be known and may be
2 cited as the Nebraska Right to Shop Act.

3 Sec. 2. For purposes of the Nebraska Right to Shop Act:

4 (1) Allowed amount means the contractually agreed upon amount paid
5 by an insurance carrier to a health care entity participating in the
6 insurance carrier's network or the amount the health plan is required to
7 pay under the health plan policy or certificate of insurance for out-of-
8 network covered benefits provided to the patient;

9 (2) Department means the Department of Insurance;

10 (3) Director means the Director of Insurance;

11 (4) Health care entity means:

12 (a) A facility licensed under the Health Care Facility Licensure
13 Act;

14 (b) A health care professional licensed under the Uniform
15 Credentialing Act; and

16 (c) An organization or association of health care professionals
17 licensed under the Uniform Credentialing Act;

18 (5) Insurance carrier means any entity that provides health
19 insurance in this state. Insurance carrier includes (a) an insurance
20 company, (b) a fraternal benefit society, (c) a health maintenance
21 organization, (d) any other entity providing a plan of health insurance
22 or health benefits subject to state insurance regulation, and (e) the
23 State of Nebraska;

24 (6) Program means the program established by an insurance carrier
25 pursuant to section 7 of this act; and

26 (7) Shoppable health care service means a health care service for
27 which an insurance carrier offers a shared savings incentive payment
28 under a program established by the insurance carrier. A shoppable health
29 care service includes, at a minimum, health care services in the
30 following categories:

31 (a) Physical and occupational therapy services;

- 1 (b) Obstetrical and gynecological services;
- 2 (c) Radiology and imaging services;
- 3 (d) Laboratory services;
- 4 (e) Infusion therapy;
- 5 (f) Inpatient or outpatient surgical procedures; and
- 6 (g) Outpatient nonsurgical diagnostic tests or procedures.

7 Sec. 3. The Nebraska Right to Shop Act shall apply to:

- 8 (1) The State of Nebraska; and
 - 9 (2) Any other insurance carrier that elects to be subject to the
- 10 act. An insurance carrier making such election shall file a notice of the
11 election with the department.

12 Sec. 4. (1) Prior to a nonemergency admission, procedure, or
13 service and upon request by a patient or prospective patient, a health
14 care entity within the patient's or prospective patient's insurer network
15 shall, within three working days, disclose the allowed amount of the
16 nonemergency admission, procedure, or service, including the amount for
17 any facility fees required, to the patient or prospective patient.

18 (2) Prior to a nonemergency admission, procedure, or service and
19 upon request by a patient or prospective patient, a health care entity
20 outside the patient's or prospective patient's insurer network shall,
21 within three working days, disclose the amount that will be charged for
22 the nonemergency admission, procedure, or service, including the amount
23 for any facility fees required, to the patient or prospective patient.

24 (3) If a health care entity is unable to quote a specific amount
25 under subsection (1) or (2) of this section in advance due to the health
26 care entity's inability to predict the specific treatment or diagnostic
27 code, the health care entity shall disclose what is known for the
28 estimated amount for a proposed nonemergency admission, procedure, or
29 service, including the amount for any facility fees required. A health
30 care entity must disclose the incomplete nature of the estimate and
31 inform the patient or prospective patient of his or her ability to obtain

1 an updated estimate once additional information is determined.

2 (4) If a patient or prospective patient is covered by insurance, a
3 health care entity that participates in an insurance carrier's network
4 shall, upon request of a patient or prospective patient, provide, based
5 on the information available to the health care entity at the time of the
6 request, sufficient information regarding the proposed nonemergency
7 admission, procedure, or service for the patient or prospective patient
8 to receive a cost estimate from his or her insurance carrier to identify
9 out-of-pocket costs, which could be through an applicable toll-free
10 telephone number or web site. A health care entity may assist a patient
11 or prospective patient in using an insurance carrier's toll-free number
12 or web site.

13 Sec. 5. An insurance carrier shall establish an interactive
14 mechanism on its publicly accessible web site that enables an enrollee to
15 request and obtain from the insurance carrier information on the payments
16 made by the insurance carrier to network providers for health care
17 services. The interactive mechanism must allow an enrollee seeking
18 information about the cost of a particular health care service to compare
19 costs among network providers.

20 Sec. 6. (1) Within two working days of an enrollee's request, an
21 insurance carrier shall provide a good faith estimate of the amount the
22 enrollee will be responsible to pay out-of-pocket for a proposed
23 nonemergency procedure or service that is a medically necessary covered
24 benefit from an insurance carrier's network provider, including any
25 copayment, deductible, coinsurance, or other out-of-pocket amount for any
26 covered benefit, based on the information available to the insurance
27 carrier at the time the request is made.

28 (2) Nothing in this section shall prohibit an insurance carrier from
29 imposing cost-sharing requirements disclosed in the enrollee's
30 certificate of coverage for unforeseen health care services that arise
31 out of the nonemergency procedure or service or for a procedure or

1 service provided to an enrollee that was not included in the original
2 estimate.

3 (3) An insurance carrier shall notify the enrollee that these are
4 estimated costs and that the actual amount the enrollee will be
5 responsible to pay may vary due to unforeseen services that arise out of
6 the proposed nonemergency procedure or service.

7 Sec. 7. (1) An insurance carrier shall develop and implement a
8 program that provides incentives for enrollees in a health plan who elect
9 to receive shoppable health care services that are covered by the plan
10 from providers that charge less than the average price paid by that
11 insurance carrier for that shoppable health care service.

12 (2) Incentives may be calculated as a percentage of the difference
13 in price, as a flat dollar amount, or by some other reasonable
14 methodology approved by the director. The insurance carrier must provide
15 the incentive as a cash payment to the enrollee.

16 (3) The program must provide enrollees with at least fifty percent
17 of the insurance carrier's saved costs for each service or category of
18 shoppable health care service resulting from shopping by enrollees. An
19 insurance carrier is not required to provide a payment or credit to an
20 enrollee when the insurance carrier's saved cost is fifty dollars or
21 less.

22 (4) An insurance carrier shall base the average price on the average
23 amount paid to an in-network provider for the procedure or service under
24 the enrollee's health plan within a reasonable timeframe not to exceed
25 one year. An insurance carrier may determine an alternate methodology for
26 calculating the average price if approved by the director.

27 Sec. 8. An insurance carrier shall make the program available as a
28 component of all health plans offered by the insurance carrier in this
29 state. Annually at enrollment or renewal, an insurance carrier shall
30 provide notice about the availability of the program to any enrollee who
31 is enrolled in a health plan eligible for the program.

1 Sec. 9. Prior to offering the program to any enrollee, an insurance
2 carrier shall file a description of the program with the department in
3 the manner determined by the director. The department may review the
4 filing made by the insurance carrier to determine if the insurance
5 carrier's program complies with the requirements of the Nebraska Right to
6 Shop Act. Filings and any supporting documentation submitted pursuant to
7 this section are confidential until the filing has been reviewed by the
8 department. This section shall not apply to the State of Nebraska.

9 Sec. 10. If an enrollee elects to receive a shoppable health care
10 service from an out-of-network provider that results in a shared savings
11 incentive payment, the insurance carrier shall apply the amount paid for
12 the shoppable health care service toward the enrollee's member cost
13 sharing as specified in the enrollee's health plan as if the health care
14 services were provided by an in-network provider.

15 Sec. 11. A shared savings incentive payment made by an insurance
16 carrier in accordance with the Nebraska Right to Shop Act is not an
17 administrative expense of the insurance carrier for rate development or
18 rate filing purposes.

19 Sec. 12. (1) On or before March 31 each year, each insurance
20 carrier other than the State of Nebraska shall file with the department
21 the following information for the most recent calendar year:

22 (a) The total number of shared savings incentive payments made
23 pursuant to the insurance carrier's program;

24 (b) The use of shoppable health care services by category of service
25 for which shared savings incentive payments are made;

26 (c) The total payments made to enrollees;

27 (d) The average amount of incentive payments made by category of
28 service;

29 (e) The total savings achieved below the average prices by category
30 of service; and

31 (f) The total number and percentage of an insurance carrier's

1 enrollees that participated in the program.

2 (2) On or before July 1, 2018, and on or before July 1 of each year
3 thereafter, the department shall electronically submit an aggregate
4 report for all insurance carriers filing the information required by
5 subsection (1) of this section to the Legislature.

6 (3) The State of Nebraska shall submit the information described in
7 subdivisions (1)(a) through (f) of this section to the Legislature on or
8 before July 1, 2018, and on or before July 1 of each year thereafter.

9 Sec. 13. The department may adopt and promulgate rules and
10 regulations as necessary to carry out the Nebraska Right to Shop Act.

11 Sec. 14. Section 44-361, Reissue Revised Statutes of Nebraska, is
12 amended to read:

13 44-361 No insurance company, by itself or any other party, and no
14 insurance agent or broker, personally or by any other party, shall offer,
15 promise, allow, give, set off, or pay, directly or indirectly, any rebate
16 of, or part of, the premium payable on the policy, or of any policy, or
17 agent's commission thereon, or earnings, profits, dividends, or other
18 benefits founded, arising, accruing or to accrue thereon or therefrom, or
19 any paid employment or contract for service, or for advice of any kind,
20 or any other valuable consideration or inducement to, or for insurance,
21 on any risk authorized to be taken under section 44-201 now or hereafter
22 to be written, which is not specified in the policy contract of
23 insurance; nor shall any such company, agent, or broker, personally or
24 otherwise, offer, promise, give, sell or purchase any stock, bonds,
25 securities or property, or any dividends or profits accruing or to accrue
26 thereon, or other things of value whatsoever, as inducement to insurance
27 or in connection therewith, which is not specified in the policy. No
28 insured person or party shall receive or accept, directly or indirectly,
29 any rebate of premium, or part thereof, or agent's or broker's commission
30 thereon, payable on the policy, or on any policy of insurance, or any
31 favor or advantage or share in the dividends or other benefits to accrue

1 on, or any valuable consideration or inducement not specified in the
2 policy contract of insurance. Extending of interest-free credit on life
3 and liability insurance premiums or interest-free credit on crop hail
4 insurance premiums shall not be a rebate of the premium. Payments made
5 pursuant to the Nebraska Right to Shop Act shall not be considered a
6 rebate of the premium for purposes of this section.

7 Sec. 15. Original section 44-361, Reissue Revised Statutes of
8 Nebraska, is repealed.