

AMENDMENTS TO LB 1063

(Amendments to Standing Committee amendments, AM2044)

Introduced by Cook

1 1. Strike amendment 1 and all amendments thereto and
2 insert the following new amendment:

3 1. Strike the original sections and all amendments
4 thereto and insert the following new sections:

5 Section 1. Sections 1 to 7 of this act shall be known and
6 may be cited as the Children's Health and Treatment Act.

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

9 (1) Clarify the meaning of the term medically necessary
10 for purposes of the medical assistance program for children under
11 nineteen years of age, to ensure children obtain needed services;

12 (2) Prohibit certain diagnosis-based exclusions;

13 (3) Preserve family unity by ensuring that children
14 eligible for the medical assistance program receive necessary
15 health care services and treatment; and.

16 (4) Require that the guidelines and criteria that the
17 Department of Health and Human Services utilizes to determine
18 medical necessity for services under the medical assistance program
19 be adopted and promulgated as rules and regulations pursuant to the
20 Administrative Procedure Act which provides for notice and public
21 comment.

22 Sec. 3. For purposes of the Children's Health and

1 Treatment Act:

2 (1) Department means the Department of Health and Human
3 Services;

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

6 (3) Medically necessary means necessary for children
7 under nineteen years of age to correct or ameliorate defects or
8 physical or mental illnesses or conditions in accordance with 42
9 U.S.C. 1396d(r) (5), as such section existed on January 1, 2012.

10 Sec. 4. (1) In accordance with 42 U.S.C. 1396a(a) (43)
11 and 42 U.S.C. 1396d(r), as such sections existed on January 1,
12 2012, the department shall provide early and periodic screening,
13 diagnostic, and treatment services to all children under nineteen
14 years of age who are eligible for coverage under the medical
15 assistance program.

16 (2) In accordance with 42 U.S.C. 1396d(r) (5), as such
17 section existed on January 1, 2012, for children under nineteen
18 years of age, the department shall provide or arrange for
19 the provision of necessary health care diagnostic and treatment
20 screening and other measures described in 42 U.S.C. 1396d(a), as
21 such section existed on January 1, 2012, to correct or ameliorate
22 defects or physical or mental illnesses or conditions discovered
23 by the screening process regardless of whether such health care
24 diagnostic and treatment screening and other measures described in
25 42 U.S.C. 1396d(a), as such section existed on January 1, 2012, are
26 covered services under the medicaid state plan. All such services
27 and other measures shall be provided or authorized when they are

1 determined to be medically necessary. Medical necessity shall be
2 determined on an individualized, case-by-case basis for each child.

3 Sec. 5. (1) The Children's Health and Treatment Act
4 does not limit the authority of the department or a department
5 contractor to (a) limit coverage of treatments or services that
6 are unsafe, experimental, or not generally accepted as treatment
7 within the medical community, (b) use utilization controls or prior
8 authorization for services, or (c) perform utilization reviews.

9 (2) The department shall report to the Health and Human
10 Services Committee of the Legislature on utilization controls,
11 including, but not limited to, the rates of initial service
12 authorizations, reauthorizations subsequent to initial service
13 authorizations, and denials for behavioral health services for
14 children. The first report shall be due on October 1, 2012,
15 and shall contain such rates of initial service authorizations,
16 reauthorizations subsequent to initial service authorizations, and
17 denials for behavioral health services for children for the first
18 three quarters of 2012. Thereafter, on January 1, April 1, and
19 July 1 of each year, the department shall report such rates
20 of initial service authorizations, reauthorizations subsequent to
21 initial service authorizations, and denials for behavioral health
22 services for children for the previous calendar quarter.

23 Sec. 6. Pursuant to 42 C.F.R. 440.230(c), the department
24 may not arbitrarily deny or reduce the amount, duration, or scope
25 of a required service to an otherwise eligible recipient solely
26 because of the diagnosis, type of illness, or condition.

27 Sec. 7. (1) The department shall adopt and promulgate

1 rules and regulations to carry out the Children's Health and
2 Treatment Act. On and after January 1, 2013, the department
3 shall not apply clinical criteria or guidelines, medical necessity
4 criteria, or other similar criteria to determine medical necessity
5 for children under nineteen years of age that have not been adopted
6 and promulgated pursuant to the Administrative Procedure Act.

7 (2) The clinical criteria or guidelines, medical
8 necessity criteria, or other similar criteria described in
9 subsection (1) of this section shall be consistent with the
10 requirements of the early and periodic screening, diagnostic,
11 and treatment services under 42 U.S.C. 1396(a)(43) and 42 U.S.C.
12 1396(r), as such sections existed on January 1, 2012.

13 Sec. 8. Section 68-901, Revised Statutes Supplement,
14 2011, is amended to read:

15 68-901 Sections 68-901 to 68-971 and sections 1 to 7 of
16 this act shall be known and may be cited as the Medical Assistance
17 Act.

18 Sec. 9. Section 68-912, Reissue Revised Statutes of
19 Nebraska, is amended to read:

20 68-912 (1) Except as otherwise provided in the Children's
21 Health and Treatment Act:

22 (a) The department may establish ~~(a)~~ (i) premiums,
23 copayments, and deductibles for goods and services provided under
24 the medical assistance program, ~~(b)~~ (ii) limits on the amount,
25 duration, and scope of goods and services that recipients may
26 receive under the medical assistance program, and ~~(e)~~ (iii)
27 requirements for recipients of medical assistance as a necessary

1 condition for the continued receipt of such assistance, including,
2 but not limited to, active participation in care coordination and
3 appropriate disease management programs and activities;~~;~~

4 ~~(2)~~ (b) In establishing and limiting coverage for
5 services under the medical assistance program, the department shall
6 consider ~~(a)~~ (i) the effect of such coverage and limitations
7 on recipients of medical assistance and medical assistance
8 expenditures, ~~(b)~~ (ii) the public policy in section 68-905, ~~(c)~~
9 (iii) the experience and outcomes of other states, ~~(d)~~ (iv) the
10 nature and scope of benchmark or benchmark-equivalent health
11 insurance coverage as recognized under federal law, and ~~(e)~~ (v)
12 other relevant factors as determined by the department; and—

13 ~~(3)~~ (c) Coverage for mandatory and optional services and
14 limitations on covered services as established by the department
15 prior to July 1, 2006, shall remain in effect until revised,
16 amended, repealed, or nullified pursuant to law. Any proposed
17 reduction or expansion of services or limitation of covered
18 services by the department under this section shall be subject
19 to the reporting and review requirements of section 68-909.

20 ~~(4)~~ (2) Except as otherwise provided in this subsection,
21 proposed rules and regulations under this section relating to the
22 establishment of premiums, copayments, or deductibles for eligible
23 recipients or limits on the amount, duration, or scope of covered
24 services for eligible recipients shall not become effective until
25 the conclusion of the earliest regular session of the Legislature
26 in which there has been a reasonable opportunity for legislative
27 consideration of such rules and regulations. This subsection does

1 not apply to rules and regulations that are (a) required by
2 federal or state law, (b) related to a waiver in which recipient
3 participation is voluntary, or (c) proposed due to a loss of
4 federal matching funds relating to a particular covered service
5 or eligibility category. Legislative consideration includes, but
6 is not limited to, the introduction of a legislative bill, a
7 legislative resolution, or an amendment to pending legislation
8 relating to such rules and regulations.

9 Sec. 10. If any section in this act or any part of any
10 section is declared invalid or unconstitutional, the declaration
11 shall not affect the validity or constitutionality of the remaining
12 portions.

13 Sec. 11. Original section 68-912, Reissue Revised
14 Statutes of Nebraska, and section 68-901, Revised Statutes
15 Supplement, 2011, are repealed.