

## LEGISLATIVE BILL 902

Approved by the Governor April 10, 1984

Introduced by Public Health & Welfare Committee,  
Fenger, 45, Chairperson; Wesely, 26;  
R. Peterson, 21; Rupp, 22; Withem, 14;  
Barrett, 39; McDonald, 31; Abboud, 12

AN ACT relating to health services; to amend sections 21-1512, 44-513, and 44-749, Reissue Revised Statutes of Nebraska, 1943, and section 44-1525, Revised Statutes Supplement, 1982; to authorize insurance arrangements for health services with preferred providers; to define terms; to provide exceptions; to harmonize provisions; to provide for severability; to repeal the original sections; and to declare an emergency.

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

Section 1. For the purposes of sections 1 to 13 of this act, unless the context otherwise requires, the definitions found in sections 2 to 7 of this act shall be used.

Sec. 2. Insured shall mean any individual resident of Nebraska eligible to receive benefits from any insurer or insurance arrangement.

Sec. 3. Insurer shall mean any insurance company as defined by section 44-103, fraternal benefit society as defined by section 44-1001, hospital service corporation formed pursuant to section 21-1509, prepaid dental service plan as defined in section 44-3802, or health maintenance organization as defined by section 44-3208, authorized to transact health insurance business in the State of Nebraska.

Sec. 4. Insurance arrangement shall mean any plan, program, contract, or combination thereof, or other arrangement under which one or more employers, unions, or other organizations provide to their employees or members, either directly or indirectly through a trust, third-party administrator, or group health insurance plan with an insurer, or any combination thereof, health care services or benefits.

Sec. 5. Participant or participant in an insurance arrangement shall mean any employer, union, or other organization providing health care services or benefits to its employees or members through an insurance arrangement.

Sec. 6. Preferred providers shall mean providers of health services who agree to furnish services in a manner reasonably expected to contain or lower costs

by contracting with insurers and participants in insurance arrangements or an insurer or participant organized as a provider of health services providing such services under a preferred provider contract.

Sec. 7. Prospective reimbursement shall mean a system whereby provider rates are established prior to the period to which they apply and the provider incurs financial risk for costs in excess of the predetermined rates.

Sec. 8. The Legislature hereby finds that health care services should be provided at the most favorable prices and that competition for health services should be promoted while ensuring the quality of health services provided to the patient.

Sec. 9. An insurer or a participant in an insurance arrangement may enter into contracts to purchase health services on a bid or negotiated basis with health providers at alternative rates of reimbursement and offer such benefit to insureds. Such insurers and participants in insurance arrangements may offer or administer a health benefit plan including preferred provider policies or contracts which limit the number and types of providers of health services eligible for payment as preferred providers under such policies or contracts. Insurers and participants in insurance arrangements may establish terms and conditions which shall be met by a provider of health services in order to qualify for payment as a preferred provider under such policies or contracts. Such terms and conditions may include provisions which identify the method of payment for services, including, but not limited to, development of prospective reimbursement systems.

Sec. 10. All providers of health services in Nebraska may develop preferred provider organizations and contract with insurers and participants in insurance arrangements if such providers have met all licensure and certification requirements necessary to practice a specific profession or to operate a specific health care facility pursuant to Chapter 71. An organization of preferred providers may limit itself to one or more specific professions or specialties within a profession, as defined in Chapter 71, and may limit the number of participating providers to that required to adequately meet the need for its particular program and the purpose of sections 1 to 13 of this act to furnish health services in a manner reasonably expected to contain or lower costs.

Sec. 11. (1) Insurers and participants may contract for health services with preferred providers through a process of competitive bidding or through individual negotiations with preferred providers. After completion of such bidding process or individual negotiations, an insurer or participant may offer to providers the terms and conditions of a preferred provider contract. Providers willing and qualified to meet the

terms and conditions of a preferred provider contract offered by an insurer or participant may agree to provide health services pursuant to such contract.

(2) The terms and conditions of the policies or contracts specified in section 9 of this act shall not discriminate against or among health providers. Differences in prices among providers based on individual negotiations with such providers, market conditions, patient mix, method of payment, or price differences among providers in different geographical areas shall not be deemed discrimination.

Sec. 12. Mandated types of providers whose services are required to be made available to insureds pursuant to section 44-513 shall, to the extent required by such section, have the same opportunity to bid and negotiate contracts for health services as a preferred provider or to provide health services as a nonpreferred provider.

Sec. 13. Insurers and participants in insurance arrangements shall provide for payment for services rendered by nonpreferred providers or providers who have not negotiated a contract with the insurer or participants in the insurance arrangement. Insureds under an insurance arrangement shall use the preferred providers who have contracted with the group to obtain coverage under the plan at the least direct expense to the insured. Insureds selecting nonpreferred providers may be held financially responsible for the difference between the benefits available under a preferred provider contract and the charges of the nonpreferred provider and may be subject to larger coinsurance or deductible provisions. Under a prepaid dental service plan as defined in section 44-3802, a participant's premium contribution for health services provided by nonpreferred providers to an insured shall be an amount equal to the participant's contribution pursuant to a preferred provider contract.

Sec. 14. That section 21-1512, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

21-1512. Such corporation may enter into contracts for the rendering of hospital service to its subscribers only with hospitals approved by the department. All contracts issued by such corporation to its subscribers shall constitute direct obligations of the hospital or hospitals with which such corporation has contracted for hospital service. The rates charged to the subscribers for hospital service and the rates of payment by such corporation to the contracting hospitals shall at all times be subject to the approval of the department. This section shall not limit the negotiation of preferred provider policies or contracts pursuant to sections 1 to 13 of this act by hospital service corporations.

Sec. 15. That section 44-513, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

44-513. Whenever any insurer shall provide by contract, policy, certificate, or any other means whatsoever, for a service, or for the partial or total reimbursement, payment, or cost of a service, to or on behalf of any of its policyholders, group policyholders, subscribers or group subscribers, or any person or group of persons, which service may be legally performed by a person licensed in this state for the practice of osteopathy, chiropractic, optometry, psychology, dentistry, or podiatry, the person rendering such service or such policyholder, subscriber, or other person, shall be entitled to such partial or total reimbursement, payment, or cost of such service, whether the service is performed by a duly licensed medical doctor or by a duly licensed osteopath, chiropractor, optometrist, psychologist, dentist, or podiatrist. This section shall not limit the negotiation of preferred provider policies and contracts under sections 1 to 13 of this act.

Sec. 16. That section 44-749, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

44-749. No accident and health insurer shall make or permit any unfair discrimination between individuals of substantially the same hazard in the amount of premium rates charged for any policy or contract of such insurance or in the benefits payable thereunder. This section shall not prohibit different premium rates, different benefits, or different underwriting procedure for individuals insured under group, family expense, franchise, or blanket plans of insurance. This section shall not limit the negotiation of preferred provider policies and contracts under sections 1 to 13 of this act.

Sec. 17. That section 44-1525, Revised Statutes Supplement, 1982, be amended to read as follows:

44-1525. The following shall be unfair methods of competition and unfair or deceptive acts or practices in the business of insurance:

(1) Making, issuing, circulating, or causing to be made, issued, or circulated, any estimate, illustration, circular, statement, sales presentation, omission, or comparison which:

(a) Misrepresents the benefits, advantages, conditions, or terms of any insurance policy;

(b) Misrepresents the dividends or share of the surplus to be received on any insurance policy;

(c) Makes any false or misleading statements as to the dividends or share of surplus previously paid on any insurance policy;

(d) Misleads or misrepresents the financial condition of any person or the legal reserve system upon which any life insurer operates;

(e) Uses any name or title of any insurance policy or class of insurance policies which misrepresents the true nature thereof;

(f) Misrepresents for the purpose of inducing or tending to induce the lapse, forfeiture, exchange, conversion, or surrender of any insurance policy;

(g) Misrepresents for the purpose of effecting a pledge or assignment of or effecting a loan against any insurance policy; or

(h) Misrepresents any insurance policy as being shares of stock;

(2) Making, publishing, disseminating, circulating, or placing before the public, or causing, directly or indirectly, to be made, published, disseminated, circulated, or placed before the public, in a newspaper, magazine, or other publication, or in the form of a notice, circular, pamphlet, letter, or poster, or over any radio or television station, or in any other way, an advertisement, announcement, or statement containing any assertion, representation, or statement with respect to the business of insurance or with respect to any person in the conduct of his or her insurance business, which is untrue, deceptive, or misleading;

(3) Making, publishing, disseminating, or circulating, directly or indirectly, or aiding, abetting, or encouraging the making, publishing, disseminating, or circulating of any oral or written statement or any pamphlet, circular, article, or literature which is false, or maliciously critical of or derogatory to the financial condition of any person, and which is calculated to injure such person;

(4) Entering into any agreement to commit, or by any concerted action committing, any act of boycott, coercion, or intimidation resulting in or tending to result in unreasonable restraint of or monopoly in the business of insurance;

(5)(a) Filing with any supervisory or other public official, or making, publishing, disseminating, circulating, or delivering to any person, or placing before the public, or causing, directly or indirectly, to be made, published, disseminated, circulated, delivered to any person, or placed before the public, any false material statement of fact as to the financial condition of a person; or

(b) Making any false entry of a material fact in any book, report, or statement of any person or omitting to make a true entry of any material fact pertaining to the business of such person in any book, report, or statement of such person;

(6) Issuing or delivering or permitting agents, officers, or employees to issue or deliver agency company stock or other capital stock, or benefit certificates or shares in any common-law corporation, or securities or any special or advisory board contracts or other contracts of any kind promising returns and profits as an inducement to insurance;

(7)(a) Making or permitting any unfair discrimination between individuals of the same class and equal expectation of life in the rates charged for any contract of life insurance or of life annuity or in the dividends or other benefits payable thereon, or in any other of the terms and conditions of such contract;

(b) Making or permitting any unfair discrimination between individuals of the same class involving essentially the same hazard in the amount of premium, policy fees, or rates charged for any policy or contract of accident or health insurance or in the benefits payable thereunder, or in any of the terms or conditions of such contract, or in any other manner, except that this subdivision shall not limit the negotiation of preferred provider policies and contracts under sections 1 to 13 of this act; or

(c) Making or permitting any unfair discrimination between individuals, risks, or insurance policies of the same class involving essentially the same hazards in the amount of premium, policy fees, or rates charged for any risks or insurance policies as described in section 44-1402, 44-1444, or 44-1901 or in the coverages provided, or in any of the terms or conditions of such contracts, or in any other manner. Any rate or classification approved by the Director of Insurance shall be presumed to be nondiscriminatory;

(8)(a) Except as otherwise expressly provided by law, knowingly permitting or offering to make or making any contract of life insurance, life annuity, or accident and health insurance, or agreement as to any such contract other than as plainly expressed in the insurance contract issued thereon, or paying or allowing, or giving or offering to pay, allow, or give, directly or indirectly, as inducement to such insurance or annuity, any rebate of premiums payable on the contract, or any special favor or advantage in the dividends or other benefits thereon, or any valuable consideration or inducement whatever not specified in the contract; or giving, selling, purchasing, or offering to give, sell, or purchase as inducement to such insurance contract or annuity or in connection therewith, any stocks, bonds, or other securities of any insurance company or other corporation, association, or partnership, or any dividends or profits accrued thereon, or anything of value not specified in the contract. ~~7 or~~

(b) Nothing in subdivision (7)(a) or (b) or (8)(a) of this section shall be construed as including within the definition of discrimination or rebates any of the following practices: (i) In the case of any contract of life insurance or life annuity, paying bonuses to policyholders or otherwise abating their premiums in whole or in part out of surplus accumulated from nonparticipating insurance if such bonuses or abatement of premiums are fair and equitable to policyholders and for

the best interests of the company and its policyholders; (ii) in the case of life insurance policies issued on the industrial debit plan, making allowance to policyholders who have continuously for a specified period made premium payments directly to an office of the insurer in an amount which fairly represents the saving in collection expenses; or (iii) readjustment of the rate of premium for a group insurance policy based on the loss or expense thereunder, at the end of the first or any subsequent policy year of insurance thereunder, which may be made retroactive only for such policy year;

(9) Committing or performing with such frequency as to indicate a general business practice any act which:

(a) Misrepresents pertinent facts or insurance policy provisions relating to coverage at issue;

(b) Fails to acknowledge and act reasonably promptly upon communications with respect to claims arising under insurance policies;

(c) Fails to adopt and implement reasonable standards for the prompt investigation of claims arising under insurance policies;

(d) Refuses to pay claims without conducting a reasonable investigation based upon all available information;

(e) Fails to affirm or deny coverage of claims within a reasonable time after proof of loss statements have been completed;

(f) Does not attempt in good faith to effectuate prompt, fair, and equitable settlements of claims in which liability has become reasonably clear;

(g) Compels an insured to institute litigation to recover amounts due under an insurance policy by offering substantially less than the amounts ultimately recovered in actions brought by insureds;

(h) Attempts to settle a claim for less than the amount to which a reasonable person would have believed he or she was entitled by reference to written or printed advertising material accompanying or made part of an application;

(i) Attempts to settle claims on the basis of an application which was altered without notice to or knowledge or consent of the insured;

(j) Makes claims payments to an insured or beneficiary not accompanied by a statement setting forth the coverage under which the payments are being made;

(k) Makes known to an insured or claimant a policy of appealing from arbitration awards in favor of the insured or claimant for the purpose of compelling them to accept settlements or compromises less than the amount awarded in arbitration;

(l) Delays the investigation or payment of claims by requiring an insured or claimant or the physician of either to submit a preliminary claim report and then

requiring the subsequent submission of formal proof of loss forms, both of which submissions contain substantially the same information;

(m) Fails to promptly settle claims, when liability has become clear, under one portion of the insurance policy coverage in order to influence settlements under other portions of the insurance policy coverage; or

(n) Fails to promptly provide a reasonable explanation of the basis in the insurance policy in relation to the facts or applicable law for denial of a claim or for the offer of a compromise settlement;

(10) Failing of any person to maintain a complete record of all the complaints received since the date of its last examination pursuant to section 44-107. This record shall indicate the total number of complaints, their classification by line of insurance, the nature of each complaint, the disposition thereof, and the time it took to process each complaint. For purposes of this subdivision, complaint shall mean any written communication primarily expressing a grievance;

(11) Making false or fraudulent statements or representations on or relative to an application for an insurance policy, for the purpose of obtaining a fee, commission, money, or other benefit from any insurers, agent, broker, or individual; and

(12) Violating any provision of section 44-125, 44-327, 44-339, 44-339.02, 44-340, 44-348, 44-360, 44-361, 44-362, 44-363, 44-364, 44-365, 44-369, 44-392, 44-393, 44-1412, 44-1455, or 44-1498.

Sec. 18. If any section in this act or any part of any section shall be declared invalid or unconstitutional, such declaration shall not affect the validity or constitutionality of the remaining portions thereof.

Sec. 19. That original sections 21-1512, 44-513, and 44-749, Reissue Revised Statutes of Nebraska, 1943, and section 44-1525, Revised Statutes Supplement, 1982, are repealed.

Sec. 20. Since an emergency exists, this act shall be in full force and take effect, from and after its passage and approval, according to law.