

LEGISLATIVE BILL 256

Approved by the Governor June 5, 1991

Introduced by Schimek, 27; Schellpeper, 18; Labedz, 5;
Crosby, 29; Rasmussen, 20; Robak, 22

AN ACT relating to public health; to define terms; to provide for a statewide program of screening mammography, conditions for reimbursement, appeals, reports, fees, records, and immunity from liability; to create the Mammography Screening Cash Fund; and to establish the Mammography Screening Committee.

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

Section 1. For purposes of sections 1 to 13 of this act:

(1) Department shall mean the Department of Health;

(2) Mammogram shall mean the X-ray resulting from mammography;

(3) Mammography shall mean radiological examination of the breast for the purpose of obtaining a mammogram which enables a physician to assess the presence, size, location, and extent of cancerous or potentially cancerous tissue;

(4) Mammogram supplier shall mean a public, private, for-profit, or not-for-profit agency or health care facility that provides mammography;

(5) Screening mammogram shall mean the X-ray resulting from screening mammography;

(6) Screening mammography shall mean radiological examination of the breast of asymptomatic women for the early detection of breast cancer, which examination shall include (a) a cranio-caudal and a medial lateral oblique view of each breast and (b) a licensed radiologist's interpretation of the results of the procedure. Screening mammography shall not include diagnostic mammography, additional projections required for lesion definition, breast ultrasound, or any breast interventional procedure;

(7) X-ray system operator shall mean a person other than a licensed practitioner or a certified physician assistant who operates an X-ray system under the supervision of a licensed practitioner;

(8) False negative result shall mean a mammogram which indicates no possible cancer when a

cancer exists;

(9) False positive result shall mean a mammogram which indicates a possible cancer when none exists;

(10) Professional component shall mean the interpretation of a screening mammogram and a written report regarding the interpretation provided by a mammogram supplier; and

(11) Technical component shall mean a screening mammogram and all other services provided by a mammogram supplier.

Sec. 2. For purposes of early screening for and detection of breast cancer, the department may establish a statewide program providing mammography screening as provided in sections 3 to 11 of this act. The department may provide information about the program to potentially eligible women and mammography suppliers under its auspices through public and private health and community-based organizations.

Sec. 3. (1) The department may offer screening mammography, for citizens of Nebraska who are able to supply the name of a physician for followup consultation or treatment, pursuant to sections 3 to 11 of this act as follows:

(a) For asymptomatic women over thirty years of age but under fifty years of age, one screening mammogram will be reimbursed after at least eleven months have passed following the month in which the last screening mammogram was performed if the woman has a personal history of breast cancer or has a mother or sister who has or had pre-menopausal breast cancer;

(b) For asymptomatic women over thirty-four years of age but under forty years of age, one screening mammogram will be reimbursed;

(c) For asymptomatic women over thirty-nine years of age but under fifty years of age, reimbursement may be made for a screening mammogram performed after at least twenty-three months have passed following the month in which the last screening mammogram was performed if the woman has no personal history of breast cancer; and

(d) For asymptomatic women over forty-nine years of age but under sixty-five years of age, reimbursement may be made for a screening mammogram performed after at least eleven months have passed following the month in which the last screening mammogram was performed.

(2) The department may reimburse any mammogram supplier for providing mammography pursuant to the

program established under section 2 of this act.

(3) Reimbursement for each mammogram provided under the program established pursuant to section 2 of this act shall be in an amount equal to the medicare reimbursement rate for screening mammography.

(4) The department shall have all powers necessary to implement the purpose and intent of sections 1 to 13 of this act, including, but not limited to, the authority to:

(a) Approve screening mammogram suppliers and participants in the program;

(b) Apply for, receive, and administer federal and other public and private funds deposited in the Mammography Screening Cash Fund to carry out the purposes of such sections;

(c) Adopt and promulgate rules and regulations necessary to carry out the purposes and intent of such sections; and

(d) With the advice of the Mammography Screening Committee: (i) Establish income guidelines based on multipliers of the federal poverty guidelines for eligibility of participants and for waiver or partial waiver of participant fees; (ii) set fees for participants; (iii) establish reimbursement rates for screening mammogram suppliers; and (iv) plan and provide outreach and educational programs relating to breast cancer and the program established pursuant to section 2 of this act to Nebraska women.

Sec. 4. A mammogram supplier shall be eligible for reimbursement pursuant to section 3 of this act only if:

(1) The mammogram supplier is certified by the department as meeting the standards of the United States Department of Health and Human Services to provide screening mammography provided in 42 C.F.R. parts 405, 410, 411, 413, and 494;

(2) The mammogram supplier provides screening mammography, including a physician's interpretation of the images or films produced by the radiologic procedure;

(3) The mammogram supplier agrees to accept as payment in full the current reimbursement rate for the technical and professional components of screening mammography established pursuant to section 3 of this act;

(4) The mammogram supplier agrees to provide mammography screening under sections 1 to 13 of this act in conformance with the conditions of its federal certification for screening mammography;

(5) The mammogram supplier agrees to provide to the department a written report on the interpretation of the results of the screening mammogram procedure; and

(6) The mammogram supplier agrees to comply with federal grant management requirements as applicable to the supplier in the event that federal grant funds are part of the program.

Sec. 5. The department may deny, suspend, or revoke the certification of a mammogram supplier for violations of subdivisions (1) through (6) of section 4 of this act or the rules and regulations adopted and promulgated under such subdivisions. Whenever the department determines to deny, suspend, or revoke a certification, it shall send to the mammogram supplier, by certified mail, a notice setting forth the particular reasons for the determination. The denial, suspension, or revocation shall become final thirty days after the mailing of the notice unless the mammogram supplier, within such thirty-day period, requests a hearing in writing. The mammogram supplier shall be given a hearing before the department according to the Administrative Procedure Act and the rules and regulations adopted and promulgated by the department under such act.

Sec. 6. (1) A mammogram supplier whose certification has been suspended may apply for reinstatement of such certification at any time.

(2) A mammogram supplier whose certification has been revoked may apply for reinstatement of such certification after a period of not less than two years has elapsed from the date of revocation.

(3) The application for reinstatement as prescribed in subsection (1) or (2) of this section shall state such pertinent facts as may be required by the department and shall be accompanied by at least two verified recommendations of the activities of the applicant since the date of the suspension or revocation.

(4) The department shall prescribe forms for the application for reinstatement pursuant to subsections (1) and (2) of this section and shall adopt and promulgate rules and regulations prescribing pertinent facts to be included on such applications.

Sec. 7. An interpreting physician shall prepare and sign a written report and forward the report and the original images or films to the woman's mammogram supplier for inclusion in the woman's medical records.

Sec. 8. A mammogram supplier to the program

established under section 2 of this act shall comply with all applicable federal, state, and local laws and regulations pertaining to radiological services and screening mammography.

Sec. 9. (1) The department, with the advice and assistance of the Mammography Screening Committee, shall adopt a schedule of fees to be charged for screening mammography performed pursuant to the program established under section 2 of this act based upon the ability to pay. The fees shall be such as to make screening mammography available to the greatest possible number of asymptomatic women. The fee may be waived by the department based on income guidelines established under subsection (2) of this section. The maximum fee shall be equal to the amount reimbursed to the mammogram supplier. All fees received under this section shall be collected by the department and remitted to the State Treasurer for credit to the Mammography Screening Cash Fund. The program established under section 2 of this act shall not pay for screening mammography for women who have public or private insurance that covers screening mammography, whose personal family income exceeds the maximum income in the guidelines adopted by the department, or who are eligible for mammography screening under any federal or state health benefit program. Any person aggrieved by a decision of the department made pursuant to this section may appeal. The appeal shall be in accordance with the Administrative Procedure Act.

(2) The department shall, with the advice and assistance of the Mammography Screening Committee, establish income guidelines based on a multiplier of the federal poverty guidelines which shall serve as a basis for a partial or complete waiver of the fee provided by subsection (1) of this section as follows:

(a) Women with household incomes of one hundred percent of the federal poverty level or below will be eligible for the program with no fees charged;

(b) Women with household incomes at a point in the range of two hundred percent of the federal poverty level or above will pay the full mammogram reimbursement rate established; and

(c) Women with household incomes at a point in the range between one hundred and two hundred percent of the federal poverty level will pay one-half of the mammogram reimbursement rate established.

After each three months of program operation, the department, with the advice and assistance of the Mammography Screening Committee, shall evaluate

participation levels of the program to determine if the fee schedule is facilitating participation at an appropriate level compared to program funding and shall make adjustments in the fee schedule or multipliers used, as necessary.

(3) Application for participation in the program shall be distributed statewide through a variety of media, including, but not limited to, mail and news media. Promotional information and the application for participation may be distributed through community organizations and health care facilities. After the determination of eligibility is complete for women who apply, the applicant shall be notified in writing and may be notified by first-class mail of her eligibility for participation.

(4) The department may issue a certificate of eligibility to each woman who applies to the department for screening mammography upon determination of eligibility pursuant to section 3 of this act and payment or waiver of the fee as provided by this section. The certificate of eligibility shall be valid for one mammogram and shall not be transferable to another person.

(5) A woman eligible to receive screening mammography under the program established pursuant to section 2 of this act shall present the certificate of eligibility to a mammogram supplier within ninety days of issuance, who shall conduct screening mammography and present the certificate to the department for reimbursement within sixty days of the date of the mammogram.

Sec. 10. There is hereby created the Mammography Screening Cash Fund. The fund shall consist of any money appropriated to it by the Legislature, any money received by the department for the program, including federal and other public and private funds, and all fees received pursuant to section 9 of this act. Money in the fund shall be used to reimburse mammogram suppliers pursuant to section 3 of this act and may be used to reimburse expenses of members of the Mammography Screening Committee. Any money in the fund available for investment shall be invested by the state investment officer pursuant to sections 72-1237 to 72-1276.

Sec. 11. The mammogram supplier and the department shall maintain confidential records containing all information pertaining to screening mammography provided by the program established under section 2 of this act. The department may publish analyses of such reports and information for scientific

and public health purposes in such a manner as to ensure that the identity of an individual or mammogram supplier cannot be ascertained and may make such reports to private or public funding sources as are deemed necessary in such a manner that the identity of an individual or mammogram supplier cannot be ascertained.

Sec. 12. There is hereby established the Mammography Screening Committee consisting of not more than sixteen volunteer members, at least eight of whom are women, appointed by the Director of Health. Members of the committee shall be persons interested in health care and the promotion of breast cancer screening and shall be drawn from both the private sector and the public sector. At least one member shall be a person who has or who has had breast cancer, one member shall be a radiologist, and one member shall be an X-ray system operator.

Of the initial members of the committee, four shall be appointed for terms of one year and four shall be appointed for terms of two years. Thereafter, all appointments shall be for terms of two years. All members shall serve until their successors are appointed. No member shall serve more than two successive two-year terms. Vacancies in the membership of the committee for any cause shall be filled by appointment by the director for the unexpired term.

Duties of the committee shall include, but not be limited to, recommending guidelines for the program established under section 2 of this act, developing and monitoring the schedule of fees established pursuant to section 9 of this act, encouraging payment of public and private funds to the Mammography Screening Cash Fund, researching and recommending to the department reimbursement limits, and planning and implementing outreach and educational programs to Nebraska women. Members of the committee shall be reimbursed for their actual and necessary expenses as provided in sections 81-1174 to 81-1177.

Sec. 13. The State of Nebraska, the department and its employees, and members of the Mammography Screening Committee shall not be liable for any damage or injury resulting from: (1) Failure to issue a certificate of eligibility under section 9 of this act; (2) failure to certify a mammogram supplier under section 4 of this act; (3) failure to waive the fee pursuant to section 9 of this act; (4) a false negative result or a false positive result interpretation or any other act or omission of an interpreting physician with respect to any screening

mammogram performed under the program established pursuant to section 2 of this act; or (5) any act or omission of a mammogram supplier or person acting on behalf of such supplier with respect to the provisions of sections 2 to 11 of this act.