

## LEGISLATIVE BILL 68

Approved by the Governor May 3, 1995

Introduced by Schimek, 27; Brown, 6; Day, 19; Hillman, 48; Schellpeper, 18; Wickersham, 49; Stuhr, 24

AN ACT relating to cancer; to amend sections 71-7001, 71-7002, 71-7003, 71-7004, 71-7009, 71-7010, 71-7012, and 71-7013, Revised Statutes Supplement, 1994; to require insurance coverage for screening mammography as prescribed; to change provisions relating to mammography; to provide for early detection of cervical cancer; to authorize funding for breast and cervical cancer detection; to rename a fund; to rename a committee and change its membership; and to repeal the original sections.

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

Section 1. (1) Notwithstanding section 44-3.131, (a) any individual or group sickness and accident insurance policy or subscriber contract delivered, issued for delivery, or renewed in this state and any hospital, medical, or surgical expense-incurred policy, except for policies that provide coverage for a specified disease or other limited-benefit coverage, and (b) any self-funded employee benefit plan to the extent not preempted by federal law shall include coverage for screening mammography as follows:

(i) For women who are thirty-five years of age and older but younger than forty years of age, one base-line mammogram between thirty-five and forty years of age;

(ii) For women who are forty years of age and older but younger than fifty years of age, one mammogram every two years or more frequently based on the patient's physician's recommendation; and

(iii) For women who are fifty years of age or older, one mammogram every year.

(2) This section does not prevent application of deductible or copayment provisions contained in the policy or health benefit plan or require that coverage under an individual or group policy or health benefit plan be extended to any other procedures. The coverage provided by this section shall not be less favorable than for other radiological examinations. This section does not apply if the covered individuals are provided an ongoing screening mammography program which at a minimum meets the requirements of this section as a separate benefit.

(3) For purposes of this section, 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. Screening mammography shall be performed by a mammogram supplier who meets the standards of the federal Mammography Quality Standards Act of 1992.

Sec. 2. Section 71-7001, Revised Statutes Supplement, 1994, is amended to read:

71-7001. For purposes of sections 71-7001 to 71-7013 and sections 4 and 6 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. 3. Section 71-7002, Revised Statutes Supplement, 1994, is amended to read:

71-7002. For purposes of early screening for and detection of breast cancer and cervical cancer, the department may establish a statewide program providing mammography screening and definitive diagnostic procedures as provided in sections 71-7003 to 71-7011 and sections 4 and 6 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. 4. The Legislature finds that private citizens and charitable organizations have donated and granted funds to the department to pay for definitive diagnostic procedures for women whose abnormal test results have been discovered through the department's program for early detection of breast and cervical cancer. The Legislature recognizes the generosity of its citizens and charitable organizations who donate their time and money to provide funds to their fellow citizens.

It is the intent of the Legislature to permit the department to obtain and expend such funds to pay for definitive diagnostic procedures for women enrolled in the program.

Sec. 5. Section 71-7003, Revised Statutes Supplement, 1994, is amended to read:

71-7003. (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 71-7003 to 71-7011 and sections 4 and 6 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 71-7002.

(3) Reimbursement for each mammogram provided under the program established pursuant to section 71-7002 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 71-7001 to 71-7013 and sections 4 and 6 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 Breast and Cervical Cancer 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 Breast and Cervical Cancer Advisory 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 71-7002 to Nebraska women.

Sec. 6. The department may apply for, receive, and administer funds received from private sources to pay for definitive diagnostic procedures for women enrolled in the screening mammography program authorized under sections 71-7001 to 71-7013 and sections 4 and 6 of this act and in the early detection of breast and cervical cancer program funded through a grant from the United States Department of Health and Human Services.

This section does not create an entitlement for enrollees in the programs. Payments may be made to the extent funds are available in the order requests are received by the department.

The funds obtained for definitive diagnostic procedures shall be remitted to the State Treasurer for credit to the Breast and Cervical Cancer Cash Fund. Money credited to the fund for purposes of this section shall be used to reimburse the costs of definitive diagnostic procedures as provided in this section.

Sec. 7. Section 71-7004, Revised Statutes Supplement, 1994, is amended to read:

71-7004. A mammogram supplier shall be eligible for reimbursement pursuant to section 71-7003 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 the federal Mammography Quality Standards Act of 1992;

(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 71-7003;

(4) The mammogram supplier agrees to provide mammography screening under sections 71-7001 to 71-7013 and sections 4 and 6 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. 8. Section 71-7009, Revised Statutes Supplement, 1994, is amended to read:

71-7009. (1) The department, with the advice and assistance of the Mammography Screening Breast and Cervical Cancer Advisory Committee, shall adopt a schedule of fees to be charged for screening mammography performed pursuant to the program established under section 71-7002 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 Breast and Cervical Cancer Cash Fund. The program established under section 71-7002 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 71-7003 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 71-7002 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. 9. Section 71-7010, Revised Statutes Supplement, 1994, is amended to read:

71-7010. There is hereby created the Mammography Screening The Breast and Cervical Cancer Cash Fund is created. 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, funds credited under section 6 of this act, and all fees received pursuant to section 71-7009. Money in the fund shall be used to reimburse mammogram suppliers pursuant to section 71-7003 and may be used to reimburse expenses of members of the Mammography Screening Breast and Cervical Cancer Advisory Committee, expenses of the program for early detection of breast and cervical cancer funded through a grant from the United States Department of Health and Human Services, and funds received under section 6 of this act. Any money in the fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act. Any money in the Mammography Screening Cash Fund on the effective date of this act shall be transferred to the Breast and Cervical Cancer Cash Fund on such date.

Sec. 10. Section 71-7012, Revised Statutes Supplement, 1994, is amended to read:

71-7012. There is hereby established the Mammography Screening Committee consisting of not more than sixteen The Breast and Cervical Cancer Advisory Committee is established. The committee consists of the members of the Mammography Screening Committee serving immediately prior to the effective date of this act and eight additional members appointed by the Director of Health who have expertise or a personal interest in cervical cancer. The committee shall consist of not more than twenty-four volunteer members, at least eight of whom are women, appointed by the Director of Health director. Members of the committee shall be persons interested in health care, and the promotion of breast cancer screening, and cervical cancer 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 71-7002, developing and monitoring the schedule of fees established pursuant to section

71-7009, encouraging payment of public and private funds to the Mammography Screening Breast and Cervical Cancer Cash Fund, researching and recommending to the department reimbursement limits, and planning and implementing outreach and educational programs to Nebraska women, advising the department on its operation of the early detection of breast and cervical cancer grant from the United States Department of Health and Human Services, encouraging payment of public and private funds to the fund, and researching and recommending to the department appropriate definitive diagnostic procedures which may be reimbursed. Members of the committee shall be reimbursed for their actual and necessary expenses as provided in sections 81-1174 to 81-1177.

Sec. 11. Section 71-7013, Revised Statutes Supplement, 1994, is amended to read:

71-7013. The State of Nebraska, the department and its employees, and members of the Mammography Screening Committee, and members of the Breast and Cervical Cancer Advisory Committee shall not be liable for any damage or injury resulting from: (1) Failure to issue a certificate of eligibility under section 71-7009; (2) failure to certify a mammogram supplier under section 71-7004; (3) failure to waive the fee pursuant to section 71-7009; (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 71-7002; 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 71-7002 to 71-7011 and sections 4 and 6 of this act.

Sec. 12. Original sections 71-7001, 71-7002, 71-7003, 71-7004, 71-7009, 71-7010, 71-7012, and 71-7013, Revised Statutes Supplement, 1994, are repealed.