

ONE HUNDRED EIGHTH LEGISLATURE - SECOND SESSION - 2024
COMMITTEE STATEMENT (CORRECTED)
LB852

Hearing Date: Tuesday January 23, 2024
Committee On: Banking, Commerce and Insurance
Introducer: Jacobson
One Liner: Provide limitations for reimbursement for durable medical equipment

Roll Call Vote - Final Committee Action:
Advanced to General File with amendment(s)

Vote Results:

Aye: 8 Senators Aguilar, Ballard, Bostar, Dungan, Jacobson, Kauth, Slama, von Gillern
Nay:
Absent:
Present Not Voting:

Testimony:

Proponents:

Senator Mike Jacobson
Jeremiah Blake
Kellie Harry
Robert Bell
Jina Ragland

Representing:

Opening Presenter
Blue Cross Blue Shield Nebraska
Mutual of Omaha
Nebraska Insurance Federation
AARP Nebraska

Opponents:

Representing:

Neutral:

Representing:

* ADA Accommodation Written Testimony

Summary of purpose and/or changes:

LB852 is a bill that was introduced by Senator Jacobson. It would add two new sections to the Medicare Supplement Insurance Minimum Standards Act (Act) (currently found at Neb. Rev. Stat. § 44-3601 to 44-3610), and would amend two other statutes within the Act. The Act was originally passed in 1980, and was intended to prevent fraud and abuse of the elderly when purchasing Medicare supplemental insurance (commonly referred to as Medigap).

Medigap insurers are being presented with "excess charges" claims for expensive motorized "scooters" that are submitted as Medicare covered durable medical equipment ("DME"). These claims are submitted by nonparticipating suppliers to Medicare for payment, and beneficiaries are then "balance billed" an enormous amount. Medigap insurers have been paying these "excess charges" claims in full to satisfy policyholders and to avoid complaints. These "excess charge" claims are becoming more frequent



and more expensive. Insurers and state regulators are concerned about the appropriateness of these claims by non participating DME suppliers and the resulting impact on Medigap premiums.

The bill would provide, section by section, as follows:

Section 1: Section 1 amends 44-3601, a statute that identifies all of the statutes that make up the Act. The amendment would add Sections 3 and 4 of LB852 to the statutes making up the Act.

Section 2: Section 2 amends 44-3602, the definitions section of the Act, by adding two new definitions to the Act: 1) Medicare approved amount, and 2) Supplier.

Section 3 (Charge Restriction): Section 3 is a new section to the Act that will prevent a supplier that is not participating in the Medicare program and who does not accept Medicare assignment from charging a Nebraska Medicare beneficiary an amount more than 15% over the Medicare approved amount. However, a supplier is still allowed to charge a deductible or coinsurance amount as required by Medicare.

Section 4 (Reimbursement Restriction): Section 4 restricts Medigap insurers from reimbursing a supplier in an amount greater than the amount provided in Section 3 above.

Section 5: Section 5 would repeal original sections 44-3601 and 44-3602.

Section 6: Section 6 is an emergency clause, stating that the new changes to the Act will take effect when LB 852 is passed and approved by the Governor.

Explanation of amendments:

Committee amendment AM2355 changes the definition of “medicare approved amount” to “the current payment rate listed in the applicable fee schedule for durable medical equipment, prosthetics, orthotics, and supplies established by the federal Centers for Medicare and Medicaid Services.”

AM2355 also changes the use of the term “not participating supplier” to “nonparticipating supplier” in LB852.

Clarifies that the limiting charge is 15% over the medicare rate.

Adds new language clarifying that nothing in LB852 shall be construed to prevent an issuer from negotiating the level and type of reimbursement with a supplier for covered durable medical equipment, prosthetics, orthotics, or supplies.

Section 5 of AM2355 also contains the provisions of one other bill, LB 32 as amended by AM2252 (see below).

LB32 (as amended by AM2252)

Section 5 of AM2355 contains LB32 as amended by AM2252.

LB32 would amend section 44-3601 of the Medical Supplement Insurance Minimum Standards Act (Act) and add a new section to the Act. The new section added would make individuals under 65 who are eligible for medicare by reason of disability or end-stage renal disease eligible for medicare supplement



policies or certificates in Nebraska. Currently, such individuals are prevented from participating in medicare supplement policies and certificates in Nebraska. The bill would provide, section by section, as follows:

LB32 adds a new section to the Act. The new section would require issuers of medicare supplement policies or certificates in Nebraska to issue such policies to state residents under 65 who are eligible for medicare by reason of disability or end-stage renal disease. The section would also provide the process and requirements by which such newly qualifying individuals are insured. Finally, this section includes a cost containment provision related to those newly qualifying individuals that would require insurers to use a weighted average aged premium rate for issuing policies or certificates. The cost containment provision is being added to prevent insurers from drastically increasing premium rates for the new class of qualifying individuals upon the possible passage of LB32.

AM2252 removed those individuals who are under 65 with end-stage renal disease from qualifying for medicare supplement policies or certificates under LB32. It also removes language that requires a guaranteed renewable basis for policies.

AM2252 also removes the weighted average formula for calculating premiums rates of those under 65, and adds new language allowing insurance companies to charge different premium rates for those under 65 than they do for those 65 or older, however, any differences in those premium amounts must not be excessive, inadequate, or unfairly discriminatory and must be based on sound actuarial principles and be reasonable in relation to the benefits provided. The premium for those under 65 may not exceed 150% of the premium for a similarly situated individual who is 65.

Finally, AM2252 adds new language stating that an individual who is under 65 and is eligible for a medicare supplement policy or certificate by reason of disability shall be subject to the same open enrollment rules applicable to an individual who is 65 and eligible for a medicare supplement policy or certificate beginning on the first day of the first month that the individual turns 65.

Hearing Date: February 7, 2023

Testifiers:

Proponents:

Mike Jacobson, Introducer

Stephen Kay, Self

Hrant Jameochian, Dialysis Patient Citizens

Wendy Schrag, Fresenius Medical Care

Edison McDonald, The Arc of Nebraska

Jina Ragland, AARP Nebraska

Leslie Spry MD, Nebraska Medical Association

Dean Large, Self

Anna Zelinske, ALS Association

Opponents:

Robert Bell, Nebraska Insurance Federation

Jeremiah Blake, Blue Cross Blue Shield Nebraska

Tom Gilsdorf, Medica Insurance Company

Committee Vote:

Aye: Aguilar, Ballard, Bostar, Dungan, Jacobson, Kauth, Slama, von Gillern

Nay: None



Julie Slama, Chairperson

