

ONE HUNDRED EIGHTH LEGISLATURE - FIRST SESSION - 2023
COMMITTEE STATEMENT
LB227

Hearing Date: Friday February 10, 2023
Committee On: Health and Human Services
Introducer: Hansen, B.
One Liner: Provide duties for the Department of Health and Human Services relating to reimbursing certain hospitals for nursing facility services under the Medical Assistance Act

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

Vote Results:
Aye: 7 Senators Ballard, Cavanaugh, M., Day, Hansen, B., Hardin, Riepe, Walz
Nay:
Absent:
Present Not Voting:

Testimony:

Proponents:

Senator Ben Hansen
Lisa Vail
Cary Ward

Representing:

District 16
Nebraska Hospital Association
CHI Health

Opponents:

Representing:

Neutral:

Dr. Kevin Bagley

Representing:

DHHS

* ADA Accommodation Written Testimony

Summary of purpose and/or changes:

LB 227 requires the State to provide Medicaid reimbursement to a hospital at 150% of the statewide average nursing facility per diem rate when an individual is enrolled in Medicaid, admitted as an inpatient, eligible for discharge after receiving care, requires nursing facility level of care upon discharge, and unable to be transferred to a nursing facility due to lack of available beds. These services must be custodial in nature. The hospital is required to notify DHHS (Department of Health and Human Services) that it is participating as a swing bed hospital. DHHS shall use the standard and criteria used by federal law for determining hospital eligibility and shall obtain approval from the federal government to implement the provisions of this bill.

SECTION BY SECTION SUMMARY:

Sec. 1: The State shall provide Medicaid reimbursement to a hospital at 150% of the statewide average nursing facility per diem rate for an individual when the individual:
Is enrolled in the Medicaid program;

Has been admitted as an inpatient to such hospital;
Is eligible for discharge after receiving care in such hospital;
Requires nursing facility of care upon discharge; and
Is unable to be transferred to a nursing facility due to a lack of available nursing facility beds or in cases where the State Court Administrator is unable to appoint a public guardian.

The services provided to such individual shall be custodial in nature for which federal financial participation is approved.

The hospital shall notify DHHS that it is participating as a swing bed hospital under the Medicaid program. For purposes of this bill, swing bed is defined as a bed which may be used by a hospital for acute or long term care in a facility located in an area which is not designated as urban by the U.S. Bureau of the Census and that has up to 100 beds, excluding beds for newborns and intensive care inpatient units.

DHHS shall use Medicare standards and criteria for determining whether a hospital is eligible for reimbursement or a supplemental payment for the use of swing beds. For any hospital that is not a critical access hospital, DHHS shall use the terms of a federal waiver. DHHS shall obtain approval from the federal government to implement the reimbursement provisions under this bill.

Explanation of amendments:

AM 848 contains AM 340 to LB 227 as well as amended provisions of LB 434, LB 219, LB 590, LB 517.

AM 340 to LB 227 within AM 848 strikes 150% of the statewide average nursing facility per diem rate and replaces it with 100%.

The reimbursement requirement regarding eligibility for discharge after receiving hospital care is removed and replaced with no longer requires acute inpatient care and discharge planning as described in 42 C.F.R. 482.43.

The reimbursement requirement regarding transfers is changed to unable to be transferred to a nursing facility due to a lack of available nursing facility beds available to the individual or in cases where the transfer requires a guardian, the court has approved appointment of a public guardian and the State Court Administrator is unable to appoint a public guardian.

The language regarding federal financial participation is removed and replaced with reimbursement for services shall be subject to federal approval.

The remaining language in the bill which relates to swing beds is stricken.

LB 434 requires long-term acute care hospitals to enroll as Medicaid providers and direct the Department to adopt a state amendment or federal Medicaid waiver.

SECTION BY SECTION SUMMARY:

Sec. 1: Renumber Sections within the Medical Assistance Act

Sec. 2: The department shall enroll long-term acute care hospitals in Nebraska as providers eligible to receive funding under the medical assistance program

Sec. 3: No later than 7/1/23, the department shall submit a state plan amendment or waiver to the federal Centers for Medicare and Medicaid Services to provide coverage under the medical assistance program for long-term acute care hospitals

Sec. 4: Repealer

Sec 5: Emergency Clause

Motion to include LB 434 as part of AM 848

Vote Results: 7-0-0

Voting Aye: Senator Hansen, Senator Hardin, Senator Ballard, Senator Cavanaugh, Senator Day, Senator Riepe, Senator Walz

Voting Nay: None

Present Not Voting: None

Testifiers to LB 434

Proponents:

Senator Mike Jacobson, District 42

Cary Ward, CHI Health

Chris Lee, Madonna Rehabilitation Hospital

Jeremy Nordquist, Nebraska Hospital Association

Opponents:

None

Neutral:

None

LB 219 requires DHHS (Department of Health and Human Services) to rebase inpatient interim per diem rates for critical access hospitals.

SECTION BY SECTION SUMMARY:

Sec. 1: Includes new language in the Medical Assistance Act (Medicaid)

Sec. 2: DHHS shall provide for rebasing inpatient interim per diem rates for critical access hospitals. DHHS shall rebase the rates every 2 years, and the most recent audited Medicare cost report shall be used as the basis for the rebasing process within 90 days after receiving the cost report.

Sec. 3: Repealer

Motion to include LB 219 as amended as part of AM 848

Vote Results: 7-0-0

Voting Aye: Senator Hansen, Senator Hardin, Senator Ballard, Senator Cavanaugh, Senator Day, Senator Riepe, Senator Walz

Voting Nay: None

Present Not Voting: None

Testifiers to LB 219

Proponents:

Senator Teresa Ibach, District 44

Manual Banner, CHI Health, Nebraska Health Association, Nebraska Rural Health Association

Andy Hale, Nebraska Hospital Association

Wade Eschenbrenner, Lexington Regional Health Center

Opponents:

None

Neutral:

None

LB 590 increases the standard of need for eligible aged, blind, and disabled persons from at least \$60 to \$75 per month for a personal needs allowance if they reside in an alternative living arrangement.

Sec. 1: The Department of Health and Human Services shall include in the standard of need for eligible aged, blind, and disabled persons at least seventy-five dollars per month for a personal needs allowance if such persons reside in an alternative living arrangement.

Sec. 2: Repealer

Motion to include LB 590 as amended as part of AM 848

Vote Results: 7-0-0

Voting Aye: Senator Hansen, Senator Hardin, Senator Ballard, Senator Cavanaugh, Senator Day, Senator Riepe, Senator Walz

Voting Nay: None

Present Not Voting: None

Testifiers to LB 590

Proponents:

Senator Rick Holdcroft, District 36

Jina Ragland, AARP Nebraska

Edison McDonald, Arc of Nebraska

Opponents:

None

Neutral:

None

LB 517, as introduced, requires a hospital to notify DHHS when it has reached a capacity equal to or greater than 90%. Upon receiving the notice, DHHS shall pay discharge incentives to a post-acute placement facility that accepts a referral for a patient with complex health needs. This bill provides the amounts of the incentives to be paid.

LB 517, as amended, strikes the original provisions of the bill. Under the amended version of LB 517, DHHS (Department of Health and Human Services) is required to either directly, or through a contract or grant to an eligibility entity, implement a pilot program to facilitate the transfer of patients with complex health needs from eligible acute care hospitals to appropriate post-acute care settings; including facilities that provide skilled nursing or long-term care.

The purposes of the pilot program are to ensure that :

patients with complex health needs are able to access timely transition from an acute care hospital to a post-acute care setting;

patients receive the appropriate type of care at the appropriate time to best meet their needs; and

acute-care hospitals have available capacity to meet the needs of patients.

Eligible acute care hospital is defined as a facility that is not designated as a critical access hospital by CMS (Centers for Medicare and Medicaid Services) and has reached or exceeded 80% of available staffed capacity for adult intensive care units beds and acute care inpatient medical surgical beds.

Eligible entity is defined as a non-profit statewide association whose members include eligible acute care hospitals.

Patient is defined as a person who is medically stable and who the provider believes, with a reasonable medical probability and in accordance with recognized medical standards, is safe to be discharged or transferred and is not expected to have his/her condition negatively impacted during, or as a result of, the discharge or transfer.

DHHS or other eligible entities responsible for developing the pilot program shall:

determine criteria to define patients with complex health needs;

develop a process for eligible acute care hospitals to determine capacity and the manner and frequency of reporting changes in capacity;

develop a process to ensure funding is utilized for the purposes of this section and in compliance with applicable state and federal laws;

include regular consultation with DHHS and representatives of acute care hospitals, skilled nursing facilities, and nursing facilities; and

include quarterly updates to DHHS.

The pilot program may include direct payments to post-acute care facilities that support care to patients with complex health needs.

Funding utilized under the pilot program shall comply with all Medicaid and Medicare reimbursement policies for skilled nursing facilities, nursing facilities, and swing-bed hospitals.

It is the intent of the Legislature to appropriate \$1 million from the General Fund to carry out this section.

Motion to include LB 517 as amended as part of AM 848

Vote Results: 7-0-0

Voting Aye: Senator Hansen, Senator Hardin, Senator Ballard, Senator Cavanaugh, Senator Day, Senator Riepe, Senator Walz

Voting Nay: None

Present Not Voting: None

Testifiers to LB 517

Proponents:

Senator Lynne Walz, District 15

Suzanne Nuss, Nebraska Medicine

Lisa Vail, Nebraska Hospital Association

Opponents:

Dr. Kevin Bagley, DHHS

Neutral:

None

Ben Hansen, Chairperson