

LEGISLATIVE BILL 921

Approved by the Governor April 19, 2022

Introduced by Lathrop, 12; Cavanaugh, J., 9; Hansen, M., 26; Vargas, 7.

A BILL FOR AN ACT relating to public health and welfare; to amend sections 47-706 and 83-338, Reissue Revised Statutes of Nebraska, and section 29-1823, Revised Statutes Cumulative Supplement, 2020; to require the Department of Health and Human Services to reimburse counties for lodging certain defendants; to define terms; to provide for enrollment of inmates in the medical assistance program prior to release from incarceration; to change priorities for admission to state hospitals for the mentally ill and require minimum numbers of beds for certain patients at the Lincoln Regional Center; to provide duties for the department; to create the Legislative Mental Health Care Capacity Strategic Planning Committee and provide for its duties and termination; to harmonize provisions; and to repeal the original sections.

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

Section 1. Section 29-1823, Revised Statutes Cumulative Supplement, 2020, is amended to read:

29-1823 (1) If at any time prior to or during trial it appears that the defendant has become mentally incompetent to stand trial, such disability may be called to the attention of the district or county court by the county attorney or city attorney, by the defendant, or by any person for the defendant. The judge of the district or county court of the county where the defendant is to be tried shall have the authority to determine whether or not the defendant is competent to stand trial. The judge may also cause such medical, psychiatric, or psychological examination of the defendant to be made as he or she deems warranted and hold such hearing as he or she deems necessary. The cost of the examination, when ordered by the court, shall be the expense of the county in which the crime is charged. The judge may allow any physician, psychiatrist, or psychologist a reasonable fee for his or her services, which amount, when determined by the judge, shall be certified to the county board which shall cause payment to be made. Should the judge determine after a hearing that the defendant is mentally incompetent to stand trial and that there is a substantial probability that the defendant will become competent within the reasonably foreseeable future, the judge shall order the defendant to be committed to the Department of Health and Human Services to provide appropriate treatment to restore competency. This may include commitment to a state hospital for the mentally ill, another appropriate state-owned or state-operated facility, or a contract facility or provider pursuant to an alternative treatment plan proposed by the department and approved by the court under subsection (2) of this section until such time as the disability may be removed.

(2)(a) If the department determines that treatment by a contract facility or provider is appropriate, the department shall file a report outlining its determination and such alternative treatment plan with the court. Within twenty-one days after the filing of such report, the court shall hold a hearing to determine whether such treatment is appropriate. The court may approve or deny such alternative treatment plan.

(b) A defendant shall not be eligible for treatment by a contract facility or provider under this subsection if the judge determines that the public's safety would be at risk.

(3) Within sixty days after entry of the order committing the defendant to the department, and every sixty days thereafter until either the disability is removed or other disposition of the defendant has been made, the court shall hold a hearing to determine (a) whether the defendant is competent to stand trial or (b) whether or not there is a substantial probability that the defendant will become competent within the reasonably foreseeable future.

(4) If it is determined that there is not a substantial probability that the defendant will become competent within the reasonably foreseeable future, then the state shall either (a) commence the applicable civil commitment proceeding that would be required to commit any other person for an indefinite period of time or (b) release the defendant. If during the period of time between the sixty-day review hearings set forth in subsection (3) of this section it is the opinion of the department that the defendant is competent to stand trial, the department shall file a report outlining its opinion with the court and within seven days after such report being filed the court shall hold a hearing to determine whether or not the defendant is competent to stand trial. The state shall pay the cost of maintenance and care of the defendant during the period of time ordered by the court for treatment to remove the disability.

(5) The defendant, by and through counsel, may move to be discharged from the offenses charged in the complaint or information for the reason that there is not a substantial probability that the defendant will become competent within the reasonably foreseeable future.

(6) In determining whether there is a substantial probability that a

defendant will become competent in the reasonably foreseeable future, the court shall take into consideration the likely length of any sentence that would be imposed upon the defendant. If the court discharges the defendant, the court shall state whether such discharge is with or without prejudice.

(7)(a) If a judge orders a defendant to be committed to the Department of Health and Human Services to receive treatment to restore competency and such defendant remains lodged in the county jail, the department shall reimburse the county for lodging the defendant.

(b) Costs of lodging the defendant shall include the daily rate of lodging the defendant, food, medical services, transportation, and any other necessary costs incurred by the county to lodge the defendant.

(c) The daily rate of lodging the defendant shall be one hundred dollars per day for each day or portion thereof after the first thirty days that the defendant is lodged in the county jail after a determination by a judge that the defendant is required to be restored to competency. On July 1, 2023, and each July 1 thereafter, the department shall adjust the amount to be reimbursed to the county jails by an amount equal to the percentage increase, if any, in the Consumer Price Index for All Urban Consumers, as published by the United States Department of Labor, Bureau of Labor Statistics, for the twelve months ending on June 30 of such year.

(d) For purposes of this section, medical services has the same meaning as provided in subsection (2) of section 47-701.

Sec. 2. Section 47-706, Reissue Revised Statutes of Nebraska, is amended to read:

47-706 (1) It is the intent of the Legislature to ensure that human services agencies, correctional facilities, and detention facilities recognize that:

(a) Federal law generally does not authorize federal financial participation for medicaid when a person is an inmate of a public institution as defined in federal law but that federal financial participation is available after an inmate is released from incarceration; and

(b) The fact that an applicant is currently an inmate does not, in and of itself, preclude the Department of Health and Human Services from processing an application submitted to it by, or on behalf of, the inmate.

(2)(a) Medical assistance under the medical assistance program shall be suspended, rather than canceled or terminated, for a person who is an inmate of a public institution if:

(i) The Department of Health and Human Services is notified of the person's entry into the public institution;

(ii) On the date of entry, the person was enrolled in the medical assistance program; and

(iii) The person is eligible for the medical assistance program except for institutional status.

(b) A suspension under subdivision (2)(a) of this section shall end on the date the person is no longer an inmate of a public institution.

(c) Upon release from incarceration, such person shall continue to be eligible for receipt of medical assistance until such time as the person is otherwise determined to no longer be eligible for the medical assistance program.

(3)(a) The Department of Correctional Services shall notify the Department of Health and Human Services:

(i) Within twenty days after receiving information that a person receiving medical assistance under the medical assistance program is or will be an inmate of a public institution; and

(ii) Within forty-five days prior to the release of a person who qualified for suspension under subdivision (2)(a) of this section.

(b) Local correctional facilities, juvenile detention facilities, and other temporary detention centers shall notify the Department of Health and Human Services within ten days after receiving information that a person receiving medical assistance under the medical assistance program is or will be an inmate of a public institution.

(4)(a) This subsection applies beginning July 1, 2023.

(b) For purposes of this section:

(i) Covered facility means:

(A) A facility as defined in section 83-170; and

(B) A county jail or adult correctional facility that is operated by a county, which county has a population of more than one hundred thousand inhabitants as determined by the most recent federal decennial census or the most recent revised certified count by the United States Bureau of the Census; and

(ii) Inmate means a person who is an inmate of a covered facility for at least twenty-one consecutive days.

(c) For individuals who are inmates of a covered facility and have at least sixty days' prior notice of their anticipated release date:

(i) The Department of Health and Human Services shall provide onsite, telephonic, or live video medical assistance program enrollment assistance to each inmate at least sixty days before the inmate's release from a covered facility. The department shall submit each inmate's medical assistance program application at least forty-five days prior to the inmate's release from a covered facility unless the inmate elects not to apply for the medical assistance program in writing or the inmate is currently enrolled in the medical assistance program with suspended coverage under subsection (2) of this section; and

(ii) The Department of Health and Human Services shall process each inmate's medical assistance program application prior to the inmate's release from a covered facility such that medical assistance program coverage becomes effective for an eligible individual no later than the day of release from a covered facility.

(d) For individuals who are inmates of a covered facility and have less than sixty days' prior notice of their anticipated release date:

(i) The Department of Health and Human Services shall provide onsite, telephonic, or live video medical assistance program enrollment assistance to each inmate as soon as practicable prior to the inmate's release from a covered facility. The department shall submit each inmate's medical assistance program application as soon as practicable prior to the inmate's release from a covered facility unless the inmate elects not to apply for the medical assistance program in writing or the inmate is currently enrolled in the medical assistance program with suspended coverage under subsection (2) of this section; and

(ii) The Department of Health and Human Services shall process each inmate's medical assistance program application prior to the inmate's release from a covered facility such that medical assistance program coverage becomes effective for an eligible individual no later than the day of release from a covered facility or as soon as practicable thereafter.

(e) The Department of Health and Human Services may contract with certified third-party enrollment assistance providers to provide the enrollment assistance and application submission required by this subsection.

(f) The Department of Health and Human Services shall take all necessary actions to maximize federal financial participation pursuant to this subsection.

(5) (4) Nothing in this section shall create a state-funded benefit or program.

(6) (5) For purposes of this section, medical assistance program means the medical assistance program under the Medical Assistance Act and the State Children's Health Insurance Program.

(7) (6) This section shall be implemented only if, and to the extent, allowed by federal law. This section shall be implemented only to the extent that any necessary federal approval of state plan amendments or other federal approvals are obtained. The Department of Health and Human Services shall seek such approval if required.

(8) (7) Local correctional facilities, the Nebraska Commission on Law Enforcement and Criminal Justice, and the Office of Probation Administration shall cooperate with the Department of Health and Human Services and the Department of Correctional Services for purposes of facilitating information sharing to achieve the purposes of this section.

(9)(a) (8)(a) The Department of Correctional Services shall adopt and promulgate rules and regulations, in consultation with the Department of Health and Human Services and local correctional facilities, to carry out this section.

(b) The Department of Health and Human Services shall adopt and promulgate rules and regulations, in consultation with the Department of Correctional Services and local correctional facilities, to carry out this section.

Sec. 3. Section 83-338, Reissue Revised Statutes of Nebraska, is amended to read:

83-338 (1) If at any time it becomes necessary, for lack of capacity or other cause, to establish priorities for the admission of patients into the state hospitals for the mentally ill, the following priorities for admission shall be limited to recognized: (a) (1) Patients whose care in the state hospital is necessary in order to protect the public health and safety; (b) defendants who are determined by a court to be incompetent to stand trial and who remain lodged in the county jail; (c) (2) patients committed by a mental health board under the Nebraska Mental Health Commitment Act or the Sex Offender Commitment Act or by a district court; (d) (3) patients who are most likely to be benefited by treatment in the state hospitals, regardless of whether such patients are committed by a mental health board or whether such patients seek voluntary admission to one of the state hospitals; and (e) (4) when cases are equally meritorious, in all other respects, patients who are indigent.

(2) The Lincoln Regional Center shall provide a minimum number of beds equal to the following percentages of total available capacity:

(a) Ten percent for patients entering the facility pursuant to subdivision (1)(a) of this section;

(b) Ten percent for patients entering the facility pursuant to subdivision (1)(b) of this section;

(c) Thirty percent for patients entering the facility pursuant to subdivision (1)(c) of this section;

(d) Ten percent for patients entering the facility pursuant to subdivision (1)(d) of this section;

(e) Ten percent for patients entering the facility pursuant to subdivision (1)(e) of this section; and

(f) Thirty percent to remain unallocated for the Department of Health and Human Services to allocate according to the priorities established in subsection (1) of this section as needed to reduce existing waiting lists.

(3) Beginning on or before November 1, 2022, the Department of Health and Human Services shall make available on its website a weekly report on the capacity and status of state-operated mental health facilities, including, but

not limited to, the capacity and wait times associated with each priority category established in subsection (1) of this section.

Sec. 4. (1) The Legislative Mental Health Care Capacity Strategic Planning Committee is established. The committee shall consist of the following members: (a) The chairperson of the Judiciary Committee of the Legislature or his or her designee, (b) the chairperson of the Health and Human Services Committee of the Legislature or his or her designee, (c) the chairperson of the Appropriations Committee of the Legislature or his or her designee, and (d) four senators selected by the chairperson of the Executive Board of the Legislative Council. The committee shall select a chairperson and vice-chairperson from among its members.

(2)(a) No later than November 1, 2022, the Legislative Mental Health Care Capacity Strategic Planning Committee shall contract with an independent consultant with expertise in inpatient mental health care delivery. The consultant shall assist the committee in determining the necessary capacity for inpatient mental health care beds for both state-operated and privately owned facilities based on best practices in mental health care. The consultant shall provide recommendations to achieve the necessary capacity if the current state inpatient mental health bed capacity is insufficient.

(b) On or before November 1, 2023, the consultant shall provide a written report of its findings and recommendations to the Legislative Mental Health Care Capacity Strategic Planning Committee.

(3) This section terminates on November 1, 2024.

Sec. 5. Original sections 47-706 and 83-338, Reissue Revised Statutes of Nebraska, and section 29-1823, Revised Statutes Cumulative Supplement, 2020, are repealed.