

AMENDMENTS TO LB921

Introduced by Judiciary.

1 1. Strike the original sections and insert the following new
2 sections:

3 Section 1. Section 29-1823, Revised Statutes Cumulative Supplement,
4 2020, is amended to read:

5 29-1823 (1) If at any time prior to or during trial it appears that
6 the defendant has become mentally incompetent to stand trial, such
7 disability may be called to the attention of the district or county court
8 by the county attorney or city attorney, by the defendant, or by any
9 person for the defendant. The judge of the district or county court of
10 the county where the defendant is to be tried shall have the authority to
11 determine whether or not the defendant is competent to stand trial. The
12 judge may also cause such medical, psychiatric, or psychological
13 examination of the defendant to be made as he or she deems warranted and
14 hold such hearing as he or she deems necessary. The cost of the
15 examination, when ordered by the court, shall be the expense of the
16 county in which the crime is charged. The judge may allow any physician,
17 psychiatrist, or psychologist a reasonable fee for his or her services,
18 which amount, when determined by the judge, shall be certified to the
19 county board which shall cause payment to be made. Should the judge
20 determine after a hearing that the defendant is mentally incompetent to
21 stand trial and that there is a substantial probability that the
22 defendant will become competent within the reasonably foreseeable future,
23 the judge shall order the defendant to be committed to the Department of
24 Health and Human Services to provide appropriate treatment to restore
25 competency. This may include commitment to a state hospital for the
26 mentally ill, another appropriate state-owned or state-operated facility,
27 or a contract facility or provider pursuant to an alternative treatment

1 plan proposed by the department and approved by the court under
2 subsection (2) of this section until such time as the disability may be
3 removed.

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

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

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

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

1 defendant during the period of time ordered by the court for treatment to
2 remove the disability.

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

7 (6) In determining whether there is a substantial probability that a
8 defendant will become competent in the reasonably foreseeable future, the
9 court shall take into consideration the likely length of any sentence
10 that would be imposed upon the defendant. If the court discharges the
11 defendant, the court shall state whether such discharge is with or
12 without prejudice.

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

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

20 (c) The daily rate of lodging the defendant shall be one hundred
21 dollars per day for each day or portion thereof after the first thirty
22 days that the defendant is lodged in the county jail after a
23 determination by a judge that the defendant is required to be restored to
24 competency. On July 1, 2023, and each July 1 thereafter, the department
25 shall adjust the amount to be reimbursed to the county jails by an amount
26 equal to the percentage increase, if any, in the Consumer Price Index for
27 All Urban Consumers, as published by the United States Department of
28 Labor, Bureau of Labor Statistics, for the twelve months ending on June
29 30 of such year.

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

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

3 47-706 (1) It is the intent of the Legislature to ensure that human
4 services agencies, correctional facilities, and detention facilities
5 recognize that:

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

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

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

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

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

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

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

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

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

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

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

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

11 (4)(a) For individuals who are inmates of a public institution and
12 have at least sixty days' prior notice of their anticipated release date:

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

22 (ii) The Department of Health and Human Services shall process each
23 inmate's medical assistance program application prior to the inmate's
24 release from a public institution such that medical assistance program
25 coverage is effective for an eligible individual no later than the day of
26 release from a public institution.

27 (b) For individuals who are inmates of a public institution and have
28 less than sixty days' prior notice of their anticipated release date:

29 (i) The Department of Health and Human Services shall provide
30 onsite, telephonic, or live video medical assistance program enrollment
31 assistance to each inmate as soon as practicable prior to the inmate's

1 release from a public institution. The department shall submit each
2 inmate's medical assistance program application as soon as practicable
3 prior to the inmate's release from a public institution unless the inmate
4 elects not to apply for the medical assistance program in writing or the
5 inmate is currently enrolled in the medical assistance program with
6 suspended coverage under subsection (2) of this section; and

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

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

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

20 (5) (4) Nothing in this section shall create a state-funded benefit
21 or program.

22 (6) (5) For purposes of this section, medical assistance program
23 means the medical assistance program under the Medical Assistance Act and
24 the State Children's Health Insurance Program.

25 (7) (6) This section shall be implemented only if, and to the
26 extent, allowed by federal law. This section shall be implemented only to
27 the extent that any necessary federal approval of state plan amendments
28 or other federal approvals are obtained. The Department of Health and
29 Human Services shall seek such approval if required.

30 (8) (7) Local correctional facilities, the Nebraska Commission on
31 Law Enforcement and Criminal Justice, and the Office of Probation

1 Administration shall cooperate with the Department of Health and Human
2 Services and the Department of Correctional Services for purposes of
3 facilitating information sharing to achieve the purposes of this section.

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

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

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

14 83-338 (1) If at any time it becomes necessary, for lack of
15 capacity or other cause, to establish priorities for the admission of
16 patients into the state hospitals for the mentally ill, ~~the following~~
17 ~~priorities for admission shall be limited to recognized:~~ (a) (1) Patients
18 whose care in the state hospital is necessary in order to protect the
19 public health and safety; (b) defendants who are determined by a court to
20 be incompetent to stand trial and who remain lodged in the county jail;
21 (c) (2) patients committed by a mental health board under the Nebraska
22 Mental Health Commitment Act or the Sex Offender Commitment Act or by a
23 district court; (d) (3) patients who are most likely to be benefited by
24 treatment in the state hospitals, regardless of whether such patients are
25 committed by a mental health board or whether such patients seek
26 voluntary admission to one of the state hospitals; and (e) (4) when cases
27 are equally meritorious, in all other respects, patients who are
28 indigent.

29 (2) State hospitals for the mentally ill shall provide a minimum
30 number of beds equal to the following percentages of total available
31 capacity:

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

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

5 (c) Forty-five percent for patients entering the facility pursuant
6 to subdivision (1)(c) of this section;

7 (d) Fifteen percent for patients entering the facility pursuant to
8 subdivision (1)(d) of this section; and

9 (e) Ten percent for patients entering the facility pursuant to
10 subdivision (1)(e) of this section.

11 (3) Beginning on or before November 1, 2022, the Department of
12 Health and Human Services shall make available on its website a weekly
13 report on the capacity and status of state-operated mental health
14 facilities, including, but not limited to, the capacity and wait times
15 associated with each priority category established in subsection (1) of
16 this section.

17 Sec. 4. (1) The Legislative Mental Health Care Capacity Strategic
18 Planning Committee is established. The committee shall consist of the
19 following members: (a) The chairperson of the Judiciary Committee of the
20 Legislature or his or her designee, (b) the chairperson of the Health and
21 Human Services Committee of the Legislature or his or her designee, (c)
22 the chairperson of the Appropriations Committee of the Legislature or his
23 or her designee, and (d) four senators selected by the chairperson of the
24 Executive Board of the Legislative Council.

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

1 necessary capacity if the current state inpatient mental health bed
2 capacity is insufficient.

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

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

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