

LEGISLATURE OF NEBRASKA  
ONE HUNDREDTH LEGISLATURE  
FIRST SESSION  
**LEGISLATIVE BILL 666**

Introduced by Pedersen, 39; Johnson, 37

Read first time January 17, 2007

Committee: Health and Human Services

A BILL

1 FOR AN ACT relating to inmates; to state findings; to define terms;  
2 to provide for eligibility for certain federal assistance  
3 programs upon release from incarceration; and to provide  
4 duties for the Department of Health and Human Services  
5 Finance and Support and correctional agencies.  
6 Be it enacted by the people of the State of Nebraska,

1           Section 1. The Legislature finds that:

2           (1) Upon release from incarceration, individuals with  
3 psychiatric disabilities often lack access to mental health  
4 services, stable housing, employment or other income, and  
5 education. Without basic support, many needlessly become trapped in  
6 a cycle of destitution, deterioration, and recidivism;

7           (2) Upon release from incarceration, individuals with  
8 psychiatric disabilities need basic services and support to enable  
9 them to transition successfully to community life. Existing federal  
10 programs, such as medicaid, Supplemental Security Income, and  
11 Social Security Disability Insurance, provide health care coverage  
12 and income support to people with psychiatric disabilities.  
13 Often, however, individuals with psychiatric disabilities released  
14 from incarceration are not enrolled in these programs or their  
15 enrollment is unreasonably delayed;

16           (3) Legislative action is required to aid individuals  
17 with psychiatric disabilities in maintaining their eligibility for  
18 federal benefit programs during incarceration and, upon release, to  
19 enable them to access federal benefit programs for which they are  
20 eligible and temporary health care coverage and income when federal  
21 benefits are not immediately available; and

22           (4) Legislative action is also required to ensure  
23 that, upon release, individuals with psychiatric disabilities are  
24 connected to the community-based mental health system.

25           Sec. 2. The purposes of sections 1 to 11 of this

1 act are to facilitate the community reintegration of individuals  
2 with psychiatric disabilities upon release from jail, prison,  
3 detention centers, or other correctional facilities, to enhance  
4 public safety, and to provide cost-effective care by enabling  
5 such individuals to receive benefits speedily upon their release  
6 from incarceration. The Department of Health and Human Services  
7 Finance and Support shall adopt rules and regulations containing  
8 policies and procedures that enable individuals with psychiatric  
9 disabilities, upon release from incarceration, to:

10 (1) Participate in federal benefit programs for which  
11 they qualify;

12 (2) Be speedily reinstated or enrolled in federal health  
13 benefit programs for which they are eligible;

14 (3) Obtain temporary health care coverage and income  
15 support while receipt of federal benefits is pending; and

16 (4) Receive mental health services, including case  
17 management, medications, and substance abuse services.

18 Sec. 3. For purposes of sections 1 to 11 of this act:

19 (1) Correctional agency means an agency of state or local  
20 government responsible for overseeing the operation of one or more  
21 correctional institutions, including juvenile facilities;

22 (2) Correctional institution means a jail, prison,  
23 juvenile correctional facility, juvenile detention facility,  
24 or another detention facility operated by a state or local  
25 correctional agency that qualifies as a public institution under 42

1 C.F.R 435.1009, as such regulation existed on January 1, 2007;

2 (3) Enrolled, as it relates to the Supplemental Security  
3 Income program or the Social Security Disability Insurance program,  
4 means (a) eligible to receive benefits pursuant to either program,  
5 as determined by the Social Security Administration of the United  
6 States Department of Health and Human Services and (b) on  
7 eligibility rolls, even if cash benefits are currently suspended;

8 (4) Federal benefit programs means medicaid, the  
9 Supplemental Security Income program, and the Social Security  
10 Disability Insurance program;

11 (5) Incarcerated means confined in a correctional  
12 institution;

13 (6) Individual with psychiatric disabilities includes (a)  
14 an adult with serious mental illnesses and (b) a juvenile with  
15 emotional or behavioral disturbances or emotional disorders;

16 (7) Likely to be eligible means an individual with  
17 psychiatric disabilities (a) whose enrollment in one or more of  
18 the federal benefits programs was terminated during his or her  
19 incarceration, (b) who was enrolled in one or more of the federal  
20 benefits programs at any time during the five years prior to  
21 his or her incarceration, or (c) who was not previously enrolled  
22 but who is likely to meet eligibility criteria for one or more  
23 of the federal benefits programs upon his or her release from  
24 incarceration;

25 (8) Medicaid eligibility category means an eligibility

1 category established in the medical assistance program under the  
2 Medical Assistance Act;

3 (9) Medicaid eligibility through the Supplemental  
4 Security Income program means eligibility to participate in  
5 the federal medicaid program by virtue of enrollment in the  
6 Supplemental Security Income program;

7 (10) Parent means a parent, a guardian, or an individual  
8 acting in the role of parent;

9 (11) Pre-release agreement means a formal agreement with  
10 the Social Security Administration under which a correctional  
11 agency and the Social Security Administration work collaboratively  
12 to ensure that applications for the federal benefits programs by  
13 inmates are speedily handled by the Social Security Administration;

14 (12) Social Security Disability Insurance program  
15 means the federal income support program for individuals with  
16 disabilities who have worked and paid Social Security taxes,  
17 provided under Title II of the federal Social Security Act, as such  
18 act existed on January 1, 2007;

19 (13) Supplemental Security Income program means the  
20 federal income support program for persons with disabilities and  
21 low incomes, provided under Title XVI of the federal Social  
22 Security Act, as such act existed on January 1, 2007, provided  
23 under Title II of the federal Social Security Act;

24 (14) Suspend medicaid coverage means to place an  
25 individual's medicaid eligibility in an inactive status such that

1 (a) the individual remains eligible for medicaid and continues  
2 on the state rolls but (b) medicaid benefits are not payable for  
3 services furnished; and

4 (15) Suspend Supplemental Security Income or Social  
5 Security Disability Insurance eligibility means to stop cash  
6 payments under such programs due to incarceration.

7 Sec. 4. (1) It shall be the policy of the State of  
8 Nebraska to facilitate, to the extent permitted by federal law:

9 (a) Suspension rather than termination of federal  
10 benefits when an individual with psychiatric disabilities is  
11 incarcerated; and

12 (b) Speedy restoration of benefits upon such individual's  
13 release from incarceration.

14 (2) The Department of Health and Human Services Finance  
15 and Support shall adopt and promulgate rules and regulations  
16 ensuring that:

17 (a) When an individual with psychiatric disabilities  
18 enrolled in the federal medicaid program is incarcerated:

19 (i) The individual's medicaid eligibility will be  
20 suspended rather than terminated and will remain suspended rather  
21 than terminated for as long as is permitted by federal law; and

22 (ii) The individual will not be terminated from the  
23 federal medicaid program unless the department determines that the  
24 individual no longer meets the medicaid eligibility criteria under  
25 which he or she had qualified and is not eligible for the federal

1 medicaid program under any other medicaid eligibility category.

2 (3) When an individual whose medicaid eligibility is  
3 suspended is released from incarceration, the individual's medicaid  
4 eligibility shall be fully restored on the day of release until the  
5 department determines that the individual is no longer eligible for  
6 medicaid.

7 (4) Correctional agencies shall seek to ensure the  
8 speedy restoration of benefits of incarcerated individuals with  
9 psychiatric disabilities whose eligibility for the Supplemental  
10 Security Income program or the Social Security Disability Insurance  
11 program has been suspended during incarceration. The Department of  
12 Health and Human Services Finance and Support shall ensure that  
13 cash benefits under Supplemental Security Income program or the  
14 Social Security Disability Insurance program are reinstated in the  
15 month of release by:

16 (a) Identifying incarcerated individuals with psychiatric  
17 disabilities whose benefits under the Supplemental Security Income  
18 program or the Social Security Disability Insurance program was  
19 suspended during incarceration and asking them if they wish to  
20 receive benefits when released; and

21 (b) For incarcerated individuals with psychiatric  
22 disabilities who wish to receive benefits under such programs,  
23 ensuring that (i) applications for reinstatement of such benefits  
24 upon release are filed on their behalf as soon as possible  
25 following suspension and (ii) all applicants for reinstatement

1 leave the correctional institution with a copy of the application.

2           Sec. 5. (1) It shall be the policy of the State  
3 of Nebraska to assist incarcerated individuals with psychiatric  
4 disabilities whose eligibility for federal program benefits was  
5 terminated while incarcerated or who were not receiving benefits at  
6 the time they were incarcerated to apply, while incarcerated, to  
7 receive benefits upon release. The Department of Health and Human  
8 Services Finance and Support shall:

9           (a) Establish procedures for receiving medicaid  
10 applications on behalf of incarcerated individuals with psychiatric  
11 disabilities in anticipation of their release; and

12           (b) Expeditiously review such applications and, to the  
13 extent practicable, complete its review before the individual is  
14 released. All reviews shall be completed within fourteen days after  
15 receipt of the application.

16           (2) The review described in subsection (1) of this  
17 section shall assess whether the incarcerated individual with  
18 psychiatric disabilities is presently eligible to be enrolled in  
19 the medicaid program or is likely to be medicaid eligible upon  
20 release.

21           (a) If the incarcerated individual is eligible to be  
22 enrolled while incarcerated, he or she shall be enrolled but placed  
23 on suspended status. The incarcerated individual shall be provided  
24 a medicaid card, entitling the individual to receive benefits  
25 effective upon his or her release.

1           (b) If the incarcerated individual is not eligible to  
2 be enrolled in medicaid while incarcerated but is likely to be  
3 eligible for medicaid upon release, he or she shall be enrolled in  
4 the temporary medicaid eligibility program but on suspended status  
5 pending release. The incarcerated individual will be provided a  
6 medicaid card, entitling him or her to receive benefits under the  
7 temporary medicaid eligibility program effective upon release.

8           (3) To facilitate enrollment in medicaid, correctional  
9 agencies shall:

10           (a) Identify incarcerated individuals with psychiatric  
11 disabilities who are likely to be eligible for medicaid while  
12 incarcerated or upon release and ask them if they wish to receive  
13 benefits when released; and

14           (b) For those who wish to receive benefits, ensure that  
15 (i) applications for medicaid are filed, to the extent practicable,  
16 well in advance of release and, if possible, at least ninety days  
17 before release and (ii) all applicants for such benefits leave the  
18 correctional institution with a copy of the application.

19           (4) Correctional agencies shall seek to ensure that  
20 incarcerated individuals with psychiatric disabilities begin to  
21 receive Supplemental Security Income program and Social Security  
22 Disability Insurance program cash benefits for which they are  
23 eligible in the month following release by:

24           (a) Identifying incarcerated individuals with psychiatric  
25 disabilities who are likely to be eligible for such programs

1 upon release and ask them if they wish to receive benefits when  
2 released; and

3 (b) For those who wish to receive benefits, ensure that  
4 applications are filed on their behalf prior to release and, to the  
5 extent practicable, at least ninety days before release and that  
6 they leave jail or prison with a copy of the application.

7 Sec. 6. (1) Correctional agencies shall enter into  
8 pre-release agreements with the federal Social Security  
9 Administration and shall otherwise facilitate participation by  
10 incarcerated individuals with psychiatric disabilities in federal  
11 benefit programs upon their release from incarceration.

12 (2) Correctional agencies shall use their best efforts to  
13 negotiate pre-release agreements that will ensure:

14 (a) Speedy consideration by the Social Security  
15 Administration of new applications for and applications for  
16 reinstatement of Supplemental Security Income program benefits or  
17 Social Security Disability Insurance program benefits on behalf of  
18 incarcerated individuals with psychiatric disabilities; and

19 (b) That the Social Security Administration is informed  
20 of the expected and actual release dates of incarcerated  
21 individuals with psychiatric disabilities whose applications have  
22 been approved or are pending.

23 (3) Once negotiated, each pre-release agreement shall be  
24 implemented as soon as practicable.

25 (4) Competent staff familiar with the characteristics of

1 successful federal program benefits applications shall ensure that  
2 proper applications are filed and updated as needed by:

3 (a) With applicants' assistance, completing required  
4 forms for applicants who are incarcerated individuals with  
5 psychiatric disabilities;

6 (b) With applicants' consent, secure medical and other  
7 information required to support applications; and

8 (c) Submit applications to the appropriate office. Such  
9 staff may be provided through contracts with local mental health  
10 agencies or providers.

11 (5) With the applicant's permission, a copy of each  
12 application shall be provided to a family member designated by the  
13 applicant and to any mental health case manager who will work with  
14 the incarcerated individual upon release. Permission to provide a  
15 copy to a parent is not required in the case of a minor under  
16 sixteen years of age.

17 Sec. 7. (1) Individuals with psychiatric disabilities  
18 shall be offered temporary medicaid eligibility and temporary  
19 income support when released from incarceration while their  
20 applications for federal benefits are pending. The Department of  
21 Health and Human Services Finance and Support shall administer the  
22 temporary medicaid eligibility program and administer the temporary  
23 income support program.

24 (2) An incarcerated individual with psychiatric  
25 disabilities shall be qualified to receive a temporary medicaid

1 card upon release from incarceration if:

2 (a) He or she is not receiving medicaid-funded services;

3 (b) He or she is likely to be eligible for medicaid; and

4 (c) An application for Supplemental Security Income

5 program benefits or medicaid was filed on his or her behalf

6 while the individual was incarcerated or within three months after

7 the individual's release.

8 (4) An incarcerated individual with psychiatric

9 disabilities may apply for a temporary medicaid card while

10 incarcerated or within three months after release. Application

11 may be made by submission to the Department of Health and Human

12 Services Finance and Support of an application for medicaid, a copy

13 of an application for Supplemental Security Income program benefits

14 submitted on the individual's behalf, or other documentation deemed

15 suitable by the department.

16 (5) Within fourteen days after submission of the

17 application, the department shall determine whether the applicant

18 is qualified to receive a temporary medicaid card and, if so, shall

19 immediately issue a temporary medicaid card to him or her. If he

20 or she is incarcerated, the temporary medicaid card shall entitle

21 him or her to receive benefits under the temporary medicaid program

22 effective upon release. If he or she has already been released, the

23 temporary medicaid card shall be effective immediately.

24 (6) If the applicant is qualified for a temporary

25 medicaid card, he or she is entitled to receive covered medicaid

1 services from certified medicaid providers for a period of six  
2 months. For individuals found qualified while incarcerated, the  
3 six months begins upon release. For individuals found qualified  
4 after release, the six months begins on the date of such  
5 determination. The six-month period may be renewed at the option of  
6 the department.

7 (7) A temporary medicaid card shall be void if, prior to  
8 the end of a six-month period, it is determined that:

9 (a) The holder is not eligible for the Supplemental  
10 Security Income program; and

11 (b) The holder is not eligible for medicaid under any  
12 other medicaid eligibility category.

13 (8) To the extent permitted by federal law, the state may  
14 claim reimbursement under the medicaid program for payments made  
15 for care provided to an applicant to whom a temporary medicaid  
16 card has been issued. The state may not recover any costs from the  
17 holder of the temporary medicaid card.

18 Sec. 8. (1) An incarcerated individual with a psychiatric  
19 disability shall be qualified for temporary income support upon  
20 release from incarceration if:

21 (a) The individual is not receiving Supplemental Security  
22 Income program benefits or Social Security Disability Insurance  
23 program benefits;

24 (b) The individual is likely to be eligible for one of  
25 such programs; and

1           (c) An application for one of such programs was filed on  
2 his or her behalf while incarcerated or within three months after  
3 the individual's release.

4           (2) An incarcerated individual with a psychiatric  
5 disability may apply for temporary income support while  
6 incarcerated or within three months after release. Application  
7 may be made by submitting to the Department of Health and  
8 Human Services Finance and Support a copy of an application for  
9 Supplemental Security Income program benefits or Social Security  
10 Disability Insurance program benefits or other documentation deemed  
11 suitable by the department. Within fourteen days after submission  
12 of the application, the department shall determine whether the  
13 individual is qualified to receive temporary income support.

14           (3) Temporary income support shall be paid monthly in  
15 an amount equal to the basic Supplemental Security Income payment  
16 in Nebraska. Payments shall be made for a period of six months.  
17 For individuals found qualified while incarcerated, the six months  
18 begins upon release. For individuals found qualified after release,  
19 the six months begins on the date of such determination. The  
20 six-month term may be renewed at the option of the department.  
21 Payments may be terminated before the end of a six-month term  
22 if the federal Social Security Administration makes a final  
23 determination that the recipient is not eligible to receive the  
24 federal benefits for which the individual applied.

25           (4) To the extent permitted by federal law, the state

1 may recover the temporary income support from Supplemental Security  
2 Income program benefits or Social Security Disability Insurance  
3 program back benefits issued by the federal Social Security  
4 Administration. The state may not recover any payments of temporary  
5 income support from the individual.

6           Sec. 9. Correctional agencies shall arrange for  
7 incarcerated individuals with psychiatric disabilities to have  
8 photo identification when they are released from incarceration. The  
9 department shall ensure that inmates who lack photo identification  
10 are issued a photo identification card before or immediately upon  
11 release. The photo identification card shall not disclose the  
12 individual's incarceration or criminal record and shall list an  
13 address other than a correctional facility.

14           Sec. 10. (1) It is the policy of the State of Nebraska  
15 that incarcerated individuals with psychiatric disabilities have  
16 access to mental health services while incarcerated and upon  
17 release.

18           (2) For incarcerated individuals with psychiatric  
19 disabilities, the Department of Correctional Services shall be  
20 responsible for the provision of mental health services.

21           (3) For individuals with psychiatric disabilities in  
22 juvenile correctional facilities, jail, or juvenile detention  
23 facilities, the Department of Health and Human Services shall  
24 be responsible for the provision of mental health services.

25           (4) The Department of Health and Human Services Finance

1 and Support shall be responsible for the provision of the case  
2 management services. The Department of Health and Human Services  
3 Finance and Support may arrange for services to be provided through  
4 contracts with community mental health agencies or community mental  
5 health providers.

6 (5) Incarcerated individuals with psychiatric  
7 disabilities shall have access to medically necessary mental  
8 health services, including substance abuse and crisis services.  
9 At the time of their release, incarcerated individuals with  
10 psychiatric disabilities shall be provided a thirty-day supply of  
11 any psychiatric medications they were taking prior to release.

12 (6) Incarcerated individuals with psychiatric  
13 disabilities shall be given access upon release to services  
14 under the medical assistance program established under the Medical  
15 Assistance Act.

16 (7) (a) To aid their transition of incarcerated  
17 individuals with psychiatric disabilities to community living,  
18 the Department of Health and Human Services Finance and Support  
19 shall provide to such individuals case management services well  
20 in advance of their release and if possible, at least ninety days  
21 before release.

22 (b) The case manager shall work with such individuals  
23 to identify services and supports they desire and will need  
24 upon return to community living. As desired by the incarcerated  
25 individual, the case manager will:

1           (i) Help arrange for needed shelter, mental health  
2 services, including substance abuse services, and other support  
3 to be provided to the individual upon release; and

4           (ii) Help the incarcerated individual access federal  
5 benefit programs upon release, including, as needed, by updating  
6 applications.

7           Sec. 11. If implementation of sections 1 to 10 of  
8 this act requires an amendment to the state medicaid plan, the  
9 Department of Health and Human Services Finance and Support shall  
10 submit an application to the Centers for Medicare and Medicaid  
11 Services of the United States Department of Health and Human  
12 Services to obtain such amendment.