

LEGISLATIVE BILL 112

Approved by the Governor April 28, 1999

Introduced by Crosby, 29; C. Peterson, 35

AN ACT relating to medical services; to provide for the responsibility for the payment of costs of medical services for individuals who are arrested, detained, taken into custody, or incarcerated; and to declare an emergency.

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

Section 1. (1) Notwithstanding any other provision of law, sections 1 to 5 of this act shall govern responsibility for payment of the costs of medical services for any person ill, wounded, injured, or otherwise in need of such services at the time such person is arrested, detained, taken into custody, or incarcerated.

(2) For purposes of sections 1 to 5 of this act, the term medical services includes medical and surgical care and treatment, hospitalization, transportation, medications and prescriptions, and other associated items.

Sec. 2. Primary responsibility for payment of the costs of medical services provided to individuals who are arrested, detained, taken into custody, or incarcerated shall be with the recipients of such services if the recipients are entitled to payment of or reimbursement for the costs of such medical services under the terms and provisions of a policy, subscription, or agreement with an insurer, a health maintenance organization, a preferred provider organization, or another similar source as provided in subdivision (1) of this section. Providers of such medical services shall seek reimbursement from the following sources in the following order:

(1) From an insurer, a health maintenance organization, a preferred provider organization, or other similar source, if the recipient of medical services is entitled to payment of or reimbursement for the costs of such medical services under the terms and provisions of a policy, subscription, or agreement with an insurer, a health maintenance organization, a preferred provider organization, or another similar source. This section does not extend or enlarge the liability of any such insurer, health maintenance organization, preferred provider organization, or other similar source, and no such insurer, health maintenance organization, preferred provider organization, or other similar source is responsible for paying or reimbursing any costs of medical services for which it is not otherwise responsible under the terms of the applicable policy, subscription, or agreement. Any individual who is entitled to payment or reimbursement for the costs of medical services under the terms of a policy, subscription, or agreement with an insurer, a health maintenance organization, a preferred provider organization, or other similar source shall cooperate with the providers of such services by making whatever applications, assignment, or other arrangements that are necessary in order to secure payment for the services provided; and

(2) From any other available source, including, when appropriate, the United States Department of Veterans Affairs, the Social Security Administration, the Department of Health and Human Services, or other similar source.

Sec. 3. (1) Upon a showing that reimbursement from the sources enumerated in section 2 of this act is not available, in whole or in part, the costs of medical services shall be paid by the appropriate governmental agency. Such payment shall be made within ninety days after such showing. For purposes of this section, a showing shall be deemed sufficient if a provider of medical services signs an affidavit stating that (a) in the case of an insurer, health maintenance organization, preferred provider organization, or other similar source, a written denial of payment has been issued or (b) in all other cases, efforts have been made to identify sources and to collect from those sources and more than one hundred eighty days have passed or the the normal collection efforts are exhausted since the medical services were rendered but full payment has not been received. Such affidavit shall be forwarded to the appropriate governmental agency. In no event shall the provider of medical services be required to file a suit in a court of law or retain the services of a collection agency to satisfy the requirement of showing that reimbursement is not available pursuant to this section.

(2) In the case of medical services necessitated by injuries or wounds suffered during the course of apprehension or arrest, the appropriate governmental agency shall be the arresting agency. In all other cases, the

appropriate governmental agency shall be the agency responsible for operation of the institution or facility in which the recipient of the services is lodged, except that when the agency is holding the individual solely for another jurisdiction, the agency may, by contract or otherwise, seek reimbursement from the other jurisdiction for the costs of the medical services provided to the individual being held for that jurisdiction.

(3) Except as provided in section 5 of this act, a governmental agency shall not be responsible for paying the costs of any medical services provided to an individual if such services are provided after he or she is released from the legal custody of the governmental agency or when the individual is released on parole.

(4) Any governmental agency requesting medical services for an individual who is arrested, detained, taken into custody, or incarcerated shall notify the provider of such services of (a) all information possessed by the agency concerning potential sources of payment and (b) the name of the appropriate governmental agency pursuant to subsection (2) of this section.

Sec. 4. The costs of routine medical services provided in the ordinary course of the duties of regular staff of a jail, prison, or other similar holding or detention facility shall not be considered reimbursable under sections 1 to 5 of this act.

Sec. 5. (1) Sections 1 to 4 of this act do not release any governmental agency from liability for the costs of medical services made necessary by the negligence, recklessness, or intentional misconduct of the agency or its employees or the costs of medical care resulting from an accident or occupational disease arising out of and in the course of the individual's performance of tasks assigned by the staff of the facility or institution holding that individual. Any recipient or provider of medical services or any insurer, health maintenance organization, preferred provider organization, or other similar source that may be responsible for the costs of medical services pursuant to sections 1 to 4 of this act shall be entitled to reimbursement from the appropriate governmental agency for the costs of medical services made necessary by the negligence, recklessness, or intentional misconduct of the governmental agency or its employees or the costs of medical care resulting from an accident or occupational disease arising out of and in the course of the individual's performance of tasks assigned by the staff of the facility or institution holding that individual.

(2) Any person who denies medical services to any individual who is arrested, detained, taken into custody, or incarcerated, solely on the basis that the individual is without a policy, subscription, or agreement with an insurer, a health maintenance organization, a preferred provider organization, or other similar source of health insurance, is guilty of nonfeasance, shall be removed from his or her employment immediately, and shall be answerable in civil damages to the individual denied medical services.

Sec. 6. Since an emergency exists, this act takes effect when passed and approved according to law.