CORRECTIONS, PAROLE, AND PROBATION

CHAPTER 91

SENATE BILL NO. 2024

(Legislative Management)
(Advisory Commission on Intergovernmental Relations)

AN ACT to create and enact a new section to chapter 12-44.1 and two new sections to chapter 50-24.1 of the North Dakota Century Code, relating to inmate medical care costs, inmate medical claims processing, and medicaid coverage to inmates in certain situations; to amend and reenact subsection 4 of section 12-44.1-01 and sections 12-44.1-12.1 and 12-44.1-14 of the North Dakota Century Code, relating to adequate medical care and payment of medical costs of inmates; to provide an appropriation; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 4 of section 12-44.1-01 of the North Dakota Century Code is amended and reenacted as follows:

4. "Inmate" means any person, whether sentenced or unsentenced, who is detained or confined in a correctional facility. The term does not include an individual who is under the supervision of the correctional facility and is supervised under home detention, electronic monitoring, or a similar program that does not involve physical detention or confinement in the facility.

SECTION 2. AMENDMENT. Section 12-44.1-12.1 of the North Dakota Century Code is amended and reenacted as follows:

12-44.1-12.1. Establishment of inmate accounts - Withholding funds for inmate financial obligations - Health care costs - Payment of funds to inmate upon release.

1. The correctional facility administrator shall establish an inmate account for each inmate.

~~2.~~ The correctional facility administrator may withdraw funds from an inmate's account to meet the inmate's legitimate financial obligations, including child support and restitution~~. The correctional facility administrator may withdraw funds from the inmate's account to pay~~ and for the inmate's medical, dental, and eye care costs ~~while the inmate is incarcerated in the correctional facility~~, and establish an administrative procedure for an inmate to appeal the withdrawal of the funds. ~~Before the funds may be withdrawn, the inmate must first receive written notice and be provided a hearing with the right to correctional facility staff assistance and the right to review by the correctional facility administrator. No written notice or hearing is required if the withdrawal of funds is being made to meet the inmate's child support obligation.~~

~~3. A correctional facility administrator may collect fees from inmates to offset health care costs as follows:~~

~~a. For a medical visit, up to ten dollars per medical visit made at the request of an inmate.~~

~~b. For self-inflicted injuries, the total amount of medical costs incurred.~~

~~c. For necessary health care services, the correctional facility may seek reimbursement from the inmate up to the total amount of health care costs incurred. If the inmate has health insurance coverage, a medical or health care provider must file a claim for reimbursement from the health insurance coverage carrier. A correctional facility may not assess an inmate for any costs associated with an intake health care assessment and related testing or for an examination of an inmate made at the request of the facility.~~

~~d. For elective health care requested by an inmate and as allowed by correctional facility policy, the inmate is responsible for the amount of the costs incurred.~~

~~e. A correctional facility may not deny necessary and nonelective medical and health care to an inmate who does not have health insurance or does not have the ability to pay the costs of the medical or health care.~~

~~4.~~2. The correctional facility administrator shall pay an inmate all funds in the inmate's account when the inmate is discharged from the correctional facility or when the inmate is transferred to another correctional facility, less the inmate's outstanding obligations to the correctional facility.

~~5.~~3. This section does not limit or alter the provisions of chapter 14-09 relating to income withholding orders for child support.

SECTION 3. A new section to chapter 12-44.1 of the North Dakota Century Code is created and enacted as follows:

Inmate medical care costs.

An inmate is financially responsible for the costs of medical or health care, except for an intake health care assessment and related testing for an examination of the inmate made at the request of the facility. The correctional facility may seek reimbursement from the inmate up to the total amount of incurred medical or health care costs. If the inmate has health insurance coverage, a medical or health care provider shall file a claim for reimbursement from the health insurance provider. If the inmate does not have health insurance coverage and the inmate's medical or health care costs are the responsibility of the correctional facility, the correctional facility's responsibility may not exceed the rates paid under the federal medicare program. If elective medical or health care is allowed by a correctional facility policy, the inmate must arrange payment for elective medical or health care before receiving care.

SECTION 4. AMENDMENT. Section 12-44.1-14 of the North Dakota Century Code is amended and reenacted as follows:

12-44.1-14. Inmate rights.

Subject to reasonable safety, security, discipline, and correctional facility administration requirements, the administrator of each correctional facility shall:

1. Ensure inmates have confidential access to attorneys and their authorized representatives.

2. Ensure that inmates are not subjected to discrimination based on race, national origin, color, creed, sex, economic status, or political belief.

3. Ensure equal access by male and female inmates to programs and services available through the correctional facility.

4. Ensure access to mail, telephone use, and visitors.

5. Ensure that inmates are properly fed, clothed, and housed.

6. Ensure that inmates have adequate medical care. Adequate medical care means necessary treatment for a medical or health condition for which serious pain or hardship would occur if care is not given. A correctional facility may not deny adequate medical care to an inmate who does not have health insurance or does not have the ability to pay the costs of the medical or health care.

7. Ensure that inmates may reasonably exercise their religious beliefs.

SECTION 5. Two new sections to chapter 50-24.1 of the North Dakota Century Code are created and enacted as follows:

Processing of claims submitted on behalf of inmates.

The department of human services shall process claims submitted by enrolled medical providers on behalf of inmates at county jails. Each county shall pay the department a processing fee for each claim submission. The department shall establish a processing fee that may not exceed thirty dollars and shall update the fee annually on July first. The processing fee must be based on the annual costs to the department of the claims processing operations divided by the annual volume of claims submitted. The department shall invoice each county for payment of the processing fee. Beginning July 1, 2011, the department of human services shall increase the claims processing fee to recover the cost of the medicaid claims system changes. The department shall deposit the portion of the fee associated with recovering the costs of the medicaid claims system changes in the general fund.

Department to expand medicaid coverage.

After implementation of the medicaid management information system, the department of human services shall expand medicaid coverage to include medicaid-covered services provided to an inmate of the state penitentiary or a county jail who would be eligible for medicaid if the inmate were not incarcerated and who is admitted to an inpatient hospital setting.

SECTION 6. APPROPRIATION. There is appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, the sum of $149,094, or so much of the sum as may be necessary, to the department of human services for the purpose of modifying the department's medicaid claims system to process claims submitted by enrolled medicaid providers on behalf of inmates of county jails under

section 5 of this Act, for the biennium beginning July 1, 2011, and ending June 30, 2013.

SECTION 7. APPROPRIATION. There is appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, the sum of $36,162, or so much of the sum as may be necessary, and from special funds derived from federal funds and other income, the sum of $36,162, to the department of human services for the purpose of modifying the department's eligibility systems to process inpatient hospital claims for inmates of the state penitentiary and county jails under section 5 of this Act, for the biennium beginning July 1, 2011, and ending June 30, 2013.

SECTION 8. EFFECTIVE DATE. Section 5 of this Act becomes effective upon the completion of the necessary changes to the department of human services' medicaid claims processing and eligibility systems.

Approved April 27, 2011
Filed April 27, 2011

CHAPTER 92

SENATE BILL NO. 2136

(Senators Lyson, Cook, Flakoll)
(Representatives Kasper, Kempenich, Ruby)

AN ACT to amend and reenact section 12-44.1-18.2 of the North Dakota Century Code, relating to work release fees paid by offenders in a correctional facility.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 12-44.1-18.2 of the North Dakota Century Code is amended and reenacted as follows:

12-44.1-18.2. Work release program - Room and board costs to be paid by inmate.

Any inmate who participates in a work release program shall pay the correctional facility for the room and board costs incurred by the inmate while confined in the correctional facility, residential halfway house, or similar alternative facility. The administrator shall determine the amount of meal and lodging costs to be paid by the inmate. The amount to be paid by the inmate while confined in a correctional facility may not exceed ~~fifteen~~twenty dollars per day or the funds earned by the inmate, whichever is less. The amount to be paid by the inmate while placed in a residential halfway house or similar alternative facility may not exceed the actual cost per day or the funds earned by the inmate, whichever is less.

Approved April 19, 2011
Filed April 19, 2011

CHAPTER 93

SENATE BILL NO. 2141

(Senators Lyson, Cook, Wardner)
(Representatives Kreidt, Ruby, Sukut)

AN ACT to create and enact a new section to chapter 12-44.1 of the North Dakota Century Code, relating to the granting of performance-based sentence reduction to offenders in a correctional facility; and to amend and reenact section 12-54.1-01 of the North Dakota Century Code, relating to performance-based sentence reduction.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 12-44.1 of the North Dakota Century Code is created and enacted as follows:

Performance-based sentence reduction.

The presiding judge of a judicial district in which a correctional facility is located, after consultation with the other judges in the district, may authorize the facility administrator to provide for sentence reductions based upon performance criteria established through the administrator except that sentence reductions may not be given to offenders sentenced under section 12.1-32-09.1. While incarcerated in a correctional facility, an offender may earn no more than a one-day sentence reduction per six days served.

SECTION 2. AMENDMENT. Section 12-54.1-01 of the North Dakota Century Code is amended and reenacted as follows:

12-54.1-01. Performance-based sentence reduction.

~~1.~~Except as provided under section 12.1-32-09.1, offenders committed to the legal and physical custody of the department of corrections and rehabilitation are eligible to earn sentence reductions based upon performance criteria established through department and penitentiary rules. Performance criteria includes participation in court-ordered or staff-recommended treatment and education programs and good work performance. The department may credit an offender committed to the legal and physical custody of the department who is eligible for sentence reduction five days good time per month for each month of the sentence imposed. The department may not credit an offender with any sentence reduction for time spent in custody prior to sentence and commitment, for time under supervised probation, or for any sentence where the incarceration time is six months or less.

~~2. The presiding judge of a judicial district in which a correctional facility is located, after consultation with the other judges in the district, may authorize the facility administrator to provide for sentence reductions based upon performance criteria established through the administrator. The criteria must be substantially similar to the performance criteria established by the penitentiary. Except as provided under section 12.1-32-09.1, offenders sentenced to the facility are eligible to earn sentence reductions based upon the performance criteria. While incarcerated in a correctional facility, an inmate~~

~~may earn five days good time per month except for any sentence where the incarceration time is thirty days or less.~~

Approved April 25, 2011
Filed April 25, 2011

CHAPTER 94

HOUSE BILL NO. 1081

(Government and Veterans Affairs Committee)
(At the request of the State Board of Chiropractic Examiners)

AN ACT to create and enact a new subdivision to subsection 2 of section 12-60-24 and section 43-06-11.1 of the North Dakota Century Code, relating to criminal history record checks for chiropractors.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

[38] **SECTION 1.** A new subdivision to subsection 2 of section 12-60-24 of the North Dakota Century Code is created and enacted as follows:

> The state board of chiropractic examiners for applicants, licensees, or investigations under chapter 43-06, except that criminal history record checks need not be made unless required by the board.

SECTION 2. Section 43-06-11.1 of the North Dakota Century Code is created and enacted as follows:

43-06-11.1. Criminal history record checks.

The board may require any applicant or licensee under this chapter to submit to a statewide and nationwide criminal history record check. The nationwide criminal history record check must be conducted in the manner provided by section 12-60-24. All costs associated with obtaining a criminal history record check are the responsibility of the applicant or licensee.

Approved March 28, 2011
Filed March 28, 2011

[38] Section 12-60-24 was also amended by section 1 of Senate Bill No. 2199, chapter 327, section 1 of Senate Bill No. 2097, chapter 328, and section 1 of Senate Bill No. 2114, chapter 512.

CHAPTER 95

HOUSE BILL NO. 1338

(Representatives Dahl, DeKrey)

AN ACT to amend and reenact section 12-67-02 of the North Dakota Century Code, relating to electronic home detention for certain offenders.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 12-67-02 of the North Dakota Century Code is amended and reenacted as follows:

12-67-02. Application.

1. For those offenders who are sentenced by the court to a term of imprisonment in a county jail or regional correctional facility, the court may commit the offender to the legal and physical custody of the administrator of the jail or correctional facility ~~who~~. Except in cases in which the law requires mandatory incarceration and does not allow for electronic home detention or global positioning system monitoring, the administrator of the jail or correctional facility shall make the decision as to whether the use of electronic home detention or global positioning system monitoring is appropriate for that offender.

2. ~~Except for an offense for which the law requires mandatory incarceration, electronic~~Electronic home detention or global positioning system monitoring may be used for adult and juvenile offenders as selected by the court, the administrator, the parole board, or the department for adult offenders as an intermediate measure of supervised probation, and for delinquent juvenile offenders in the custody of the division of juvenile services as a condition of community placement. Electronic home detention and global positioning system monitoring may be used for the following:

   a. Pretrial or preadjudicatory detention.

   b. Probation.

   c. Community corrections approved by the court.

   d. Parole.

   e. Work release under chapter 12-44.1 or approved by the parole board.

   f. Institutional release approved by the court or the parole board.

   g. ~~County jail diversion approved by the court.~~

   ~~h.~~ Sex offender containment.

3. If not otherwise prohibited by law, the administrator may use electronic home detention or global positioning system monitoring for an offender if required

due to medical needs of the offender or to prevent overcrowding in the county jail or regional correctional facility.

4. If the law requires mandatory incarceration and does not allow for electronic home detention or global positioning system monitoring, the court order must expressly prohibit electronic home detention and global positioning system monitoring.

Approved April 19, 2011
Filed April 20, 2011