



Sub. H.B. 170

124th General Assembly
(As Reported by H. Criminal Justice)

**Reps. Schuring, Flowers, Schaffer, Willamowski, Seitz, Husted, Ogg, Cirelli,
Webster, Barrett, Roman, Reidelbach**

BILL SUMMARY

- Expands the cost debts subject to recovery from an offender in the custody or under the supervision of the Department of Rehabilitation and Correction to specifically include the cost of any medical care provided to the offender while in the custody or under the supervision of the Department.
- For each offender in the custody or under the supervision of the Department, authorizes the Department to make a determination as to whether the offender is covered by health insurance and the terms and conditions for the filing and payment of claims under that insurance.
- Permits the Department or the provider of health care services to an offender, as appropriate, to promptly submit a claim for payment for the health care services to the appropriate third-party payer whenever the Department renders or arranges for the rendering of health care services to the offender in accordance with the offender's health insurance.
- Permits the Department or the provider of health care services to an offender to designate, or make any other arrangement necessary to ensure, that payment of any amount due on the claim be made to the Department or the provider, as appropriate, and requires any payment made to the Department to be deposited into the Offender Financial Responsibility Fund.
- If the policy, contract, or plan is a defined provider plan or a plan with a closed panel of providers, authorizes the Department to arrange for the defined provider or closed panel to render health care services to the offender at a site approved by the Department.

- Gives the Department the right of subrogation against the appropriate third party payer, defined provider, or closed panel for any health care services provided to the offender.
- Requires the Department to examine the feasibility and desirability of purchasing insurance coverage to protect against unpredictable or catastrophic losses that may be incurred by the state in the provision of health care services to offenders who are in the custody or under the supervision of the Department.
- Requires the Department to develop specifications for a utilization review program under which the clinical necessity, appropriateness, efficacy, or efficiency of any outside health care service recommended for an offender may be evaluated by an external utilization review organization, to request proposals for the provision of services of that nature, and, within six months after the bill's effective date, to report the responses to the request to specified members of the General Assembly.
- Specifies that the Department is not required to enter a contract for the provision of services of that nature unless money has been appropriated to the Department adequate to fund the provision of services of that nature.
- Requires the Department to adopt rules to establish a schedule of health care services available to offenders in the custody or under the supervision of the Department and to establish a program to encourage the utilization of preventive health care services by offenders.

CONTENT AND OPERATION

DRC recovery of cost debts for health care

Existing law

The Department of Rehabilitation and Correction (hereafter DRC) may recover from an "offender" (see "*Definitions*," below, for words in quotes) who is in its custody or under its supervision certain "cost debts" described below under "*Background--DRC recovery of cost debts; Cost debts subject to recovery*." To satisfy such a cost debt that relates to an offender, DRC may apply directly assets that are in DRC's possession and that are being held for that offender without further proceedings in aid of execution. If assets belonging to or subject to the direction of that offender are in the possession of a third party, DRC may request

the Attorney General to initiate proceedings to collect the assets from the third party to satisfy the cost debt. (R.C. 5120.56(B).)

Generally, all of the following assets of an offender are subject to attachment, collection, or application toward the cost debts (R.C. 5120.56(C)): (1) any pay the offender receives from the state, (2) any funds the offender receives from persons on an approved visitor list, (3) any liquid assets belonging to the offender and in DRC custody, and (4) any assets the offender acquires or any other income the offender earns subsequent to the offender's commitment.

All moneys collected by or on behalf of DRC for allowable cost debts, and all moneys currently in DRC's custody that are applied to satisfy an allowable cost debt, must be deposited into the Offender Financial Responsibility Fund. DRC may expend moneys in the fund for goods and services of the same type as those for which offenders are assessed. (R.C. 5120.56(I).)

Operation of the bill

The bill expands the cost debts subject to recovery to specifically include the cost of any medical care provided to the offender that accrues while the offender is in the custody or under the supervision of DRC (R.C. 5120.56(D)(7)).

Offenders with health insurance

Benefits contracts

Existing law. An existing provision in the Health Insurance Laws prohibits a "benefits contract" from limiting or excluding coverage for the reason that the "beneficiary" is under "confinement" or is otherwise under the custody of a law enforcement officer, and a governmental entity is wholly or primarily responsible for rendering or arranging for the rendering of health care services for the beneficiary. But, a benefits contract may limit or exclude coverage for health care services rendered to such a beneficiary if the injury or sickness for which the services were rendered resulted from an action or omission for which the governmental entity operating the correctional facility, or the governmental entity with which the law enforcement officer is affiliated, is liable. (R.C. 3924.53(A)(2), (B), and (C).)

Operation of the bill. The bill expands the definition of "confinement" for the purposes of this provision to also mean any period of time during which a person is in the custody or under the supervision of DRC (R.C. 3924.53(A)(2)).

Claim for payment for the health care services provided to offender

Under the bill, for each offender who is in the custody or under the supervision of DRC, DRC may make a determination as to whether the offender is covered under a health insurance or health care policy, contract, or plan and, if the offender has such coverage, what terms and conditions are imposed by it for the filing and payment of claims. If DRC determines that the offender is covered under a policy, contract, or plan and, while that coverage is in force, DRC renders or arranges for the rendering of health care services to the person in accordance with the terms and conditions of the policy, contract, or plan, then DRC or the provider of the health care services, as appropriate under the terms and conditions of the policy, contract, or plan, may promptly submit a claim for payment for the health care services to the appropriate third-party payer. DRC or the provider of the health care services also may designate, or make any other arrangement necessary to ensure, that payment of any amount due on the claim be made to DRC or the provider, as the case may be.

If the policy, contract, or plan is a defined provider plan or a plan with a closed panel of providers, DRC may arrange for the defined provider or closed panel to render health care services to the offender at a DRC approved site. DRC also has the right of subrogation against the appropriate third party payer, defined provider, or closed panel for any health care services provided to the offender. Any payment made to DRC must be deposited into the Offender Financial Responsibility Fund. (R.C. 5120.57.)

DRC to examine the feasibility and desirability of purchasing insurance coverage

The bill requires DRC to examine the feasibility and desirability of purchasing insurance coverage to protect against unpredictable or catastrophic losses that may be incurred by the state in the provision of health care services to offenders who are in the custody or under the supervision of DRC. No later than six months after the effective date of the bill, DRC must report its findings and any recommendations to the Speaker of the House of Representatives, the President of the Senate, and the chairs of the standing committees of the House of Representatives and the Senate that have primary jurisdiction over issues related to DRC. (Section 3(A).)

DRC to request proposals for a utilization review program

The bill requires DRC to develop specifications for a utilization review program under which the clinical necessity, appropriateness, efficacy, or efficiency of any outside health care service recommended for an offender may be evaluated by an external utilization review organization. DRC must request

proposals for the provision of services of that nature. The request for proposals (RFP) must adequately describe the specifications. Within six months after the bill's effective date, DRC must report the responses to the RFP to the Speaker of the House of Representatives, the President of the Senate, and the chairs of the standing committees of the House of Representatives and the Senate that have primary jurisdiction of issues related to DRC. DRC is not required to enter into a contract for the provision of services of that nature unless money has been appropriated to DRC adequate to fund the provision of those services. (Section 3(B).)

Rules

The bill requires DRC to adopt rules to do both of the following (R.C. 5120.58):

- (1) Establish a schedule of health care benefits that are available to offenders who are in the custody or under the supervision of DRC;
- (2) Establish a program to encourage the utilization of preventive health care services by offenders.

Background--DRC recovery of cost debts

Cost debts subject to recovery

Under existing law, costs of incarceration or supervision that may be assessed against and collected from an offender as a debt to the state include, but are not limited to, all of the following costs that accrue while the offender is in the custody or under the supervision of DRC (R.C. 5120.56(D)):

- (1) Any user fee or copayment for services at a detention facility or housing facility, including, but not limited to, a fee or copayment for sick call visits;
- (2) Assessment for damage to or destruction of property in a detention facility subsequent to commitment;
- (3) Restitution to an offender or to a staff member of a state correctional institution for theft, loss, or damage to the personal property of the offender or staff member;
- (4) The cost of housing and feeding the offender in a detention facility;
- (5) The cost of supervision of the offender;

(6) The cost of any "ancillary services" provided to the offender.

Exceptions to cost debt recovery

Existing law prohibits the cost of housing and feeding an offender in a state correctional institution from being collected from a payment made to the offender for performing an activity at a state job or assignment that pays less than the minimum wage or from money the offender receives from visitors, unless the combined assets in the offender's institution personal account exceed, at any time, \$100. If the combined assets in that account exceed \$100, the cost of housing and feeding the offender may be collected from the amount in excess of \$100. Also, DRC is prohibited from collecting cost debts or apply offender assets toward a cost debt if, due to an ongoing, permanent injury, the collection or application would unjustly limit the offender's ability to provide for the offender after incarceration. (R.C. 5120.56(E) and (G).)

Rules to implement cost debt recovery

DRC is required under existing law to adopt rules to implement cost debt recovery. The rules must include, but are not limited to, rules that establish or contain all of the following: (1) a process for ascertaining the items of cost to be assessed against an offender, (2) a process by which the offender generally has the opportunity to respond to the assessment of costs and to contest any item of cost in DRC's calculation or as it applies to the offender, (3) a requirement that the offender be notified, in writing, of a final decision to collect or apply the offender's assets and that the notification be provided after the offender has had an opportunity to contest the application or collection, and (4) criteria for evaluating an offender's ongoing, permanent injury and evaluating the ability of that type of offender to provide for the offender after incarceration. The rules may allow the collection of a cost debt as a flat fee or over time in installments. If the cost debt is to be collected over time in installments, the rules are not required to permit the offender an opportunity to contest the assessment of each installment. The rules may establish a standard fee to apply to all offenders who receive a particular service. (R.C. 5120.56(F).)

Definitions

As used in the bill:

Ancillary services

"Ancillary services" means services provided to an offender as necessary for the particular circumstances of the offender's personal supervision, including,

but not limited to, specialized counseling, testing, or other services not included in the calculation of residential or supervision costs (R.C. 5120.56(A)(1)).

Beneficiary

"Beneficiary" means any policyholder, subscriber, member, employee, or other person who is eligible for benefits under a benefits contract (R.C. 3924.53(A)(1) by reference to 3901.38(A)(1), not in the bill).

Benefits contract

"Benefits contract" means a sickness and accident insurance policy providing hospital, surgical, or medical expense coverage, or a health insuring corporation contract or other policy or agreement under which a third-party payer agrees to reimburse for covered health care or dental services rendered to beneficiaries, up to the limits and exclusions contained in the benefits contract (R.C. 3924.53(A)(1) by reference to 3901.38(A)(2), not in the bill).

Confinement

"Confinement" means any period of time during which a person is in the custody or under the supervision of DRC or is confined in specified local jails, workhouses, or other correctional facilities (R.C. 3924.53(A)(2), as amended by the bill).

Cost debt

"Cost debt" means a cost of incarceration or supervision that may be assessed against and collected from an offender as a debt to the state (R.C. 5120.56(A)(2)).

Detention facility

"Detention facility" means any place used for the confinement of a person charged with or convicted of any crime (R.C. 5120.56(A)(3)).

Offender

"Offender" means any inmate, parolee, probationer, releasee, or other person who has been convicted of or pleaded guilty to any felony or misdemeanor and is sentenced to a term of imprisonment, a prison term, or another type of confinement in a detention facility or to participation in another correctional program in lieu of incarceration (R.C. 5120.56(A)(4)).

HISTORY

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