

1 HOUSE BILL NO. 276

2 INTRODUCED BY R. STOKER

3
4 A BILL FOR AN ACT ENTITLED: "AN ACT ESTABLISHING LIABILITY FOR MEDICAL COSTS INCURRED BY
5 PERSONS IN INTERACTION WITH LAW ENFORCEMENT; PROVIDING A STATUTORY APPROPRIATION
6 TO PAY FOR A PORTION OF PREDETENTION MEDICAL COSTS; REVISING THE METHOD FOR
7 DETERMINING THE RATE OF REIMBURSEMENT FOR MEDICAL COSTS INCURRED BY PERSONS IN
8 DETENTION; AMENDING SECTIONS 7-32-2245 AND 17-7-502, MCA; AND PROVIDING AN IMMEDIATE
9 EFFECTIVE DATE AND AN APPLICABILITY DATE."
10

11 WHEREAS, in *City of Revere v. Massachusetts General Hospital*, 463 U.S. 239 (1983), the United States
12 Supreme Court held that due process requires that persons under official detention have a constitutional right
13 to receive adequate medical care regardless of their ability to pay and further held that responsibility for costs is
14 a matter of state law; and

15 WHEREAS, there is a distinction in the chronology of a criminal proceeding between the pre-detention
16 phase of a person's contact with law enforcement and the postdetention phase; and

17 WHEREAS, it is possible that medical costs and associated security costs can be incurred for the
18 treatment of persons in the pre-detention phase; and

19 WHEREAS, the Legislature has specifically and clearly addressed responsibility for medical costs of
20 inmates that are detained in detention centers (the postdetention phase), as provided in Title 7, chapter 32, part
21 22, MCA; and

22 WHEREAS, the Legislature has made many revisions to the postdetention statutes from providing that
23 the arresting agency pays (pre-1989) to providing that the arresting agency, except a city or town, pays (1989)
24 to providing that the inmate is responsible for the inmate's medical care costs and the arresting agency pays,
25 except when the inmate is responsible or in the case of a city or town (1995), and ultimately to providing that the
26 inmate is responsible, but if the inmate cannot pay, the county, rather than the arresting agency, is responsible
27 (2003); and

28 WHEREAS, there are no statutes that address responsibility for medical costs and associated security
29 costs that are incurred for the treatment of persons in the pre-detention phase; and

30 WHEREAS, the Montana Supreme Court, in *Montana Deaconess Medical Center v. Johnson*, 232 Mont.

1 474, 758 P.2d 756 (1988), established the common-law rule relating to responsibility for predetention medical
2 costs by holding that the government has a constitutional obligation under the due process clause to provide
3 inmate medical care and that a county is primarily responsible to third-party providers for postarrest medical care
4 given to a person who is ultimately charged with a violation of state law, although the county may seek recovery
5 from another party pursuant to state law; and

6 WHEREAS, in 47 A.G. Op. 2 (1997), the Attorney General, considering certain 1995 legislative
7 amendments, held that the legislative changes to the postdetention statutes did not result in a change in the law
8 relating to predetention medical costs as established in the Deaconess case; and

9 WHEREAS, several incidents have arisen around the state in which medical treatment was required for
10 and provided to persons in the predetention phase who were apprehended for suspected criminal activity, who were
11 injured or otherwise required medical care, and who were unable to pay for the medical treatment; and

12 WHEREAS, these incidents involve factual situations that are not contemplated or addressed by the
13 existing state statutes governing detention centers; and

14 WHEREAS, there have been attempts to avoid financial responsibility under the postdetention statutes
15 by claiming that the statutes don't apply if a suspect was not formally arrested or was subsequently "unarrested";
16 and

17 WHEREAS, these attempts to avoid application of the postdetention statutes ignore the common-law
18 liability for predetention medical costs established in the Deaconess case; and

19 WHEREAS, many of these incidents have resulted in hospitals and other medical providers being
20 unreimbursed for medical treatment that was provided and for associated security costs; and

21 WHEREAS, these incidents and disputes were brought to the attention of the Legislature's Law and
22 Justice Interim Committee during the 2007-08 interim; and

23 WHEREAS, the Committee appointed a subcommittee to work with interested parties to develop a
24 legislative solution to the problem; and

25 WHEREAS, the Committee was unable to develop a compromise that was acceptable to the interested
26 parties; and

27 WHEREAS, the Legislature now desires to clarify and revise state law relating to responsibility for
28 payment of costs for medical treatment provided to a person who is apprehended for suspected criminal activity
29 and who is injured or otherwise requires medical attention during the predetention phase of the person's contact
30 with law enforcement.

1
2 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:
3
4 NEW SECTION. **Section 1. Medical costs -- payment.** (1) This section applies to a person who:
5 (a) is not an inmate, as defined in 7-32-2241; and
6 (b) has been taken into custody or presumed custody by a law enforcement officer, is under arrest as
7 defined in 46-1-202, or would likely be placed under arrest except for the person's need for immediate medical
8 attention.
9 (2) If a person who meets the requirements in subsection (1) requires medical treatment, the person is
10 responsible for costs incurred by a hospital or provider for the medical treatment. These medical costs include
11 costs associated with:
12 (a) the treatment of a person's condition or injury that is directly attributable to the person's interaction
13 with a law enforcement officer, including but not limited to gunshot wounds, fractures, open wounds that require
14 suturing, and crushing injuries;
15 (b) a person's illness or condition that began or injuries that were sustained before the person's direct
16 interaction with a law enforcement officer;
17 (c) self-inflicted injuries while in custody; and
18 (d) injuries incurred while unlawfully resisting arrest or attempting to avoid arrest, including injuries
19 sustained in a high-speed chase.
20 (3) If a person is found to be able to pay for the person's medical costs as provided in subsection (2),
21 the hospital and provider that treat the person shall collect the cost of the treatment from the person or may
22 pursue reimbursement from a third-party payor for the services provided.
23 (4) (a) If a hospital or provider is unable to recover the cost of treatment from the person, the county, as
24 provided in subsection (4)(b), is responsible for reimbursing the hospital and the provider for services incurred
25 by the hospital and the provider:
26 (i) in the treatment of a person's condition or injury that is directly attributable to the person's interaction
27 with a law enforcement officer, including but not limited to gunshot wounds, fractures, open wounds that require
28 suturing, and crushing injuries;
29 (ii) for drug or alcohol testing administered at the request of the county or law enforcement officer; and
30 (iii) for a medical screening examination prior to incarceration administered at the request of the county

1 or law enforcement officer.

2 (b) The county that is responsible for reimbursing the hospital or provider for services rendered is the
3 county in which the person's interaction with law enforcement originated.

4 (c) The county shall provide all additional security required by a hospital while the person is receiving
5 medical treatment. The county may not bill the hospital for costs of providing security for the person.

6 (d) Reimbursement under this subsection (4) must be made within 30 days at the medicaid
7 reimbursement rate or at a rate that is 70% of the provider's customary charge, whichever is greater.

8 (5) If the hospital or provider is reimbursed by the person or the third-party payor after the hospital or
9 physician has been reimbursed by the county, the hospital or provider shall refund to the county the amount that
10 the hospital or provider was paid by the county for the services provided to the person in custody or presumed
11 custody.

12 (6) Inability to pay may not be a factor in providing necessary medical care.

13 (7) This section does not restrict a person's right to use a third-party payor.

14 (8) The county may seek reimbursement of medical costs and security costs from the account provided
15 for in [section 2] that exceed \$10,000 per individual.

16 (9) As used in this section, the following definitions apply:

17 (a) "Hospital" means a critical access hospital as defined in 50-5-101 or a hospital as defined in
18 50-5-101.

19 (b) "Law enforcement officer" means a law enforcement officer as defined in 7-32-201 or a highway
20 patrol officer.

21 (c) "Provider" means a licensed physician, physician assistant, or advanced practice registered nurse
22 who is practicing within the scope of the license issued by the department of labor and industry.

23

24 **NEW SECTION. Section 2. Medical reimbursement special revenue account to fund medical costs**
25 **-- statutory appropriation -- department of justice.** (1) There is a medical reimbursement account in the state
26 special revenue fund provided for in 17-2-102.

27 (2) The money in the account is statutorily appropriated, as provided in 17-7-502, to the department of
28 justice to fund certain medical costs pursuant to [section 1].

29

30 **Section 3.** Section 7-32-2245, MCA, is amended to read:

1 **"7-32-2245. Payment of confinement and medical costs by inmate.** (1) An inmate found by the
 2 sentencing court to have the ability to pay is liable for the costs, including actual medical costs, of the inmate's
 3 confinement in a detention center. The rate for confinement costs must be determined in accordance with
 4 46-18-403. Confinement costs, other than actual medical costs, must be ordered by the court and must be paid
 5 in advance of confinement and prior to payment of any fine.

6 (2) If an inmate requires medical treatment, the inmate is responsible for medical costs associated with:

7 (a) preexisting conditions;

8 (b) self-inflicted injuries while in custody;

9 (c) injuries incurred while in custody if the injuries are not the result of negligent or intentionally torturous
 10 acts committed by the detention center administrator or a member of the administrator's staff;

11 (d) injuries incurred during the commission of a crime or while unlawfully resisting arrest or attempting
 12 to avoid an arrest; and

13 (e) any other injuries or illnesses that are not the responsibility of other entities as provided in 7-32-2224
 14 and 7-32-2242(3).

15 (3) (a) If an inmate is found to be able to pay for the inmate's medical costs, as provided in subsections
 16 (1) and (2), the health care provider who treats the inmate shall collect the cost of the treatment from the inmate
 17 or the detention center administrator may arrange with the health care provider to pursue reimbursement from
 18 a third-party payor for the services provided.

19 (b) If the health care provider is unable to collect from the inmate or third-party payor ~~within 120 days~~
 20 ~~from the date of the service~~, the county is responsible for reimbursing the health care provider within 30 days for
 21 the services at:

22 ~~(i) the medicaid reimbursement rate or at a rate that is 70% of the provider's customary charges,~~
 23 ~~whichever is greater; or~~

24 ~~(ii) a negotiated rate.~~

25 (c) If the health care provider is reimbursed by the inmate or the third-party payor after the provider has
 26 been reimbursed by the county, the provider shall refund to the county the amount that the provider ~~had been~~ was
 27 paid by the county for the services provided to the inmate.

28 (4) Inability to pay may not be a factor in providing necessary medical care for an inmate.

29 (5) This section does not restrict an inmate's right to use a third-party payor.

30 (6) If a city or town is the arresting agency and commits a person to the detention center of the county

1 in which the city or town is located, the inmate is responsible for the inmate's medical expenses and the
 2 provisions of this section apply."

3

4 **Section 4.** Section 17-7-502, MCA, is amended to read:

5 **"17-7-502. Statutory appropriations -- definition -- requisites for validity.** (1) A statutory
 6 appropriation is an appropriation made by permanent law that authorizes spending by a state agency without the
 7 need for a biennial legislative appropriation or budget amendment.

8 (2) Except as provided in subsection (4), to be effective, a statutory appropriation must comply with both
 9 of the following provisions:

10 (a) The law containing the statutory authority must be listed in subsection (3).

11 (b) The law or portion of the law making a statutory appropriation must specifically state that a statutory
 12 appropriation is made as provided in this section.

13 (3) The following laws are the only laws containing statutory appropriations: 2-17-105; 5-11-120;
 14 5-11-407; 5-13-403; 7-4-2502; 10-1-1202; 10-1-1303; 10-2-603; 10-3-203; 10-3-310; 10-3-312; 10-3-314;
 15 10-4-301; 15-1-121; 15-1-218; 15-23-706; 15-31-906; 15-35-108; 15-36-332; 15-37-117; 15-39-110; 15-65-121;
 16 15-70-101; 15-70-369; 15-70-601; 16-11-509; 17-3-106; 17-3-212; 17-3-222; 17-3-241; 17-6-101; 17-7-304;
 17 18-11-112; 19-3-319; 19-6-404; 19-6-410; 19-9-702; 19-13-604; 19-17-301; 19-18-512; 19-19-305; 19-19-506;
 18 19-20-604; 19-20-607; 19-21-203; 20-8-107; 20-9-534; 20-9-622; 20-26-1503; 22-3-1004; 23-4-105; 23-4-202;
 19 23-4-204; 23-4-302; 23-4-304; 23-5-306; 23-5-409; 23-5-612; 23-7-301; 23-7-402; 37-43-204; 37-51-501;
 20 39-71-503; 41-5-2011; 42-2-105; 44-1-504; 44-12-206; 44-13-102; [section 2]; 50-4-623; 53-1-109; 53-6-703;
 21 53-24-108; 53-24-206; 60-11-115; 61-3-415; 69-3-870; 75-1-1101; 75-5-1108; 75-6-214; 75-11-313; 76-13-150;
 22 77-1-108; 77-2-362; 80-2-222; 80-4-416; 80-5-510; 80-11-518; 82-11-161; 87-1-513; 90-1-115; 90-1-205;
 23 90-3-1003; and 90-9-306.

24 (4) There is a statutory appropriation to pay the principal, interest, premiums, and costs of issuing,
 25 paying, and securing all bonds, notes, or other obligations, as due, that have been authorized and issued
 26 pursuant to the laws of Montana. Agencies that have entered into agreements authorized by the laws of Montana
 27 to pay the state treasurer, for deposit in accordance with 17-2-101 through 17-2-107, as determined by the state
 28 treasurer, an amount sufficient to pay the principal and interest as due on the bonds or notes have statutory
 29 appropriation authority for the payments. (In subsection (3): pursuant to sec. 10, Ch. 360, L. 1999, the inclusion
 30 of 19-20-604 terminates when the amortization period for the teachers' retirement system's unfunded liability is

1 10 years or less; pursuant to sec. 4, Ch. 497, L. 1999, the inclusion of 15-38-202 terminates July 1, 2014;
2 pursuant to sec. 10(2), Ch. 10, Sp. L. May 2000, and secs. 3 and 6, Ch. 481, L. 2003, the inclusion of 15-35-108
3 terminates June 30, 2010; pursuant to sec. 17, Ch. 593, L. 2005, the inclusion of 15-31-906 terminates January
4 1, 2010; pursuant to sec. 73, Ch. 44, L. 2007, the inclusion of 19-6-410 terminates upon the death of the last
5 recipient eligible under 19-6-709(2) for the supplemental benefit provided by 19-6-709; and pursuant to sec. 6,
6 Ch. 2, Sp. L. September 2007, the inclusion of 76-13-150 terminates June 30, 2009.)"

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8 **NEW SECTION. Section 5. Fund transfer.** There is transferred \$250,000 for each fiscal year of the
9 biennium beginning July 1, 2009, from the state general fund to the special revenue account created in [section
10 2].

11
12 **NEW SECTION. Section 6. Codification instruction.** [Sections 1 and 2] are intended to be codified
13 as an integral part of Title 46, chapter 6, and the provisions of Title 46, chapter 6, apply to [sections 1 and 2].

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15 **NEW SECTION. Section 7. Effective date.** [This act] is effective on passage and approval.

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17 **NEW SECTION. Section 8. Applicability.** [This act] applies to medical costs, as provided in [section
18 1], incurred on or after [the effective date of this act].

19 - END -