

2020 Regular Session

SENATE BILL NO. 361

BY SENATOR MIZELL

CORRECTIONAL FACILITIES. Prohibits elective surgical, medical, and dental procedures for prison inmates. (8/1/20)

1 AN ACT

2 To amend and reenact the introductory paragraph of R.S. 15:824(B)(1)(c) and 831(A) and

3 to enact R.S. 15:831(E) and (F), relative to the healthcare of inmates in corrections

4 facilities; to provide for certain restrictions related to the delivery of certain surgical

5 procedures available to inmates; to provide for restrictions related to the performance

6 of certain health, medical, and dental services performed for inmates; to prohibit

7 elective surgical, medical, and dental services; to provide for certain requirements

8 related to prescription medications prescribed to inmates; to provide for reports; to

9 provide for legislative intent; and to provide for related matters.

10 Be it enacted by the Legislature of Louisiana:

11 Section 1. The introductory paragraph of R.S. 15:824(B)(1)(c) and 831(A) are  
12 hereby amended and reenacted and R.S. 15:831(E) and (F) are hereby enacted to read as  
13 follows:

14 §824. Commitment of persons to the Department of Public Safety and Corrections

15 B.(1) \* \* \*

16 (c) In addition, the department shall reimburse the cost of extraordinary  
17 medical expenses incurred in emergency circumstances when the health of the

1 inmate requires the use of the closest services available, so long as such medical  
 2 expenses are for services which meet the requirements of R.S. 15:831(E). The  
 3 department shall not be liable to pay to a health care provider for health care services  
 4 provided to a prisoner in an amount greater than the lesser of the actual amount  
 5 billed by the health care provider, one hundred ten percent of the Medicare rate of  
 6 compensation, or the health care provider's actual costs, unless the rate of  
 7 compensation for such health care services is subject to a contractual agreement  
 8 entered into between the department and the health care provider. The rate provided  
 9 for herein shall be reevaluated by the legislature prior to a rate being established for  
 10 Fiscal Year 2010-2011. The department shall require an inmate to file a claim for  
 11 reimbursement with any available health or medical insurer in accordance with R.S.  
 12 15:831. The department, subject to appropriation by the legislature, shall also  
 13 reimburse the cost of medical care incurred when the health of the inmate requires  
 14 hospitalization and all of the following occur:

15 \* \* \*

16 §831. Medical care of inmates; testing; **restrictions; reporting**

17 A. The secretary of the Department of Public Safety and Corrections shall  
 18 establish and shall prescribe standards for health, medical, and dental services for  
 19 each institution, including preventive, diagnostic, and therapeutic measures on both  
 20 an outpatient and a hospital basis, for all types of patients, so long as the services  
 21 provided meet the requirements of Subsection E of this Section. An inmate may  
 22 be taken to a medical facility outside the institution when deemed necessary by the  
 23 director. However, in situations which are not life-threatening, the medical facility  
 24 selected to treat the inmate shall be a part of the state's charity hospital system. In  
 25 emergency situations where treatment by a state charity hospital is not available or  
 26 feasible, the inmate may receive emergency treatment at the nearest private medical  
 27 facility. As soon as practicable, the inmate should be transferred to a facility operated  
 28 by the state's charity hospital system. Notwithstanding any law to the contrary, all  
 29 payments to private hospitals or health care providers shall be governed by R.S.

1 15:824(B)(1)(c). No monies appropriated to the department from the state general  
 2 fund or from dedicated funds shall be used for medical costs associated with organ  
 3 transplants for inmates or for the purposes of providing cosmetic medical treatment  
 4 of inmates, unless the condition necessitating such treatment or organ transplant  
 5 arises or results from an accident or situation which was the fault of the department  
 6 or resulted from an action or lack of action on the part of the department. However,  
 7 nothing in this Section shall prohibit an inmate from donating his vital organs for  
 8 transplant purposes. **No monies appropriated to the department from the state**  
 9 **general fund or from dedicated funds shall be used for health, medical, and**  
 10 **dental services unless those costs meet the requirements provided for in R.S.**  
 11 **15:831(E).**

12 \* \* \*

13 **E. On or after August 1, 2020, no inmate shall receive any surgery or**  
 14 **any health, medical, or dental service unless the surgery or service meets all of**  
 15 **the following criteria:**

16 **(1) Is medically necessary.**

17 **(2) Is not an elective procedure.**

18 **(3) Is one of the following:**

19 **(a) A surgery or a health, medical, or dental service that is on the list**  
 20 **promulgated by the Louisiana Department of Health as an approved service**  
 21 **available for use by Louisiana Medicaid participants.**

22 **(b) A prescription medication that is on the Louisiana Medicaid single**  
 23 **preferred drug list or is an over-the-counter medication.**

24 **F.(1) The legislative auditor shall review all medical billing statements**  
 25 **and information related to all surgeries and all health, medical, or dental**  
 26 **services provided to inmates pursuant to this Section during the 2017-2018, the**  
 27 **2018-2019, the 2019-2020, and the first half of the 2020-2021 Fiscal Years and**  
 28 **shall prepare a report to the legislature.**

29 **(2) The report to the legislature shall be delivered to the president of the**

1 Senate and the speaker of the House of Representatives no later than February  
2 15, 2021.

3 (3) The report to the legislature shall include all of the following:

4 (a) The number of surgeries performed as well as the number of health,  
5 medical, and dental services rendered to inmates during the 2017-2018, the  
6 2018-2019, and the 2019-2020 Fiscal Years and the number of those surgeries  
7 and services which were elective in nature.

8 (b) The percentage of name brand medications which were prescribed  
9 to inmates in comparison with generic medications or similar over-the-counter  
10 medications.

11 (c) The amount of reduced costs from the use of the Medicaid approved  
12 treatment list and the Medicaid single preferred drug list in the first half of the  
13 2020-2021 Fiscal Year in comparison with the three previous fiscal years where  
14 no such controls were in place.

15 (d) Recommendations for efficiencies which can improve the delivery of  
16 medically necessary surgical and health, medical, and dental services to inmates  
17 in corrections facilities while reducing any unnecessary costs for such delivery.

18 Section 2. Nothing in this Act shall be construed to authorize the payment of  
19 Medicaid funds for the healthcare of any inmate housed in a correctional facility in violation  
20 of 42 Code of Federal Regulations 435.1010. It is the intent of the legislature that the use  
21 of the Medicaid-approved list of services as well as the Medicaid single preferred drug list  
22 promulgated by the Louisiana Department of Health shall be for the sole purpose of  
23 providing a control list of health, medical, and dental services, surgeries, and medications  
24 which may be utilized by inmates in correctional facilities so long as they are medically  
25 necessary and are not elective procedures.

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The original instrument and the following digest, which constitutes no part  
of the legislative instrument, were prepared by Carla S. Roberts.

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SB 361 Original

DIGEST  
2020 Regular Session

Mizell

Present law provides that the secretary of the Dept. of Public Safety and Corrections will

establish and prescribe standards for health, medical, and dental services for each prison, including preventive, diagnostic, and therapeutic measures on both an outpatient and a hospital basis, for all types of patients.

Present law provides that payments to private hospitals or healthcare providers for healthcare services provided to a prisoner in an amount greater than the lesser of the actual amount billed by the healthcare provider, 110% Medicare rate of compensation, or the healthcare provider's actual costs, unless the rate of compensation for such healthcare services is subject to a contractual agreement entered into between the department and the healthcare provider.

Present law provides that no monies appropriated to the department from the state general fund or from dedicated funds shall be used for medical costs associated with organ transplants for inmates or for the purposes of providing cosmetic medical treatment of inmates, unless the condition necessitating such treatment or organ transplant arises or results from an accident or situation which was the fault of the department or resulted from an action or lack of action on the part of the department.

Proposed law retains present law but provides that, on or after August 1, 2020, no inmate shall receive any medical treatment or service unless the treatment or service meets the following criteria:

- (1) Is medically necessary.
- (2) Is not an elective procedure.
- (3) Is a surgery or a health, medical, or dental service that is on the list of approved services promulgated by the La. Dept. of Health as available for use by a Louisiana Medicaid participant or is a prescription medication which is on the La. Medicaid single preferred drug list or is an over-the-counter medication.

Proposed law provides that the legislative auditor shall review all medical billing statements and information related to all surgeries and health, medical, or dental services provided to prison inmates pursuant to present law during the 2017-2018, the 2018-2019, and the 2019-2020 Fiscal Years and pursuant to proposed law for the first half of the 2020-2021 Fiscal Year and will prepare a report to the legislature. The report to the legislature will be delivered to the president of the Senate and the speaker of the House of Representatives no later than February 15, 2021, and will include all of the following:

- (1) The number of surgeries performed as well as the number of health, medical, and dental services rendered to inmates during the 2017-2018, the 2018-2019, and the 2019-2020 Fiscal Years and the number of those surgeries and services that were elective in nature.
- (2) The percentage of name brand medications which were prescribed to inmates in comparison with generic medications or similar over-the-counter medications.
- (3) The amount of reduced costs from the use of the Medicaid-approved treatment list and the Medicaid single preferred drug list in the first half of the 2020-2021 Fiscal Year in comparison with the three previous fiscal years where no such controls were in place.
- (4) Recommendations for efficiencies which can improve the delivery of medically necessary health, medical, and dental services to inmates in corrections facilities while reducing any unnecessary costs for such delivery.

Proposed law provides that nothing in proposed law is to be construed to authorize the payment of Medicaid funds for the medical care of any inmate housed in a correctional facility in violation of federal Medicaid law. Proposed law further provides that it is the

intent of the legislature that the use of the Medicaid-approved list of treatments, surgeries, and procedures as well as the Medicaid single preferred drug list promulgated by the La. Dept. of Health shall be for the sole purpose of providing a control list of those approved treatments, surgeries, and medications which may be utilized by inmates in correctional facilities so long as they are medically necessary and are not elective procedures.

Effective August 1, 2020.

(Amends R.S. 15:824(B)(1)(c)(intro para) and 831(A); adds R.S. 15:831(E) and (F))