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FIRST REPRINT

A.B. 389

ASSEMBLY BILL NO. 389—COMMITTEE ON  
HEALTH AND HUMAN SERVICES

MARCH 23, 2023

Referred to Committee on Health and Human Services

SUMMARY—Revises provisions governing Medicaid.  
(BDR 38-977)

FISCAL NOTE: Effect on Local Government: No.  
Effect on the State: Yes.

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EXPLANATION – Matter in *bolded italics* is new; matter between brackets [omitted material] is material to be omitted.

AN ACT relating to Medicaid; requiring the Medicaid program to provide certain coverage for certain persons who are incarcerated; and providing other matters properly relating thereto.

**Legislative Counsel's Digest:**

Existing law requires the Department of Health and Human Services to administer Medicaid. (NRS 422.270) Existing law requires the Department to authorize a person who is incarcerated to apply for enrollment in Medicaid up to 6 months before the person is scheduled to be released from incarceration. Under existing law, such enrollment is effective immediately upon release. (NRS 422.27487) Existing federal law prohibits federal funding to provide coverage under Medicaid to incarcerated persons. (42 U.S.C. § 1396d(a)(31)(A)) Existing federal law authorizes a state to apply for a waiver of certain provisions of federal law governing Medicaid for the purpose of an experimental, pilot or demonstration project. (42 U.S.C. § 1315) **Section 1** of this bill requires the Director of the Department to apply for such a waiver for the purpose of providing under Medicaid coverage of certain services for incarcerated youths and incarcerated persons with certain health conditions for not more than 90 days before the scheduled release of such persons. **Sections 1 and 4.5** of this bill require the screening of incarcerated persons to determine eligibility for such coverage. **Section 4** of this bill makes a conforming change to indicate that the provisions of **section 1** will be administered in the same manner as the provisions of existing law governing the State Plan for Medicaid. **Sections 2 and 3** of this bill make conforming changes to reflect the eligibility of certain incarcerated persons for Medicaid pursuant to **section 1**. **Sections 1.5 and 2.5** of this bill make conforming changes to reflect that federal law requires services provided under a federal waiver to be included in a waiver document that is separate from the State Plan for Medicaid.



\* A B 3 8 9 R 1 \*

THE PEOPLE OF THE STATE OF NEVADA, REPRESENTED IN  
SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

**Section 1.** Chapter 422 of NRS is hereby amended by adding thereto a new section to read as follows:

*1. The Director shall, to the extent that federal financial participation is available, include under Medicaid coverage for limited services for persons described in subsection 2 who are incarcerated, for not more than 90 days before the scheduled release of such persons. Such services must include, without limitation:*

- (a) Case management;*
- (b) Consultations with providers of physical and behavioral health care;*
- (c) Laboratory and radiology services;*
- (d) Prescription drugs, including, without limitation, medication-assisted treatment; and*
- (e) The services of a community health worker.*

*2. A person is eligible for the coverage described in subsection 1 if the person would otherwise be eligible for Medicaid if he or she were not incarcerated and:*

- (a) Is under 18 years of age;*
- (b) Has been diagnosed with:*
  - (1) A mental illness;*
  - (2) Substance use disorder;*
  - (3) A chronic disease or other significant disease;*
  - (4) An intellectual disability;*
  - (5) A developmental disability;*
  - (6) A traumatic brain injury; or*
  - (7) Human immunodeficiency virus; or*
- (c) Is pregnant or not more than 12 weeks postpartum.*

*3. The Department shall apply to the Secretary of Health and Human Services for a waiver granted pursuant to 42 U.S.C. § 1315 that authorizes the Department to receive federal funding to provide the coverage required by this section. The Department shall fully cooperate in good faith with the Federal Government during the application process to satisfy the requirements of the Federal Government for obtaining a waiver pursuant to this section.*

*4. If the Secretary of Health and Human Services grants the waiver applied for pursuant to subsection 3, the Department of Corrections shall coordinate with the Department of Health and Human Services on an ongoing basis to ensure persons described in subsection 2 who are incarcerated are screened and identified for eligibility to receive the coverage described in subsection 1.*



5. As used in this section:

(a) "Chronic disease" means a health condition or disease which presents for a period of 3 months or more or is persistent, indefinite or incurable.

(b) "Community health worker" has the meaning ascribed to it in NRS 449.0027.

(c) "Developmental disability" has the meaning ascribed to it in NRS 433.069.

(d) "Intellectual disability" has the meaning ascribed to it in NRS 433.099.

(e) "Medication-assisted treatment" means treatment for an opioid use disorder using medication approved by the United States Food and Drug Administration for that purpose.

(f) "Mental illness" means any mental dysfunction leading to the impaired ability of a person to maintain himself or herself and to function effectively in his or her life situation without external support.

(g) "Traumatic brain injury" means a sudden shock or damage to the brain or its coverings which is not of a degenerative nature and produces an altered state of consciousness or temporarily or permanently impairs the mental, cognitive, behavioral or physical functioning of the brain. The term does not include:

(1) A cerebral vascular accident;

(2) An aneurism; or

(3) A congenital defect.

**Sec. 1.5.** NRS 422.27248 is hereby amended to read as follows:

422.27248 1. The Department shall apply to the Secretary of Health and Human Services for a waiver granted pursuant to 42 U.S.C. § 1315 that authorizes the Department to receive federal funding to ~~[include in the State Plan for Medicaid]~~ **provide** coverage **under Medicaid** for the treatment of the substance use disorder of a person who is in an institution for mental diseases.

2. The Department may apply to the Secretary of Health and Human Services for a waiver granted pursuant to 42 U.S.C. § 1315 that authorizes the Department to receive federal funding to ~~[include in the State Plan for Medicaid]~~ **provide** coverage **under Medicaid** for the treatment of an adult with a serious mental illness or a child with a serious emotional disturbance in an institution for mental diseases.

3. The Department shall cooperate with the Federal Government in obtaining:

(a) A waiver pursuant to subsection 1; and



(b) Any waiver for which the Department applies pursuant to subsection 2.

4. As used in this section:

(a) "Adult with a serious mental illness" means a person who is at least 18 years of age and has been diagnosed within the immediately preceding 12 months as having a mental, behavioral or emotional disorder as defined in the most recent version of the Diagnostic and Statistical Manual of Mental Disorders published by the American Psychiatric Association, other than an addictive disorder, intellectual or developmental disability, irreversible dementia or a substance use disorder, which interferes with or limits one or more major life activities of the person.

(b) "Child with a serious emotional disturbance" means a person who is less than 18 years of age and has been diagnosed within the immediately preceding 12 months as having a mental, behavioral or emotional disorder as defined in the most recent version of the Diagnostic and Statistical Manual of Mental Disorders published by the American Psychiatric Association, other than a disorder designated as a Code V disorder in the Manual, a developmental disability or a substance use disorder, which substantially interferes with or limits the person from developing social, behavioral, cognitive, communicative or adaptive skills or his or her activities relating to family, school or community. The term does not include a person with a disorder which is temporary or is an expected response to a stressful event.

(c) "Developmental disability" has the meaning ascribed to it in NRS 435.007.

(d) "Institution for mental diseases" has the meaning ascribed to it in 42 U.S.C. § 1396d(i).

(e) "Intellectual disability" has the meaning ascribed to it in NRS 435.007.

**Sec. 2.** NRS 422.27487 is hereby amended to read as follows:

422.27487 1. To the extent not prohibited by federal law, the Department shall:

(a) Suspend, rather than terminate, the eligibility for Medicaid of a person who is incarcerated for the amount of time authorized by regulation pursuant to subsection 2;

(b) Authorize a person who is incarcerated and was not eligible for Medicaid before being incarcerated or whose eligibility for Medicaid has been terminated to apply up to 6 months before his or her scheduled release for enrollment in Medicaid immediately upon release ~~(H)~~, *except where such a person is authorized to enroll earlier pursuant to section 1 of this act*; and

(c) Reinstate or institute, as applicable, eligibility for and coverage under Medicaid for a person described in paragraph (a) or



(b) as soon as possible upon his or her release from incarceration if the person otherwise meets the requirements to be eligible for Medicaid at that time.

2. The Department may adopt any regulations necessary to carry out the provisions of this section, including, without limitation, regulations that prescribe the amount of time that the eligibility for Medicaid of a person may be suspended pursuant to paragraph (a) of subsection 1 before being terminated.

**Sec. 2.5.** NRS 422.396 is hereby amended to read as follows:

422.396 1. The Department, through a division of the Department designated by the Director, shall establish and administer a program to provide community-based services necessary to enable a person with a physical disability to remain in his or her home or with his or her family and avoid placement in a facility for long-term care. The Department shall coordinate the provision of community-based services pursuant to this section.

2. The Department shall apply to the Secretary of Health and Human Services for a waiver granted pursuant to 42 U.S.C. § 1396n(c) *or apply for an amendment to the State Plan for Medicaid* that authorizes ~~[the Department to amend the State Plan for Medicaid adopted by the Department pursuant to NRS 422.063 in order to authorize]~~ the Department to include as medical assistance under ~~[the State Plan]~~ *Medicaid* the following services for persons with physical disabilities:

- (a) Respite care;
- (b) Habilitation;
- (c) Residential habilitation;
- (d) Environmental modifications;
- (e) Supported living;
- (f) Supported living habilitation;
- (g) Supported personal care; and
- (h) Any other community-based services approved by the Secretary of Health and Human Services.

➡ The Department shall cooperate with the Federal Government in obtaining a waiver *or amendment* pursuant to this subsection.

3. The Department may use personnel of the Department or it may contract with any appropriate public or private agency, organization or institution to provide the community-based services necessary to enable a person with a physical disability to remain in his or her home or with his or her family and avoid placement in a facility for long-term care.

4. A contract entered into with a public or private agency, organization or institution pursuant to subsection 3 must:

- (a) Include a description of the type of service to be provided;



(b) Specify the price to be paid for each service and the method of payment; and

(c) Specify the criteria to be used to evaluate the provision of the service.

5. The Department shall adopt regulations necessary to carry out the provisions of this section, including, without limitation, the criteria to be used in determining eligibility for the services provided pursuant to the program. Before adopting regulations pursuant to this section, the Department shall solicit comments from persons with a variety of disabilities and members of the families of those persons.

6. As used in this section, "person with a physical disability" means a person with a severe physical disability that substantially limits his or her ability to participate and contribute independently in the community in which the person lives.

**Sec. 3.** NRS 209.511 is hereby amended to read as follows:

209.511 1. Before an offender is released from prison by expiration of his or her term of sentence, by pardon or parole, the Director may provide mediation services to the offender and the family members and friends of the offender who provide emotional, psychological and financial support to the offender.

2. As soon as practicable after an offender is authorized to apply for enrollment in Medicaid pursuant to NRS 422.27487 ~~§~~ *or section 1 of this act*, the Director shall complete the paperwork for the application if the offender may be eligible for Medicaid :

*(a) Not more than 90 days before the scheduled release of the offender pursuant to section 1 of this act; or*

*(b) Immediately upon the scheduled release ~~§~~ of the offender pursuant to NRS 422.27487.*

3. Not later than 3 months before an offender is projected to be released from prison by expiration of his or her term of sentence, by pardon or parole, the Director may, if space is available, provide an eligible offender with one or more evidence-based or promising practice reentry programs to obtain employment, including, without limitation, any programs which may provide bonding for an offender entering the workplace and any organizations which may provide employment or bonding assistance to such a person.

4. When an offender is released from prison by expiration of his or her term of sentence, by pardon or by parole, the Director:

(a) May furnish the offender with a sum of money not to exceed \$100, the amount to be based upon the offender's economic need as determined by the Director;

(b) Shall give the offender notice of the provisions of chapter 179C of NRS and NRS 202.357 and 202.360;



(c) Shall require the offender to sign an acknowledgment of the notice required in paragraph (b);

(d) Shall give the offender notice of the provisions of NRS 179.245 and the provisions of NRS 213.090, 213.155 or 213.157, as applicable;

(e) Shall provide the offender with a photo identification card issued by the Department and information and reasonable assistance relating to acquiring a valid driver's license or identification card to enable the offender to obtain employment, if the offender:

(1) Requests a photo identification card;

(2) Requests such information and assistance and is eligible to acquire a valid driver's license or identification card from the Department of Motor Vehicles; or

(3) Is not currently in possession of a photo identification card;

(f) Shall provide the offender with clothing suitable for reentering society;

(g) Shall provide the offender with the cost of transportation to his or her place of residence anywhere within the continental United States, or to the place of his or her conviction;

(h) If appropriate, shall release the offender to a facility for transitional living for released offenders that is licensed pursuant to chapter 449 of NRS;

(i) Shall require the offender to submit to at least one test for exposure to the human immunodeficiency virus;

(j) If the offender is eligible for Medicare, shall complete enrollment application paperwork for the offender; and

(k) If the offender was receiving a prescribed medication while in custody, shall ensure that the offender is provided with a 30-day supply of any such prescribed medication.

5. The Director shall not provide an offender with a photo identification card pursuant to paragraph (e) of subsection 4 unless the photo identification card clearly indicates whether the Director:

(a) Has verified the full legal name and age of the offender by obtaining an original or certified copy of the documents required by the Department of Motor Vehicles pursuant to NRS 483.290 or 483.860, as applicable, furnished as proof of the full legal name and age of an applicant for a driver's license or identification card; or

(b) Has not verified the full legal name and age of the offender pursuant to paragraph (a).

6. The costs authorized or required in paragraphs (a), (e), (f), (g), (i) and (k) of subsection 4 must be paid out of the appropriate account within the State General Fund for the use of the Department as other claims against the State are paid to the extent that the costs



1 have not been paid in accordance with subsection 5 of NRS 209.221  
2 and NRS 209.246.

3 7. The Director is encouraged to work with the Nevada  
4 Community Re-Entry Task Force established by the Governor  
5 pursuant to executive order, or its successor body, if any, to align  
6 statewide strategies for the reentry of offenders into the community  
7 and the implementation of those strategies.

8 8. As used in this section:

9 (a) "Eligible offender" means an offender who is:

10 (1) Determined to be eligible for reentry programming based  
11 on the Nevada Risk Assessment System instrument, or its successor  
12 risk assessment tool; and

13 (2) Enrolled in:

14 (I) Programming services under a reentry program at a  
15 correctional facility which has staff designated to provide the  
16 services; or

17 (II) A community-based program to assist offenders to  
18 reenter the community.

19 (b) "Facility for transitional living for released offenders" has  
20 the meaning ascribed to it in NRS 449.0055.

21 (c) "Photo identification card" means a document which  
22 includes the name, date of birth and a color picture of the offender.

23 (d) "Promising practice reentry program" means a reentry  
24 program that has strong quantitative and qualitative data showing  
25 positive outcomes, but does not have sufficient research or  
26 replication to support recognition as an evidence-based practice.

27 **Sec. 4.** NRS 232.320 is hereby amended to read as follows:

28 232.320 1. The Director:

29 (a) Shall appoint, with the consent of the Governor,  
30 administrators of the divisions of the Department, who are  
31 respectively designated as follows:

32 (1) The Administrator of the Aging and Disability Services  
33 Division;

34 (2) The Administrator of the Division of Welfare and  
35 Supportive Services;

36 (3) The Administrator of the Division of Child and Family  
37 Services;

38 (4) The Administrator of the Division of Health Care  
39 Financing and Policy; and

40 (5) The Administrator of the Division of Public and  
41 Behavioral Health.

42 (b) Shall administer, through the divisions of the Department,  
43 the provisions of chapters 63, 424, 425, 427A, 432A to 442,  
44 inclusive, 446 to 450, inclusive, 458A and 656A of NRS, NRS  
45 127.220 to 127.310, inclusive, 422.001 to 422.410, inclusive, *and*





*section 1 of this act*, 422.580, 432.010 to 432.133, inclusive, 432B.6201 to 432B.626, inclusive, 444.002 to 444.430, inclusive, and 445A.010 to 445A.055, inclusive, and all other provisions of law relating to the functions of the divisions of the Department, but is not responsible for the clinical activities of the Division of Public and Behavioral Health or the professional line activities of the other divisions.

(c) Shall administer any state program for persons with developmental disabilities established pursuant to the Developmental Disabilities Assistance and Bill of Rights Act of 2000, 42 U.S.C. §§ 15001 et seq.

(d) Shall, after considering advice from agencies of local governments and nonprofit organizations which provide social services, adopt a master plan for the provision of human services in this State. The Director shall revise the plan biennially and deliver a copy of the plan to the Governor and the Legislature at the beginning of each regular session. The plan must:

(1) Identify and assess the plans and programs of the Department for the provision of human services, and any duplication of those services by federal, state and local agencies;

(2) Set forth priorities for the provision of those services;

(3) Provide for communication and the coordination of those services among nonprofit organizations, agencies of local government, the State and the Federal Government;

(4) Identify the sources of funding for services provided by the Department and the allocation of that funding;

(5) Set forth sufficient information to assist the Department in providing those services and in the planning and budgeting for the future provision of those services; and

(6) Contain any other information necessary for the Department to communicate effectively with the Federal Government concerning demographic trends, formulas for the distribution of federal money and any need for the modification of programs administered by the Department.

(e) May, by regulation, require nonprofit organizations and state and local governmental agencies to provide information regarding the programs of those organizations and agencies, excluding detailed information relating to their budgets and payrolls, which the Director deems necessary for the performance of the duties imposed upon him or her pursuant to this section.

(f) Has such other powers and duties as are provided by law.

2. Notwithstanding any other provision of law, the Director, or the Director's designee, is responsible for appointing and removing subordinate officers and employees of the Department.



**Sec. 4.5.** If the Secretary of Health and Human Services grants a waiver pursuant to subsection 3 of section 1 of this act to authorize Medicaid to provide the coverage described in section 1 of this act, the Department of Corrections shall cooperate with the Department of Health and Human Services to evaluate incarcerated persons who may be released not later than 6 months after the date on which the waiver is approved to determine which of those persons may be eligible for and benefit from services covered under the waiver.

**Sec. 5.** 1. This section becomes effective upon passage and approval.

2. Sections 1 to 4.5, inclusive, of this act become effective:

(a) Upon passage and approval for the purpose of adopting any regulations and performing any other preparatory administrative tasks that are necessary to carry out the provisions of this act; and

(b) On January 1, 2024, for all other purposes.

