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HOUSE BILL 85

47TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2005

INTRODUCED BY

Mimi Stewart

FOR THE CORRECTIONS OVERSIGHT, COURTS AND JUSTICE COMMITTEE

AN ACT

RELATING TO HEALTH; REQUIRING CERTAIN GOVERNMENTAL ENTITIES TO ASSIST INCARCERATED PERSONS WITH MENTAL DISORDERS OR DEVELOPMENTAL DISABILITIES TO APPLY FOR AND RECEIVE PUBLIC BENEFITS; REQUIRING THE HUMAN SERVICES DEPARTMENT TO ADOPT RULES TO ENSURE THAT AN INCARCERATED PERSON'S FEDERAL SOCIAL SECURITY INCOME, FEDERAL SOCIAL SECURITY DISABILITY INCOME, MEDICAID OR FOOD STAMP BENEFITS STATUS BE SUSPENDED RATHER THAN TERMINATED UPON INCARCERATION; REQUIRING CERTAIN GOVERNMENTAL ENTITIES TO NEGOTIATE FOR A PRERELEASE AGREEMENT WITH THE FEDERAL SOCIAL SECURITY ADMINISTRATION; PROVIDING FOR PHOTO IDENTIFICATION FOR CERTAIN PERSONS UPON RELEASE FROM INCARCERATION.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. SHORT TITLE. -- This act may be cited as the

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1 "Prerelease Benefits Assistance Act".

2 Section 2. PURPOSE OF ACT. --The purpose of the Prerelease
3 Benefits Assistance Act is to facilitate the community
4 reintegration of persons with mental disorders or developmental
5 disabilities upon their release from jail, prison, detention
6 centers or other correctional facilities operated by the state
7 or by a class A county; enhance public safety; and provide
8 cost-effective care by enabling released persons to receive
9 benefits for which they are entitled promptly upon their
10 release from incarceration.

11 Section 3. DEFINITIONS. --As used in the Prerelease
12 Benefits Assistance Act:

13 A. "incarcerated" or "incarceration" means confined
14 in a jail, prison, juvenile detention facility or other
15 detention facility that qualifies as a public institution
16 pursuant to 42 C.F.R. Section 435.1009 and that is operated by
17 the state or by a class A county;

18 B. "mental disorder" means a mental disorder or a
19 developmental disability, as defined in the Mental Health and
20 Developmental Disabilities Code or the Children's Mental Health
21 and Developmental Disabilities Act;

22 C. "prerelease agreement" means a formal agreement
23 between the federal social security administration and a
24 correctional facility providing that the correctional facility
25 and the federal social security administration shall work

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1 collaboratively to ensure that the applications of incarcerated
2 persons with mental disorders for federal supplemental security
3 income and federal social security disability income benefits
4 are promptly processed by the federal social security
5 administration;

6 D. "suspended", when referring to medicaid benefits
7 or food stamp benefits, means to place a person's medicaid or
8 food stamp benefits eligibility in an inactive status, rather
9 than a terminated status, such that while the benefits are
10 suspended the person remains eligible for medicaid and food
11 stamps and continues on the state programs; provided that
12 benefits are not payable for services furnished while the
13 person is incarcerated; and

14 E. "suspended", when referring to the federal
15 supplemental security income program or the federal social
16 security disability income program, means to stop cash payments
17 to a person upon incarceration.

18 Section 4. MEDICAID AND FOOD STAMPS ELIGIBILITY--
19 SUSPENDED BENEFITS-- RESTORATION OF BENEFITS. --

20 A. The human services department shall adopt rules
21 providing that when a person with a mental disorder who is
22 enrolled in the medicaid or food stamp program is incarcerated,
23 the person's eligibility for medicaid or food stamp benefits:

24 (1) shall be suspended and shall remain
25 suspended for as long as permitted by federal law; and

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1 (2) shall not be terminated unless the human
2 services department determines that the person no longer meets
3 the eligibility criteria under which the person had qualified
4 and is not eligible for medicaid or food stamp benefits
5 pursuant to any eligibility category.

6 B. The human services department shall adopt rules
7 providing that when a person with a mental disorder whose
8 medicaid or food stamp benefits eligibility has been suspended
9 due to incarceration is released from incarceration, the
10 person's benefits shall be fully restored unless the human
11 services department determines that the person is no longer
12 eligible for medicaid or food stamp benefits pursuant to any
13 eligibility category.

14 Section 5. APPLICATIONS TO RESTORE BENEFITS-- DISTRIBUTION
15 OF AND ASSISTANCE WITH APPLICATIONS. --

16 A. The human services department, in conjunction
17 with the corrections department, the children, youth and
18 families department and administrators of jails and delinquency
19 facilities operating in a class A county, shall seek to ensure
20 the prompt restoration of benefits to an incarcerated person
21 with a mental disorder whose eligibility for federal
22 supplemental security income, federal social security
23 disability income, medicaid or food stamp benefits has been
24 suspended or terminated during incarceration. These agencies
25 shall take reasonable actions to ensure that cash benefits are

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1 reinstated in the month of the person's release and that
2 medicaid and food stamp benefits are reinstated upon release.

3 The agencies shall take reasonable actions to:

4 (1) identify incarcerated persons with mental
5 disorders whose federal supplemental security income, federal
6 social security disability income, medicaid or food stamp
7 benefits were suspended during incarceration and ask those
8 persons if they wish to receive benefits upon their release;

9 (2) ensure that, if an incarcerated person
10 with a mental disorder wishes to receive benefits upon release,
11 the person is given an application for reinstatement of
12 benefits and assistance in completing and filing the
13 application to the extent practicable at least thirty days
14 prior to the person's release and that the person is given a
15 copy of the person's completed and filed application; and

16 (3) provide assistance to an incarcerated
17 person with a mental disorder throughout the application
18 process from competent staff familiar with the characteristics
19 of successful applications. The assistance may be provided
20 directly or arranged through contracts for services and shall
21 include distribution of application forms, assistance with
22 securing medical and other information required to support an
23 application and assistance with completing and submitting
24 application forms.

25 B. With the permission of the incarcerated person,

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1 a copy of the person's application shall be provided to a
2 family member designated by the person and to any case manager
3 or social worker who will be working with the person upon the
4 person's release. Permission to distribute a copy of an
5 application for a minor under the age of fourteen is not
6 required.

7 Section 6. PRERELEASE AGREEMENT WITH THE SOCIAL SECURITY
8 ADMINISTRATION. --

9 A. The corrections department, the children, youth
10 and families department and administrators of jails and
11 delinquency facilities operating in class A counties shall,
12 within ninety days of the effective date of the Prerelease
13 Benefits Assistance Act, take reasonable action to negotiate a
14 prerelease agreement with the local office of the federal
15 social security administration designed to ensure:

16 (1) prompt consideration by the federal social
17 security administration of applications for federal
18 supplemental security income or federal social security
19 disability income benefits on behalf of incarcerated persons
20 with mental disorders; and

21 (2) that the federal social security
22 administration is informed of the expected and actual release
23 dates of persons with mental disorders whose applications are
24 pending or have been approved.

25 B. Once negotiated, the corrections department, the

1 children, youth and families department and administrators of
2 jails and delinquency facilities operating in class A counties
3 shall implement the provisions of the prerelease agreement as
4 soon as practicable.

5 Section 7. APPLICATIONS FOR INCARCERATED PERSONS
6 TERMINATED FROM OR NOT ENROLLED IN FEDERAL BENEFITS PROGRAMS--
7 PROCEDURES. --

8 A. The human services department, in conjunction
9 with the corrections department, the children, youth and
10 families department and administrators of jails and delinquency
11 facilities operating in class A counties, shall assist
12 incarcerated persons with mental disorders whose eligibility
13 for federal supplemental security income, federal social
14 security disability income, medicaid or food stamp benefits was
15 terminated while incarcerated or who were not receiving
16 benefits at the time they were incarcerated to apply, while
17 incarcerated, to receive benefits upon their release. The
18 human services department shall:

19 (1) establish application procedures for
20 benefits on behalf of incarcerated persons with mental
21 disorders in anticipation of their release; and

22 (2) promptly review the applications and, to
23 the extent practicable, complete that review prior to each
24 person's release; provided that such reviews shall be completed
25 within thirty days from the date of receipt of the person's

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1 application.

2 B. The review as provided in Subsection A of this
3 section shall assess whether the incarcerated person with a
4 mental disorder is eligible to be enrolled in the federal
5 supplemental security income, federal social security
6 disability income, medicaid or food stamp benefits programs or
7 is likely to be eligible for benefits upon release. If the
8 human services department determines that the person is
9 eligible to be enrolled while incarcerated, the person shall be
10 enrolled but the person's benefits eligibility shall be placed
11 on suspended status. The person shall be provided the proper
12 documentation to enable the person to receive benefits
13 effective upon the person's release.

14 C. The agencies designated in Subsection A of this
15 section shall provide assistance to incarcerated persons with
16 mental disorders throughout the application process from
17 competent staff familiar with the characteristics of successful
18 applications. The assistance may be provided directly or
19 arranged through contracts and shall include distribution of
20 application forms, assistance with securing medical and other
21 information required to support applications and assistance
22 with completing and submitting application forms.

23 Section 8. PHOTO IDENTIFICATION.--The corrections
24 department, the children, youth and families department and
25 jails and delinquency facilities operating in class A counties

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1 shall arrange for incarcerated persons with mental disorders to
2 be issued photo identification upon their release.

3 Section 9. AMENDMENT TO STATE MEDICAID PLAN. -- If
4 implementation of the provisions of the Prerelease Benefits
5 Assistance Act requires an amendment to the state medicaid
6 plan, the human services department shall apply for such an
7 amendment within ninety days of the effective date of that act
8 and shall take reasonable actions to obtain federal approval of
9 the amendment.

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