

# PROPOSED RULEMAKING

## DEPARTMENT OF CORRECTIONS

[37 PA. CODE CH. 93]

### State Correctional Institutions and Facilities

The Department of Corrections (Department) acting under the authority conferred by the Prison Medical Services Act (act) (61 P. S. §§ 1011—1017), and Act 53 of 1996, gives public notice of its intention to adopt amendments to Chapter 93 (relating to State correctional institutions and facilities).

The proposed amendment will enable the Department to impose fees on inmates in State correctional institutions and facilities for the provision of certain medical services. The proposed amendment will also require inmates who are covered by medical insurance to pay for the medical services through that insurance as far as the medical insurance policy may allow. The proposed amendment includes formal changes to the regulations. Section 93.12 (relating to care and treatment) is amended to include subsections that contain definitions, specify what medical services will and will not be subject to a fee, require inmates who are covered by medical insurance to pay for the costs of those services through that insurance and describe the procedures to be used for the collection of the fees.

Section 93.12 is first proposed to be amended by designating its current and only subsection as subsection (a). Subsection (b) is proposed to be added to include definitions for the terms "Department," "fee," "inmate," "health care professional" and "medical service." Subsection (c) is added to designate the medical services for which a fee will be charged. Subsection (d) is added to designate the medical services for which a fee will not be charged. Subsection (e) is added to establish the amount of the fee to be charged for certain medical services and when the fee will be assessed. Subsection (e) also confers upon the Department the authority to modify the fee amount upon 60 days written notice to the inmate population. Subsection (f) is added to describe how payment of fees will be accomplished. Subsection (g) is added to require inmates who have medical insurance to pay for their own medical needs through that insurance. Subsection (h) is added to require the Department to include an explanation of the medical service fee program in the *Inmate Handbook*.

#### *Background and Need for the Proposed Amendments*

The amendment is proposed in accordance with the statutory mandate of the act and Act 53 of 1996. The act and Act 53 of 1996 establish the Prison Medical Services Program (Program) within the Department and direct the Department to issue regulations to implement the Program and to require inmates who are covered by medical insurance to pay for their medical needs through that insurance. The act states that the regulations shall specify the medical services which are subject to fees, the fee amounts, payment procedures, medical services that are not subject to fees and fees applicable to medical emergencies, chronic care and preexisting conditions.

Implementation of the Program will result in immediate savings to the taxpayers of this Commonwealth. Inmates will be required to pay for a portion of the

medical services actually used. This is in contrast to the present system where inmates receive free medical services at taxpayer expense. Additionally, it is anticipated that inmates will be less likely to seek and use medical services unnecessarily when they will be partly responsible for paying for those services. The money earned through the assessment of fees for medical services for inmates will be placed in the General Fund.

#### *Fiscal Impact*

The proposed amendment will require that inmates incarcerated within State correctional institutions and facilities pay a \$2 fee for certain medical services provided to them and to pay two-thirds of the total cost of medical services that are provided to another inmate as a result of the paying inmate's assaultive conduct. The proposed amendment will also require inmates who are covered by medical insurance to pay for their medical needs through that insurance. The proposed amendment will have no other direct fiscal impact on the private sector, the general public or political subdivisions. The additional revenue generated through the collection of fees will be deposited in the General Fund as required by the act.

#### *Paperwork Requirements*

The proposed amendment will create minimal additional paperwork for the private sector in that few inmates are covered by medical insurance that would require the filing of many medical claims with private insurance companies. The proposed amendment will not create any additional paperwork for the general public or political subdivisions of this Commonwealth. Minimal additional paperwork will be required for the Department. The Department will collect the fees through an inmate authorization form, which will describe the medical service to be provided and advise the inmate of the fee to be deducted from the inmate's account. The authorization form will then be forwarded to the institution's business office for debiting the inmate's account. The act also requires that the Department conduct an annual audit of the Program and submit an annual report to the Chairpersons and Minority Chairpersons of the Appropriations Committee and the Judiciary Committee of the Senate and the Chairpersons and Minority Chairpersons of the Appropriations Committee and the Judiciary Committee of the House of Representatives.

#### *Regulatory Review*

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on September 24, 1997, the Department submitted a copy of the proposed amendment to the Independent Regulatory Review Commission (IRRC) and the Chairpersons of the House and Senate Judiciary Committees (Committees). In addition to submitting the proposed amendment, the Department has provided IRRC and the Committees with a copy of a detailed Regulatory Analysis Form prepared by the Department in compliance with Executive Order 1996-1, "Improving Government Regulations." A copy of this material is available to the public upon request.

If IRRC has objections to the proposed amendment, it will notify the Department within 10 days of the close of the Committees' comment period. The notification shall specify the regulatory review criteria which have not been met by that portion. The Regulatory Review Act specifies detailed procedures for review, prior to final publication of

the amendments, by the Department, the General Assembly and the Governor of objections raised.

*Statutory Authority*

The Department's authority to establish the Program and impose the fees established by the proposed amendment is set forth in section 3(b) of the act (61 P. S. § 1013(b)) and Act 53 of 1996.

*Effective Date*

The proposed amendment shall be effective upon closure of the public comment period, the regulatory review process and subsequent publication as final rulemaking in the *Pennsylvania Bulletin*.

*Public Comment Period/Contact Person*

Written comments concerning the Department's proposed amendment of § 93.12 shall be submitted to Kathleen Zwierzyna, Director, Bureau of Health Care Services, Pennsylvania Department of Corrections, 2520 Lisburn Road, P.O. Box 598, Camp Hill, PA 17001-0598. Written comments must be received within 30 days of the publication of this notice of proposed rulemaking in the *Pennsylvania Bulletin*.

MARTIN F. HORN,  
*Commissioner*

**Fiscal Note:** 19-1. (1) cost savings to the General Fund as listed; (2) Implementing Year 1996-97 is \$140,000; (3) 1st Succeeding Year 1997-98 is \$180,000; 2nd Succeeding Year 1998-99 is \$185,000; 3rd Succeeding Year 1999-00 is \$191,000; 4th Succeeding Year 2000-01 is \$197,000; 5th Succeeding Year 2001-02 is \$202,000; (4) 1995-96 \$826,878,000; 1994-95 \$720,826,000; 1993-94 \$595,379,000; (7) State Correctional Institutions; (8) recommends adoption. This regulation will also increase revenue to the General Fund from the \$2 inmate fee. The increased revenue is estimated at \$140,000 for Fiscal Year 1996-1997 and \$380,000 annually beginning in Fiscal Year 1997-1998. The increased revenue will augment the State Correctional Institutions Appropriation in the Department of Corrections.

**Annex A**

**TITLE 37. LAW**

**PART III. AGENCIES AND OFFICES**

**Subpart B. DEPARTMENT OF CORRECTIONS**

**CHAPTER 93. STATE CORRECTIONAL INSTITUTIONS AND FACILITIES**

**Subchapter A. RIGHTS AND PRIVILEGES**

**§ 93.12. [ Care and treatment ] Prison Medical Services Program.**

(a) Every institution will establish procedures to permit inmates to have access to health care staff, prescribed treatment for serious medical needs, appropriate nutrition, exercise and personal hygiene items.

(b) The following words and phrases, when used in this section, have the following meanings, unless the context clearly indicates otherwise:

**Department**—The Department of Corrections of the Commonwealth.

**Fee**—The portion of the actual cost of a medical service provided to an inmate which the Department has determined shall be charged to the inmate.

**Health care professional**—A physician, physician assistant, nurse, dentist, optometric professional or other person licensed to provide health care under the laws of the Commonwealth.

**Inmate**—A person confined to a correctional institution, motivational boot camp, community corrections center or other facility operated by the Department, its agent or contractor.

**Medical service**—A service the object of which is the diagnosis, evaluation, treatment or preservation of the health of the human body, including its organs, structures, systems or other components. The term shall be interpreted broadly and includes, but not be limited to, diagnostic testing, prescribing and administering medication, surgical procedures, dental care, eye care, the furnishing of prosthetic appliances and devices and any other type of treatment or preventative care, whether performed on an inpatient or outpatient basis.

(c) The Department will charge a fee to an inmate for one or more of the following:

(1) Medical service requested by the inmate.

(2) Nonemergency medical service provided to the inmate unless the medical service is provided during a follow-up appointment or was previously recommended or prescribed by a health care professional employed by the Department or its contractors.

(3) Medical service provided to the inmate as the result of a self-inflicted injury or illness, including emergency medical service provided to the inmate as the result of a self-inflicted injury or illness.

(4) An initial medication prescription except as provided in subsection (d).

(5) Medical service provided to another inmate as a result of assaultive conduct engaged in by the inmate to be charged the fee.

(6) Medical service provided to the inmate as a result of an injury or illness arising from the inmate's participation in a sport.

(7) Medical service provided to the inmate to determine whether the inmate's physical condition is suitable for participation in a sport unless the medical service is provided as part of the inmate's initial, annual or biennial physical examination.

(d) The Department will not charge a fee to an inmate for any of the following:

(1) A physical, dental or mental health screening provided to the inmate upon intake.

(2) An immunization, tuberculosis test, Hepatitis B vaccination or other treatment initiated by the Department for public health reasons.

(3) An institutional transfer screening.

(4) An annual and biennial physical and dental examination.

(5) A medical service provided to the inmate during a follow-up appointment scheduled by a health care professional employed by the Department or its contractors.

(6) Mental health treatment.

(7) Chronic care.

(8) Infirmary and long-term care.

(9) A medical referral ordered by a health care professional employed by the Department or its contractors.

(10) A medical service provided to the inmate during a medical emergency unless the medical emergency resulted from a self-inflicted injury or illness as determined by the health care professional providing the medical service.

(11) A laboratory test, electrocardiogram, dressing change or other treatment ordered by a health care professional employed by the Department or its contractors.

(12) A prenatal care.

(13) A medical service provided as a result of an injury or illness arising from the inmate's institutional work assignment.

(14) Medication prescription subsequent to the initial medication prescription provided to an inmate for the same illness or condition.

(15) A social service program including, but not limited to, substance abuse groups and counseling.

(16) A psychotropic medication.

(17) A medication prescribed for the inmate for public health reasons.

(18) A physical, dental and mental health screening performed at the request of the Department.

(19) A medical service provided to the inmate to determine whether the inmate's physical condition is suitable for an institutional work assignment.

(20) An eyeglass prescription.

(21) Dentures.

(22) Prosthetic devices excluding customized items.

(e) The fee for a medical service in subsection (c) is \$2, except that an inmate shall be required to pay a fee equivalent to two-thirds of the total cost of medical services provided to another inmate as a result of the inmate's assaultive conduct. The fee will be assessed each time a medical service in subsection (c) is provided to the inmate or as a result of the inmate's actions. The Department may modify the fee to be charged for any medical

service in subsection (c). Each inmate will receive 60 days written notice of the implementation of the Prison Medical Services Program (Program). Each inmate will receive written notice of any changes in medical service fees and payment procedures at least 60 days prior to the effective date of the changes.

(f) Payment for any medical service in subsection (c) shall be accomplished according to the following procedures:

(1) At the time a medical service is to be provided to the inmate, the inmate will be informed by the Department or its health care contractor whether a fee will be charged for the medical service and will be provided with an authorization form. The authorization form will describe the medical service to be provided and authorize the institution to deduct the fee from the inmate's account.

(2) An inmate who wishes to receive a medical service after being advised that a fee will be charged for the medical service, shall sign the authorization form acknowledging that the inmate's account will be debited for the fee. A nonemergency medical service will not be provided to an inmate who refuses to sign the authorization form after having been advised that a fee will be charged for the medical service. An inmate will not be denied access to medical services because of an inability to pay the required fee. If an inmate lacks sufficient funds to pay a medical service fee, the inmate's account will be debited and the fee recouped as soon as sufficient funds are deposited in the inmate's account.

(3) The Department may seek to recover any amount owed for medical services fees by an inmate upon release in the manner provided by law.

(g) Inmates who have medical insurance shall pay for their own medical needs through that insurance by submitting the proper paperwork to their insurance carrier.

(h) The Department will include an explanation of the Program in the *Inmate Handbook*.

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