



Fitness for Confinement Case Decided by Nebraska Supreme Court

The Nebraska Supreme Court today declined to determine whether Chase County or the City of Imperial was responsible for costs of a fitness for confinement examination for an inmate. In *Chase County v. City of Imperial*, 302 Neb. 395, __ N.W.2d __ (2019), the court determined that the county, city, district court, and Court of Appeals had not considered whether the arrestee or his insurer could pay all or part of the medical bill. Therefore, there was no showing that the “appropriate governmental entity” was liable for medical costs. The court concluded that a declaratory judgment was not available due to the lack of a justiciable controversy between the parties.

In *Chase County v. City of Imperial*, Imperial police arrested an individual for disturbing the peace and transported him to the Chase County jail for booking. Because he was heavily intoxicated, jail personnel requested medical clearance before he could be admitted to the jail. The hospital submitted the \$436 bill for the fitness for confinement examination to the county and later to the city. The county and the city each contended that the other party was responsible for payment.

The case focuses primarily on Neb.Rev.Stat. [§ 47-702](#) and [§ 47-703](#). The pertinent parts of these sections are set out below.

Section 47-702. Primary responsibility for payment; reimbursement sources.

“Primary responsibility for payment of the costs of medical services provided to individuals who are arrested, detained, taken into custody, or incarcerated shall be with the recipients of such services if the recipients are entitled to payment of or reimbursement for the costs of such medical services under the terms and provisions of a policy, subscription, or agreement with an insurer, a health maintenance organization, a preferred provider organization, or another similar source as provided in subdivision (1) of this section. Providers of such medical services shall seek reimbursement from the following sources in the following order:

(1) From an insurer, a health maintenance organization, a preferred provider organization, or other similar source, if the recipient of medical services is entitled to payment of or reimbursement for the costs of such medical services under the terms and provisions of a policy, subscription, or agreement with an insurer, a health maintenance organization, a preferred provider organization, or another similar source. . . and

(2) From any other available source, including, when appropriate, the United States Department of Veterans Affairs, the Social Security Administration, the Department of Health and Human Services, or other similar source.

47-703. Payment by governmental agency; when; notice to provider.

(1) Upon a showing that reimbursement from the sources enumerated in section 47-702 is not available, in whole or in part, the costs of medical services shall be paid by the appropriate

governmental agency. Such payment shall be made within ninety days after such showing. For purposes of this section, a showing shall be deemed sufficient if a provider of medical services signs an affidavit stating that (a) in the case of an insurer, health maintenance organization, preferred provider organization, or other similar source, a written denial of payment has been issued or (b) in all other cases, efforts have been made to identify sources and to collect from those sources and more than one hundred eighty days have passed or the normal collection efforts are exhausted since the medical services were rendered but full payment has not been received. Such affidavit shall be forwarded to the appropriate governmental agency. In no event shall the provider of medical services be required to file a suit in a court of law or retain the services of a collection agency to satisfy the requirement of showing that reimbursement is not available pursuant to this section.

(2) In the case of medical services necessitated by injuries or wounds suffered during the course of apprehension or arrest, the appropriate governmental agency chargeable for the costs of medical services shall be the apprehending or arresting agency and not the agency responsible for operation of the institution or facility in which the recipient of the services is lodged. In all other cases, the appropriate governmental agency shall be the agency responsible for operation of the institution or facility in which the recipient of the services is lodged, except that when the agency is holding the individual solely for another jurisdiction, the agency may, by contract or otherwise, seek reimbursement from the other jurisdiction for the costs of the medical services provided to the individual being held for that jurisdiction. . .

District Court

Chase County filed an action for a declaratory judgment in district court and moved for summary judgment, seeking a determination that the city was responsible for the costs of the medical exam. The district court determined that the medical charges were not for injuries suffered during the arrest and were not for medical services required for an individual confined to jail. Instead, it focused on whether the person was “lodged” in the facility. It relied on a dictionary definition of the term and sections of Nebraska’s Administrative Code that set out jail standards. It concluded that the city was responsible for the costs.

Court of Appeals

On its appeal to the Court of Appeals, the City of Imperial argued that the jailing agency requested the medical care prior to lodging the inmate and that the district court should not have considered jail standards. The court determined that the language of § 47-703(2) was clear and unambiguous and that it was precluded from looking beyond the statutes, including to jail standards, to construe the meaning of the statute. It focused on the phrase “in all other cases” in § 47-703(2) to reason that the costs of medical services were chargeable to Chase County because the medical services were not necessitated by injuries suffered in the course of apprehension or arrest. In addition, the county’s position would allow a county to circumvent payment for medical services by requiring the services to occur prior to booking.

Supreme Court

Chase County petitioned the Supreme Court for further review. The court stated that when a declaratory judgment is sought, there must be an actual justiciable issue from which the court can declare law as it applies to a given set of facts. It cannot be used to obtain a judgment that is merely advisory. Because neither of the parties or the lower courts considered whether the arrestee or his insurer could pay the medical bill in whole or in part, there was no justiciable controversy and the analysis could not proceed to declare whether the county or the city was responsible.

The court noted that this may be a case of last impression because two bills, [LB216](#) and [LB455](#), are pending before the Legislature that would amend § 47-703. LB455 will be heard by the Judiciary Committee on March 27.

The Supreme Court reversed the judgment of the Court of Appeals with directions to reverse and vacate the judgment of the district court. The full text of the case is available [here](#).

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