INVESTIGATION OF INMATE MEDICAL CO-PAYS AT IOWA COUNTY JAILS



IOWA OFFICE OF OMBUDSMAN

BERNARDO GRANWEHR, OMBUDSMAN

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Contributors

Investigators
Jeff Burnham
Phil Brown

Contributing Writers
Andy Teas, Legal Counsel
Bert Dalmer, Deputy Ombudsman

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Role of the Ombudsman

The Office of Ombudsman (Ombudsman) is an independent and impartial agency in the legislative branch of Iowa state government. The Ombudsman investigates complaints against most Iowa state and local government agencies. The Ombudsman has jurisdiction to investigate any administrative action of any person providing child welfare or juvenile justice services under contract with an agency that is subject to investigation by the Ombudsman. The governor, legislators, judges, and their staffs fall outside the Ombudsman's jurisdiction. The Ombudsman's powers and duties are defined in Iowa Code chapter 2C.

In response to a complaint or on the Ombudsman's own motion, the Ombudsman determines whether an agency's actions were unlawful, contrary to policy, unreasonable, unfair, oppressive, or otherwise objectionable. The Ombudsman may make recommendations to the agency and other appropriate officials to correct a problem or to improve government policies, practices, or procedures. If the Ombudsman determines that a public official has acted in a manner warranting criminal or disciplinary proceedings, the Ombudsman may refer the matter to the appropriate authorities.

If the Ombudsman decides to publish a report of the investigative findings, conclusions, and recommendations, and the report is critical of an agency, official or employee, they are given an opportunity to reply to the report, and the unedited reply is attached to the report.

Introduction

The Ombudsman has wrestled with county jails for years to settle a controversy about when they are authorized to charge inmates for medical care, and the steps they must take to recoup those charges. We first started fielding these complaints soon after a 2006 amendment in the Iowa Code changed the way jails can charge for medical expenses. The complaints we receive differ slightly in their particulars, but they typically involve a jail that has taken an inmate's money with little or no notice or without going through the court process set out by Iowa law.

Iowa's county jails are allowed to recover expenses from certain inmates who receive medical care during their incarceration. Restrictions are built into Iowa law that allow jails to charge for medical expenses if the inmate is at least 18 years old and has been: (1) convicted of a criminal offense or (2) sentenced for contempt of court for violating a domestic abuse order. In the event a qualifying inmate does not pay the expense, Iowa law provides a specific avenue through the courts that the jail may take to recover the expenses.[1]

For a time, we addressed complaints piecemeal as they came to our office. We eventually realized practices among jails were inconsistent, despite what we saw as a clear set of procedures spelled out in Iowa Code.

In 2016, we attempted to address the issue in a letter that detailed our position on the matters. At our request, the Iowa State Association of Counties (ISAC) sent our letter to county sheriffs and jail administrators throughout Iowa. We received only one response from a county. Given the scant feedback, along with a legislative proposal that could impact the relevant Iowa Code section at issue, we did not see the need to release a public report.[2] We assumed – incorrectly as it turned out – that jails were now aware of our position and would change their reimbursement practices to be consistent with Iowa law.

To date, inmate complaints to our office about medical charges have continued.

Recent Developments

There have been a number of developments on the subject of inmate medical charges over the last few years. First, we started seeing an uptick in medical payment complaints beginning in 2020. Second, some notable changes were made to Iowa law: Iowa hospitals used to seek reimbursement from counties when inmates were brought in for treatment. Now, however, hospitals are required to seek reimbursement from an inmate's insurance before they can seek payment from the county where the inmate was housed.[3] Third, counties are no longer allowed to seek reimbursement for medical costs through the restitution process.[4] Lastly, sheriffs can no

[1] See Iowa Code § 356.7.
[2] In the end, the bill we were following did not amend or otherwise impact Iowa Code section 356.7.
[3] See Iowa Code § 356.15A.
[4] See former Iowa Code § 356.7(2)(i)(2019).

longer seek reimbursement through "any other remedy authorized by law," as that provision was struck from the Code.[5]

In our more recent discussions with jails, we learned that many jail administrators and sheriffs were unaware of our 2016 special report. As we walked each jail official through our position on the law, the reactions we received ranged from willingness to hesitancy to change practices.

We believe it is time for all of Iowa's county jails to standardize their practices in accordance with Iowa law.

Overview of Iowa Law

Charging and seeking reimbursement for medical costs in county jails is governed by Iowa Code section 356.7(1). The pertinent provisions of that section read as follows:

> The county sheriff … may charge a prisoner who is eighteen years of age or older and who has been convicted of a criminal offense or sentenced for contempt of court for violation of a domestic abuse order for the actual administrative costs relating to the arrest and booking of that prisoner, for room and board provided to the prisoner while in the custody of the county sheriff or municipality, and for any medical aid provided to the prisoner under section 356.5 … If a prisoner who has been convicted of a criminal offense or sentenced for contempt of court for violation of a domestic abuse order fails to pay for the administrative costs, the room and board, or medical aid, the sheriff or municipality may file a reimbursement claim with the district court as provided in subsection 2.

After a jail files a claim against an inmate for reimbursement, the court approves the claim and the sheriff may enforce it, pursuant to Iowa Code section 626. Such claims, however, do not have priority over only claims for child support that may be owed by the inmate.

Who Is Responsible for Medical Costs?

Some jail officials tell us they take direction from the Iowa Administrative Code, which puts the obligation for medical expenses on the inmate. To be sure, the Administrative Code does provide a short statement on the topic: "Responsibility for the costs of medical services and products remains that of the prisoner."[6]

However, we have been telling jails since 2016 that they should not rely solely on this administrative rule. Iowa Code section 356.7 was amended in 2006 to include the

[5] See former Iowa Code § 356.7(4) (2019): "This section does not limit the right of the sheriff or municipality to obtain any other remedy authorized by law." ISAC pointed to this section to defend their claim that sheriffs could use options outside of the mandates found in section 356.7 to recover costs of medical expenses. We did not agree with ISAC's interpretation of the law, but consider it a moot issue since the provision has been stricken from the Code.

[6] Iowa Admin. Code r. 201—50.15 (2022).

aforementioned provision for medical expense reimbursement. The administrative rules were unfortunately never updated to conform with that change.

Once again, Iowa Code section 356.7 specifies the type of inmate from whom medical costs – and all jail fees for that matter – can be collected: Those who are 18 years of age or over, and who have been convicted of a criminal offense or sentenced for contempt of court for violation of a domestic abuse order.

Jails can pass on medical costs to inmates only if the state secures a conviction.[7] If this is not obvious from the plain language of the statute itself, the Iowa Supreme Court underscored this point when it stated that "section 356.7(1) expresses, twice, the notion that reimbursement claims are permitted only when a prisoner has been convicted of a criminal offense."[8] Conversely, the Court found, the collection of jail fees is not authorized when the inmate is later determined not to be convicted.[9]

Section 356.7 doesn't permit collection of room and board from *every* individual who happens to spend time in a county jail, as if the jail were simply public housing with meals provided, but rather shifts some of the costs of operating the county jail system to *convicted* defendants.[10]

Relying on the administrative rules as the sole guidance for charging inmate medical expenses is misguided, given that administrative rules are subordinate to the Iowa Code – and the clear and repeated declarations from the Iowa Supreme Court.

Due Process Applies to Inmate Funds

Iowa law lays out a set of procedures a jail must follow if it seeks reimbursement of jail fees from a qualifying inmate. To seek reimbursement, a sheriff must file a claim with the clerk of court and include the following eight items, if known:

> a. The name, date of birth, and social security number of the person who is the subject of the claim.
> b. The present address of the residence and principal place of business of the person named in the claim.
> c. The criminal proceeding pursuant to which the claim is filed, including the name of the court, the title of the action, and the court's file number.
> d. The name and office address of the person who is filing the claim.
> e. A statement that the notice is being filed pursuant to this section.
> f. The amount of room and board charges the person owes.
> g. The amount of administrative costs the person owes.

[7] *State v. Shackford*, 952 N.W.2d 141, 144 (Iowa 2020).
[8] *Id*. (internal quotations omitted)
[9] *Id*. at 147. See also *State v. Schiebout*, 944 N.W.2d 666, 672 (Iowa 2020) "[A] prisoner may be charged for [medical aid] costs only if 'convicted of a criminal offense or sentenced for contempt of court for violation of a domestic order' … With Schiebout's conviction vacated, she cannot be held liable under section 356.7 for these charges."
[10] *Id*. (italics in original).

h. The amount of medical aid the person owes.[11]

After a claim is approved by the court, a sheriff may choose to enforce the claim by following the collection methods set out in Iowa Code chapter 626, which governs the enforcement of court-ordered payments.

Iowa courts have not been asked to interpret the specific issue of medical expense recovery under section 356.7. However, the courts have reviewed the procedures required for room and board, which are governed the same way as medical expenses under this Code section. It is clear from these opinions that jail fees are subject to due process protections; that is, inmates are entitled to a notice of the charges and an opportunity to challenge them. The Iowa Supreme Court has said as much in *State v. Gross*:

> It is true, of course, that defendants are entitled to due process before judgments for jail fees are entered against them. As a general matter, due process requires, at a minimum, notice and an opportunity to be heard.[12]

Justice David Wiggins, in a concurring opinion in the 2019 case, warned of the "hazards" of a county using Iowa Code section 356.7 to collect jail room and board and medical aid from a convicted inmate.[13] Wiggins pointed to a number of legal pitfalls that present themselves when a sheriff attempts to collect on an outstanding jail fee, including limitations on wage garnishment under section 642.21; a statute of limitations to collect on the fees under section 614.1(6); and the limitations of debt collection under section 537.7102.[14]

Those pitfalls become even more hazardous if a jail decides to skirt judicial processes by taking funds directly from an inmate's account. As Wiggins asked, "Is a county or city subject to a wrongful execution, attachment or garnishment suit if notice and opportunity to be heard was inadequate under the constitution?"[15]

Scott County Jail

Inmate Complaints

We received a complaint in 2022 from a Scott County Jail inmate who had served two separate stints at the jail over a 10-month period. During that time, the Jail had taken $118.50 from his account for various medical services that the Jail had provided, including doctor visits, over-the-

[11] Iowa Code § 356.7(2).
[12] *State v. Gross*, 935 N.W.2d 695, 702 (Iowa 2019), quoting *Bonilla v. Iowa Bd. of Parole*, 930 N.W.2d 751, 778 (Iowa 2019) (internal quotations omitted.)
[13] See *Id*. at 706.
[14] See also *State v. Moment*, 958 N.W.2d 608 (Iowa Ct. App 2021), where the court found that Social Security disability benefits – even when placed in a jail's inmate account – are exempt from a sheriff's levy filed under section 356.7, due to garnishment protections under Iowa Code section 627.6. "Given Moment's undisputed testimony that the seized money came from his disability check alone as well as federal and state authority establishing the funds represented in that check are exempt from execution, we conclude Moment was entitled to have the levy quashed."
[15] *Gross*, 935 N.W.2d at 706.

counter medications, and prescriptions. The jail had taken $98 from his account before he was convicted of any of his offenses. Prior to his conviction, he was not a person from whom the jail could legally seek reimbursement at the time the funds were taken.

Another $20.50 was taken from his account during the time he spent at the jail after his conviction. However, the jail had not sought reimbursement through the courts for that amount, as required by Iowa Code section 356.7.

We heard from another Scott County Jail inmate in 2022 who was charged $129 for various medical services he had received while at the jail. Our review found that the inmate had been arrested on three warrants, but only one of them was for a criminal charge. The other two warrants were for contempt of court for failing to make court-ordered payments toward his child support obligations.

The criminal charge was later dismissed, meaning he was never convicted of a criminal offense for purposes of section 356.7. He remained in the jail on a sentence related to the two contempt-of-court charges connected to his child support obligation. A person who is sentenced for contempt-of-court may be charged for their medical expenses – but only if it is for a violation of a domestic abuse order. It does not specifically apply to contempt-of-court cases involving child support.[16] [17]

Policy Basis for Charging a Co-Pay

A manager for the Scott County Public Health Department, which oversees the Scott County Jail's medical staff, explained the county's general practice of recouping the cost of medical aid provided to inmates:

> Whenever an inmate is seen by the physician or nurse, receives prescription medication, X-rays, treatments, or is transported outside the facility to a health care visit, the corresponding charge is posted to their account. Charges are posted and deducted regardless of whether the inmate has a positive or negative balance. We do not charge inmates for the full amount of their medical treatment or medications. They are charged based on a nominal fee schedule.

Our investigation found that Scott County recoups only a very small fraction of the total cost of medical aid provided. According to jail officials, here are the relevant figures for the fiscal year that ended on June 30, 2022:

[16] The inmate left the jail with a negative balance. Jail officials told us that if he re-enters the jail and has money on his account, those funds will be taken until the negative balance is paid off.

[17] In reviewing the jail's information, we found an apparent error in how the inmate's balance was calculated. A jail official confirmed that the private company that handles inmates' financial accounts had made two errors on this inmate's account. The jail said the inmate would receive a refund in the amount of $35.62. The official also told us that he asked the private company "if they're ever audited" and the company would not answer the question. "This is a little alarming," he acknowledged.

Total cost of medical aid provided to inmates: **$368,256.86**[18]

Total amount of medical co-pays assessed to inmates: **$7,440**

Total amount actually collected: **$2,925.43**

Jail officials acknowledge that the amount of money they recoup for medical costs is relatively insignificant. They realize it does little to help balance the jail's budget. That begs the question why the jail charges a co-pay.

"It is not so much about financial impact as it is evaluating real medical needs versus fictitious demands," the assistant jail administrator for Scott County told us.

She added that some inmates who are indigent – meaning they have no money on their account and so there can be no deductions for medical costs – will seek and attempt to hoard medications and then sell them to other inmates, potentially risking the safety and security of the entire facility.

Collecting Prior to Conviction Will Continue

The jail administrator agreed with our interpretation of state law. He wrote that section 356.7 is "gray to interpret" but added, "It appears that you are correct that co-pays should be collected after conviction."

Although he agrees with our interpretation, the jail administrator told us he is not willing to change the county's practices, writing:

> Until there is more clarity of State law pertaining to section 356.7 and Chapter 50 (the state administrative rules for jails) guidance from the ISSDA (the Iowa State Sheriffs and Deputies Association) Jail committee and consistency across the State with Jails, we are going to continue with past practices. However, our Sheriff has advised this will be one of his talking points with the ISSDA Jail committee this year. We are open to change if it is found that we are incorrect with our practices. So far, other Jails in Eastern Iowa seem to do the same practices as we do for the most part.

We must point out that although many counties may have similar practices, that does not mean those counties are complying with state law.

Since the Legislature amended section 356.7 in 2020 to eliminate reimbursement to the jails through restitution, Scott County has stopped pursuing room and board charges from anyone.

"We thought they changed the law to make it harder for us," the jail administrator told us. "The time consuming process for that is exactly why we stopped collecting the medical fees and room

[18] This figure does not include service provider salaries or benefits.

and board with the exception of the medical co-payments. The expense of personnel to do so was greater than the revenue collected through the new process."

Previous to that law change, he said Scott County had been collecting an average of $50,000 annually in room-and-board reimbursements.

Wapello County Jail

Inmate Complaint

In 2020, an inmate at the Wapello County Jail called our office and asked if the jail should be taking all of the money off his books to pay for nurse and doctor visits, and for his prescribed medications. We found that the jail had deducted $130 from the inmate's account for medical-related charges. At the time, the inmate was being held on numerous criminal charges that were still pending in court, meaning he had not been convicted and thus was not a qualifying person under the law who could be charged for medical expenses.

We asked the jail administrator if he would be willing to refund the $130 back to the inmate's account, in light of the requirements under the law. The jail administrator declined our suggestion, stating:

> As for returning money back to [the inmate], it would create accounting discrepancies and to be fair we would have to do the same for others.

We asked the jail administrator to request a review by the county attorney to see if corrective action was warranted. The county attorney responded that under the statute, a county can file a reimbursement claim through the courts if an inmate fails to pay the administrative costs. The county attorney wrote that the inmate in this case "did not fail to pay for administrative costs. He in fact paid a fraction of them, thereby vitiating the need to file for reimbursement with the courts."

We disagree with the county attorney's assertion that the inmate "paid" anything, as that would imply he gave the money willingly, as opposed to having the money taken without his consent.[19] The inmate did not give the money; rather, the county took it from his account. For that matter, the jail should not have even told the inmate – either directly or impliedly – that any medical costs were owed at the time, since the inmate had not yet been convicted.

General practice

Everyone who is booked into the Wapello County Jail is required to sign a form titled, "Inmate Medical Policy and Fees." The form advises that charges for medical services will be removed from inmate accounts and "will take precedence over any commissary that you may order." The

[19] See Merriam-Webster definitions for the verb "pay," in which the payor is the actor.

form adds that any unpaid medical charges will be forwarded to the Clerk of Court for recoupment.

Notably, the form does not say that such deductions will occur only after the individual has been convicted.

The form includes the following charges:

- Nurse visit $5
- Doctor visit $50
- Dental visit $45
- Prescription $10
- Ibuprofen or Tylenol 50 cents per tablet

The Jail's inmate handbook, last updated in June 2022, says inmates will also be billed for the actual cost of medical-related services if the Sheriff's Department receives any bills from providers.

Unlike its approach to medical costs, Wapello County has not pursued collection of room-and-board charges from anyone for approximately the past year due to staffing issues.

Mills County Jail

Inmate Complaint

We heard from a Mills County Jail inmate in 2020 who had appeared in court to plead guilty and receive his sentence on a criminal charge. By the time he returned to the Jail, $155 had been taken from his account.

We found that the jail had taken the funds for medical costs that the inmate had incurred during his incarceration. The jail, however, had not filed a reimbursement claim consistent with Iowa Code section 356.7. This was not an anomaly for the jail, as it regularly pursued this recoupment process for medical expenses. The then-jail administrator said Mills County took inmates' money for medical-related charges because, otherwise, the county would receive little or no money for those services. She told us that she believed inmates with medical needs should not be allowed to buy commissary products, as they would "spend their last dollar on a candy bar" and the county would receive nothing.

At the time, the county did not pursue room-and-board charges like it had in this case for medical expenses. Instead, the county would recoup room and board only after an inmate had been sentenced and the county attorney had filed a reimbursement claim in district court. In this case, the county had filed a reimbursement claim for room and board in district court for $5,880.

Updated Practice

According to the office manager for the Mills County Sheriff's Department, the county no longer deducts any money from any inmate account for reimbursement of medical-related charges.

When someone is leaving the jail after being sentenced by a judge, jail staff present that person with a form showing the amounts they owe for both medical-related charges and room and board, as well as a proposed payment plan. The first payment is due on the first day of the following month. If they do not make that first payment, the county then sends the paperwork to a private collection agency that Mills County has contracted with for recoupment of unpaid jail fees.

The private collection agency then pursues collection on the county's behalf. The office manager told us that over the past two years, the vast majority of clients honored their payment plans. For those who do not honor their payment plan, the private collection agency files a reimbursement claim in district court on behalf of Mills County.

The main goal of this program is to persuade people who have been sentenced to voluntarily make payments so there is no need to go to court. The office manager said they do not pursue recoupment for any jail fees from inmates who were not convicted.

Among the 12 county jails that we contacted, Mills County is the only one that we found to be in general compliance with section 356.7, having changed its practice after our investigation.

The office manager told us that she gave a presentation on Mills County's recoupment process to a large group of officials from at least 50 other counties. Based on the feedback she received, she believes some of those counties may be adopting those same procedures for their own recoupment efforts.

O'Brien County Jail

Inmate Complaint

An inmate at the O'Brien County Jail complained to our office that she was charged $197.54 for clinic/hospital fees. She claimed that there was no existing civil judgment or restitution order in place and that she had not agreed to pay for the service. When she raised the issue to jail staff, her grievance was denied.

The jail justified the expense by claiming the inmate had signed a medical waiver acknowledging that she was responsible for any medical costs she incurred at the Jail. The $197.54 was the expense the doctor charged for the provided medical services. In addition, the grievance response stated that the jail charges a $5 administrative fee to set up a medical appointment and to process necessary paperwork.

General Practice

The medical waiver that the jail requires all inmates to sign at booking reads, in relevant part:

> I answer truthfully the medical questions asked of me. I understand I am financially responsible for all medical (mental, physical, and dental) costs which may incur during my incarceration and authorize the O'Brien County Sheriff's Office to deduct money from my jail account to satisfy the debt incurred.

The jail does not follow the same process for room and board. Instead, the jail provides an inmate a receipt after they have finished serving their time. Inmates are given 30 days to pay the amount, after which the Sheriff may file a claim for any unpaid amount due. Consistent with Iowa Code section 356.7, the jail does not charge an inmate for room and board if their charges are dismissed.

The jail administrator told our office that the medical waiver has no impact on how or whether the jail collects money directly from the inmate's commissary account. The form, according to him, is more of an acknowledgement than a waiver. Jail officials will take money from the commissary account even if the inmate does not sign the form.[20] The jail administrator said neighboring counties follow the same process.

County Jail Survey

In addition to the four counties discussed herein, we contacted seven other counties about their practices for recouping jail fees. We selected some of these additional counties based on our office's history of receiving jail-fee complaints. We found a significant disparity in jail practices for room-and-board charges and medical-related fees.

One jail administrator told us that he recently contacted several other jails about their jail-fee reimbursement practices. "Everyone seems to do medical and room and board a little different," he told us. We found the same thing.

Room and board

Of the 12 county jails we contacted, we found that 11 are recouping room-and-board charges consistent with our interpretation of the law. Of those 11, five counties simply choose not to seek reimbursement for expenses.

We found only one county that collects room-and-board charges in a way that does not comply with the law. That county waits until an individual is being discharged from the jail, and then – if the individual has any money on their commissary account – the county deducts whatever is there to satisfy the debt without filing the required reimbursement claim in district court.

[20] Our office received a call in December 2022 from a boyfriend of an O'Brien County Jail inmate wishing to file a complaint on an issue unrelated to medical fees. Typically, our office prefers to hear directly from inmates. In this case, the inmate could not call our office because any money placed in her commissary account was immediately taken by the jail to cover her medical expenses.

Medical

Three of the 12 counties we contacted are complying with the law when recouping medical-related charges. The other nine counties are collecting medical-related charges in a way that does not comply with the law:

- Seven counties deduct from inmates' commissary accounts for medical expenses as they are incurred.
- One county waits until an inmate is discharged from the jail and then deducts for medical charges regardless of whether the inmate was convicted.
- One county waits until after an inmate has been convicted and sentenced, but does not file a reimbursement claim before garnishing the inmate's account.

The following table lists the jails we contacted and whether they take money for medical or room and board prior to conviction, or without filing a reimbursement claims consistent with section 356.7.

County	Take money for medical before conviction?	File reimbursement claim for medical before taking funds?	Take money for R-B before conviction?	File reimbursement claim for R-B before taking funds?
Wapello	**Yes**	**No**	No	Yes
Mills	No	Yes	No	Yes
Scott	**Yes**	**No**	No	Yes
Allamakee	No	Yes	No	Yes
Mahaska	No	Yes	No	Yes
Marshall	**Yes**	**No**	No	Yes
Woodbury	No	**No**	No	Yes
Jefferson	**Yes**	**No**	No	Yes
Des Moines	**Yes**	**No**	No	Yes
O'Brien	**Yes**	**No**	No	Yes
Buchanan	**Yes**[21]	**No**	No	**No**
Polk	**Yes**	**No**	No	Yes

** County jails in bold are not in compliance with Iowa law.*

[21] Buchanan County deducts funds from inmate accounts at discharge for medical charges regardless of whether the individual was convicted.

Analysis and conclusions

Two steps forward, one step back

After learning of our office's interpretation of the law, one jail administrator initially told us he would change his county's reimbursement practices to comply with section 356.7. However, he later told us that his initial response was a "knee-jerk" reaction and that he changed his mind after consulting other jail administrators and the Jail Committee of ISSDA. He said the range of views among other county officials "was about a 50-50 split." Some said they disagreed with the Ombudsman's interpretation and would continue business as usual, while others changed their practices, he said, "to get the monkey off their back."

By contrast, another jail administrator agreed with our interpretation and indicated an intent to change his practice. "I clearly see what needs to be done and will take appropriate steps," he wrote us, adding, "I have read 356.7 hundreds of times for Room and Board, but NEVER put 2 and 2 together on the medical piece."

We have opened the topic for debate throughout the years to consider opposing or alternative points of view that we may have not considered. In some cases, we have urged jail officials to consult with their legal counsel to review their practices and report back to us. We have, to date, not been convinced that our interpretation of section 356.7 is incorrect on the type of inmate that can be charged for medical expenses and the process that needs to be followed to seek reimbursement.

We separately reached out to two attorneys with experience litigating the jail fees issue – one who represents the State of Iowa and another who represents criminal defendants on behalf of a state agency.[22] We provided them with a template of our office's interpretation of section 356.7 that is reflected in this report. Both attorneys agreed with our interpretation that a sheriff may only charge an inmate who has been convicted of a crime, with one attorney specifically referencing Justice Wiggins' special concurrence on the collection methods in *State v. Gross*, which we discussed earlier in this report.

Several counties told us they remain confused about how to handle inmate medical fees, especially since the 2020 legislative amendment brought an end to counties' ability to pursue recoupment through the criminal restitution process. Several counties expressed frustration with that change, saying it made the process more time consuming.

The Ombudsman understands that counties are between a rock and a hard place on this issue. Iowa law requires county jails to provide medical care even though reimbursement for those costly services is generally not available. "Most times they never put more money on their accounts and the jail eats that cost," lamented one jail administrator.

[22] We have chosen not to use their names in this report as they provided their opinion based on their own experience and interpretation of section 356.7, and not officially or unofficially on behalf of their respective agencies.

Nevertheless, an inmate's due process rights cannot be ignored. The process set out under section 356.7 offers inmates an opportunity not only to object to the legal basis for taking the funds, but also to identify human errors in fee calculations, as was the case in one complaint we reviewed.

While Iowa's Home Rule amendment to the Iowa Constitution gives deference to local governments to manage their local government affairs, those local rules are not permitted to be inconsistent with state law.[23] We believe inmate co-pay is one example where the general assembly has spoken clearly on the inmates from whom a jail may recoup medical expenses and the manner in which they may be collected. An inmate's due process rights should not vary based on the county in which he is incarcerated.

Order of priority

We must not overlook the rights of other creditors with claims against inmates. Section 356.7 states that a sheriff's claim for fees under that section do not have priority over competing claims for child support obligations owed by the inmate.[24]

When sheriffs take funds from inmate accounts without following the process laid out in Iowa Code, they skip the statutory line of priority and may be taking money that should be going to children.

Role of the DOC and the State Jail Inspector

One county jail administrator told our office that he had discussed his jail's process of taking money from inmates before conviction with the State's jail inspector. His impression was that the jail inspector was noncommittal on whether that process was legal or appropriate.[25]

The state's jail inspector is employed by the Iowa Department of Corrections (DOC), which is charged with conducting periodic inspections of each jail.[26] The DOC consults with the ISSDA,

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[23] See Iowa Const. art. III, § 39A ("Counties or joint county-municipal corporation governments are granted home rule power and authority, not inconsistent with the laws of the general assembly, to determine their local affairs and government"); Iowa Code § 331.301(1) ("A county may, except as expressly limited by the Constitution, and if not inconsistent with the laws of the general assembly, exercise any power and perform any function it deems appropriate to protect and preserve the rights, privileges, and property of the county or of its residents, and to preserve and improve the peace, safety, health, welfare, comfort, and convenience of its residents."); Iowa Code § 331.301(6)(a) ("A county shall not set standards and requirement which are lower or less stringent than those imposed by state law, but may set standards and requirements which are higher or more stringent than those imposed by state law, unless a state law provides otherwise."); and *Goodell v. Humboldt County*, 575 N.W.2d 486, 492 (Iowa 1998), ("Under this constitutional amendment, counties have the power 'to determine their local affairs and government,' but only to the extent those determinations are 'not inconsistent with the laws of the general assembly.'")

[24] See Iowa Code § 356.7(3) ("[I]rrespective of whether the judgment lien for the amount of the claim has been perfected, the claim shall not have priority over competing claims for child support obligations own by the person.")

[25] In their response to a draft of this report, Scott County officials stated they had a different experience with the jail inspector. They reported that when they inquired as to the legality of their actions, the jail inspector told them "he agreed with Iowa Code section 356.7(1) and we should probably follow it."

[26] See Iowa Code § 356.43. See also Iowa Admin. Code r. 201—50.1, which defines "Jail Inspector" as "the department of corrections employee responsible for inspections of jails and enforcement of these rules by authority of Iowa Code section 356.43."

the Iowa Peace Officer Association, the Iowa League of Cities, and the Iowa Board of Supervisors Association to draw up minimal standards that are the subject of the inspections.[27] The jail standards themselves can be found in Iowa Administrative Code chapter 201—50. DOC has traditionally solicited our opinion as a stakeholder when its administrative rules are periodically reviewed.

In 2017, we reached out to DOC officials to alleviate the confusion faced by jail officials between the administrative rules and the Iowa Code. As mentioned earlier in this report, the administrative rules – which state that medical costs remain the responsibility of the inmate – have not been changed to comply with amendments to the Iowa Code that passed in 2006. We asked DOC for a simple fix – to add the underlined language to the current provision as follows:

> Responsibility for the costs of medical services and products remains that of the prisoner, per section 356.7(1) of the Iowa Code.

We believed this addition would at least compel jail officials to review and consider the requirements found in section 356.7 and set a firm basis for the state's jail inspector to establish a consistent practice among the jails. DOC declined to consider the proposed rule change until we had first met with the ISAC Jail Committee for their buy-in. We then reached out to the committee in 2017 to meet, but received no response. We later met with the ISSDA Jail Committee in 2018 to discuss the rule, but were not able to convince the committee a change was needed.

Conclusions

We applaud the efforts by Mills County to change its practices and comply with Iowa law, collecting only from inmates who have been convicted and following the reimbursement process set out in Iowa Code section 356.7. For each of the other jails highlighted in this report – namely Scott, Wapello and O'Brien – we conclude that their practices do not comport with Iowa law on either the type of inmate from whom they collect or their methods for seeking reimbursement.

Separately, we believe it is DOC's responsibility to assess the requirements of the Iowa Code and ensure the administrative rules are in harmony with the law. DOC also should ensure that the rules do not create such confusion that a jail could fall out of compliance with the Iowa Code and infringe on inmate rights. We also note that Iowa law makes it DOC's obligation to consult with law enforcement and local government groups when drawing up standards. That burden should not have been shifted to our office.

[27] See Iowa Code section 356.36(1), "The Iowa department of corrections, in consultation with the Iowa state sheriff's association, the Iowa peace officers association, the Iowa league of cities, and the Iowa board of supervisors association, shall draw up minimum standards for the regulation of jails, alternative jails, facilities established pursuant to chapter 356A and municipal holding facilities. When completed by the department, the standards shall be adopted as rules pursuant to chapter 17A."

Recommendations

For each sheriff's office in the state, the Ombudsman recommends that:

1. **The sheriff review its current practice of collecting medical fee debts from its jail's inmates and, if necessary, amend its practices to comport with Iowa Code section 356.7, consistent with the Ombudsman's interpretation of that section.**

In addition:

2. **The Iowa Department of Corrections should take a lead role in amending Iowa Administrative Code rule 201—50.15 to resolve the rule's inconsistencies with Iowa Code section 356.7 and alleviate confusion for jails.**

3. **The State's jail inspector or other DOC designee should provide clear, ongoing guidance to jails on the circumstances under which a jail may charge an inmate for medical costs, and how collection may be executed.**

Department of Corrections Response

Fields of Opportunities

STATE OF IOWA

KIM REYNOLDS, GOVERNOR
ADAM GREGG, LT. GOVERNOR

DEPARTMENT OF CORRECTIONS
BETH A. SKINNER, PhD, DIRECTOR

March 12, 2024

Bernardo Granwehr
Ombudsman
Ola Babcock Miller Building
1112 East Grand Avenue
Des Moines, Iowa 50319

Re: Ombudsman's Investigative Report on Prisoner Medical Co-Pays at Iowa County Jails

Dear Mr. Granwehr:

Thank you for passing along a copy of your investigative report for review and comment by the Department of Corrections (DOC).

Pursuant to Iowa Code §2C.15, the DOC offers the following comments, which are to be attached to your final report unedited:

Background

Iowa Code section 356.36(1) states, "*The Iowa department of corrections, in consultation with the Iowa state sheriff's association, the Iowa peace officers association, the Iowa league of cities, and the Iowa board of supervisors association, shall draw up minimum standards for the regulation of jails, alternative jails, facilities established pursuant to chapter 356A and municipal holding facilities. When completed by the department, the standards shall be adopted as rules pursuant to chapter 17A.*"

Ombudsman Recommendations and Response from DOC

Ombudsman Recommendation: The Iowa Department of Corrections should take a lead role in amending Iowa Administrative Code rule 201-50.15 to resolve the rule's inconsistencies with Iowa Code section 356.7 and alleviate confusion for jails.

DOC Response: The DOC acknowledges the issue and agrees to bring it to the attention of the Iowa Sheriff's & Deputies Association (ISSDA), so they can get it addressed with their legal counsel.

The mission of the Iowa Department of Corrections is:
Creating Opportunities for Safer Communities

(Office) 515-725-5701 - 510 East 12th Street, Des Moines, Iowa 50319 - (FAX) 515-725-5799

https://doc.iowa.gov/

Department of Corrections Response

Current jail inspection administrative rules require each jail to have written policies and procedures on medical care. ISSDA legal counsel, Iowa State Association of Counties (ISAC) legal counsel, or the jail's local county attorney should be the entity to advise each local Sheriff on what steps needs to be taken to follow the Iowa Code. The Sheriff can place this guidance in the jails policy and procedures.

Ombudsman Recommendation: The State's jail inspector or other DOC designee should provide clear, ongoing guidance to jails on the circumstances under which a jail may charge an inmate for medical costs, and how collection may be executed.

DOC Response: The DOC acknowledges the issue and agrees to bring it to the attention of the Iowa Sheriff's & Deputies Association, so they can get it addressed with the Sheriff's.

The DOC jail inspector is not an accountant and/or financial auditor and is not able to provide ongoing financial guidance to each jail. The Auditor of State is in a better position, as they have responsibility for audits of counties, cities, school districts and other governmental subdivisions and is required to provide guidelines to CPA firms performing such audits.

Current jail inspection administrative rules require each jail to have written policies and procedures on medical care. ISSDA legal counsel, Iowa State Association of Counties (ISAC) legal counsel, or the jail's local county attorney should be the entity to advise each Sheriff on what steps needs to be taken to follow the Iowa Code. The Sheriff can place this guidance in the jails written policy and procedures.

Sincerely,

Director Beth Skinner, PhD

Ombudsman Comment

COUNTY JAILS

None of the jails mentioned in this report disagreed with our interpretation of the law or recommendations. Specifically, Mills and Wapello County opted not to provide a written reply.

Scott County responded that they "will be following the law as discussed and after meeting with the jail medical team giving them time to prepare for how they will figure out something. . ."

O'Brien County responded on October 31, 2023, with a letter that read:

> We have made some minor changes to our medical expense procedures. We have also contacted the State Jail Inspector, Delbert Longley. The jail inspector also brought up the inconsistencies in Iowa administrative Code rule 201-50.15 and Code Section 356.7. He advised these inconsistencies are being addressed and recommended we not change our procedures until these inconsistencies are dealt with.

IOWA DEPARTMENT OF CORRECTIONS

We are pleased that the Iowa Department of Corrections (DOC) acknowledges the conflict between Iowa law and Iowa administrative rules on when and how county jail inmates may be charged for the cost of their medical care.

The main issue in this report concerns an outdated rule on jail medical expenses that is inconsistent with statute. DOC has a statutory duty to periodically review its rules with the goal of identifying and eliminating "all rules of the agency that are outdated, redundant, or inconsistent with or incompatible with statute…"[28] The current, outdated rule triggers DOC's statutory duty to clean up the administrative rules to resolve the inconsistency.

We believe that, in order for DOC to comply with its statutory duties under Iowa Code section 356.36(1) and Iowa Code section 17A.7, DOC should take the additional step of initiating a rulemaking to address this issue, in consultation with ISAC and ISSDA.

Lastly, we agree with DOC that the jail inspector is not an accountant and is not able to provide financial guidance to jails. Fortunately, this is not a financial issue, but one of compliance with the Iowa Code. We believe the jail inspector is in the best position to provide guidance to jails on this topic, which is why we recommended he do so.

[28] See Iowa Code section 17A.7.