

STATE OF MICHIGAN

MIKE COX, ATTORNEY GENERAL

COUNTIES: Responsibility for costs associated with
mental health treatment provided to
COUNTY JAILS: inmates at county jails

INMATES:

MENTAL HEALTH CODE:

The costs incurred providing mental health services to an inmate incarcerated in a county jail are ultimately the responsibility of the county under MCL 801.4. The community mental health program serving the county in which that jail is located must nevertheless seek to obtain payment from available insurance or other sources before resorting to the county for payment in accordance with MCL 801.4(2).

The costs incurred in providing mental health services to an inmate in a county jail rests with the county, regardless of the type of treatment or mental health service being delivered.

Opinion No. 7231

May 27, 2009

Honorable Steven Lindberg
State Representative
The Capitol
Lansing, MI

You have asked two questions relating to responsibility for the costs incurred providing mental health services to inmates incarcerated at county jails. Your first question asks whether the county or the local community mental health authorities must bear the financial burden of providing mental health services to inmates in a county jail who are in need of mental health care while incarcerated.

County jails are under the supervisory jurisdiction of the Michigan Department of Corrections (MDOC). Section 62(3) of the Corrections Code, MCL 791.262(3), states:

The department shall supervise and inspect jails and lockups that are under the jurisdiction of the county sheriff to obtain facts concerning the proper management of the jails and lockups and their usefulness. The department shall promulgate rules and standards promoting the proper, efficient, and humane administration of jails and lockups that are under the jurisdiction of the county sheriff pursuant to the administrative procedures act.

The MDOC has promulgated administrative rules in fulfillment of this statutory directive. These rules impose various requirements upon county jails relating to the physical and mental health of persons in their custody. Rule 28, 1998-2000 AACS, R 791.728, includes a requirement to ensure that matters relating to the psychiatric needs of an inmate shall be left to the medical judgment of the appropriate health professional:

A facility shall establish and maintain written policy, procedure, and practice which provide that all medical, psychiatric and dental inmate matters involving medical judgment are the sole province of the responsible physician, dentist or other qualified health professional.

Under Rule 31, 1998-2000 AACS, R 791.731, a trained facility staff member is required to perform an initial mental health screening to determine whether or not each new inmate will be housed within the jail's general population.

Within fourteen days of this initial health screening, a more detailed health appraisal is then required. Under Rule 32, 1998-2000 AACS, R. 791.732, a more thorough physical and mental health work-up must be completed by "a trained health care person."

Michigan's Mental Health Code, MCL 330.1001 *et seq*, addresses who is to provide mental health services to inmates in county jails. Section 1002a of the Mental Health Code, MCL 330.2002a, states:

For a person confined in a place of detention operated by a political subdivision of the state and who requests mental health services, mental health services shall be provided by the appropriate community mental health program pursuant to the responsibilities described in section 206 [MCL 330.1206¹].

Thus, the Mental Health Code makes clear that the community mental health program shall provide the requested mental health services. But it is silent concerning whether that program or the county has primary responsibility for the financial burden associated with providing those services. The answer to this question can be found, however, within the Michigan statutes regulating county jails, chapter 171 of the Revised Statutes of 1846. Specifically, section 4 of chapter 171, MCL 801.4, assigns such responsibility to the counties, with health care providers assigned a related duty to seek reimbursement under the described circumstances:

(1) Except as provided in subsection (2) and sections 5 and 5a,^[2] *all charges and expenses of safekeeping and maintaining prisoners and persons charged with an offense, shall be paid from the county treasury, the accounts therefor being first settled and allowed by the county board of commissioners.*

(2) If medical care or treatment is provided to an individual described in subsection (1), the health care provider shall make a

¹ A "community mental health [services] program" is defined under the Mental Health Code to include mental health authorities. See MCL 330.1100a(16). Section 206(1), MCL 330.1206(1), provides that the purpose of a community mental health services program "shall be to provide a comprehensive array of mental health services appropriate to conditions of individuals who are located within its geographic service area, regardless of an individual's ability to pay."

² Sections 5 and 5a authorize a county board of commissioners to provide for reimbursement for medical attendance supplies and to seek reimbursement for expenses incurred in providing medical care and treatment. MCL 801.5(3) and MCL 801.5a(1)-(3).

reasonable effort to determine whether that individual is covered by a health care policy, a certificate of insurance, or other source for the payment of medical expenses. If the county sheriff who has custody over the individual is aware that the individual is covered by any health care policy, certificate of insurance, or other source of payment, the sheriff shall provide that information to the health care provider. If the health care provider determines that the individual, at the time of admission or treatment, is a medicaid recipient or a beneficiary of any health care policy, certificate of insurance, or other source for the payment of some or all of those expenses, the health care provider shall first seek reimbursement from that source, subject to the terms and conditions of the applicable health care policy, certificate of insurance, or medicaid contract, before submitting those expenses to the county. When submitting an invoice to the county for the payment of medical expenses under this section, a health care provider shall provide a statement that the health care provider has made a reasonable effort to determine whether the individual was covered by a health care policy, certificate of insurance, or other source for the payment of medical expenses. A county may enter into agreements with health care providers to establish procedures for the submission of invoices for medical expenses under this section and the payment of those invoices. [Emphasis added.]

MCL 801.4 has been consistently applied to hold counties liable for the costs of medical care provided to county jail inmates. See, e.g., *Univ Emergency Services, PC v Wayne County*, 141 Mich App 512, 520-521; 367 NW2d 344 (1984); *St. Mary's Hosp v Saginaw County*, 139 Mich App 647, 649; 363 NW2d 32 (1984); and *Zieger Osteopathic Hosp, Inc v Wayne County*, 139 Mich App 630, 632; 363 NW2d 28 (1984). As the Court stated in *Zieger Osteopathic Hosp, Inc*, "[t]his statute reflects the general principle that counties are responsible for the costs of enforcement of state criminal laws."

A basic principle governing statutory construction is that statutes covering the same subject matter should be read *in pari materia*. In *Apsey v Memorial Hosp*, 477 Mich 120, 129 n 4; 730 NW2d 695 (2007), quoting *Detroit v Michigan Bell Tel Co*, 374

Mich 543, 558; 132 NW2d 660 (1965), the Michigan Supreme Court explained how this principle is applied:

Statutes *in pari materia* are those which relate to the same person or thing, or the same class of persons or things, or which have a common purpose. It is the rule that in construction of a particular statute, or in the interpretation of its provisions, all statutes relating to the same subject, or having the same general purpose, should be read in connection with it, as together constituting one law, although enacted at different times, and containing no reference one to the other.

Reading MCL 330.2002a together with MCL 801.4 leads to the conclusion that mental health services for inmates in a county jail shall be provided by the community mental health program and paid for by the county. This conclusion is, of course, subject to the exception set forth in MCL 801.4(2), which operates to require the community mental health program providing services to an inmate covered by any health care policy, insurance, or other source of payment, to make a reasonable effort to receive payment from that source before resorting to the county for payment.

To the extent the county does pay such costs, section 5a of chapter 171 of the Revised Statutes of 1846, MCL 801.5a, provides the county with a mechanism to attempt to seek reimbursement from inmates for mental health and other medical costs:

(1) The county board of commissioners may seek reimbursement for expenses incurred in providing medical care and treatment pursuant to sections 4 to 5. If a county board of commissioners seeks reimbursement pursuant to this section, reimbursement shall be sought only in the following order:

(a) From the prisoner or person charged.

(b) From insurance companies, health care corporations, or other sources if the prisoner or person charged is covered by an insurance

policy, a certificate issued by a health care corporation, or other source for those expenses.

(2) A prisoner in a county jail shall cooperate with the county in seeking reimbursement under subsection (1) for medical expenses incurred by the county for that prisoner.

(3) A prisoner who willfully refuses to cooperate as provided in subsection (2) shall not receive a reduction in his or her term under section 7 of Act No. 60 of the Public Acts of 1962, being section 801.257 of the Michigan Compiled Laws.

It is my opinion, therefore, in answer to your first question, that the costs incurred providing mental health services to an inmate incarcerated in a county jail are ultimately the responsibility of the county under MCL 801.4. The community mental health program serving the county in which that jail is located must nevertheless seek to obtain payment from available insurance or other sources before resorting to the county for payment in accordance with MCL 801.4(2).

Your second question asks whether the financial burden associated with providing mental health services to inmates incarcerated in county jails may shift from one party to another depending on what type of treatment is being delivered, such as initial screening, emergency care, and long term treatment.

Under R 791.731, the initial mental health screening to be performed on an inmate must be completed by a trained staff member. Under MCL 801.4(1) and (2), "all" charges and expenses of safekeeping and maintaining prisoners "shall be paid from the county treasury," subject to a health care provider's obligation to attempt to seek recovery from available insurances and other similar sources. "All" is a term clearly synonymous

with each and every. In its ordinary and natural meaning, there is no broader classification than the word "all"; it leaves no room for exceptions. *People v Monaco*, 474 Mich 48, 55; 710 NW2d 46 (2006). Thus, these provisions require that all expenses associated with maintaining the inmate, including those incurred to fulfill the requirement to perform the initial screening through a jail staff person, are the obligation of the county.

Regarding other mental health services, as explained above, the financial burden for providing them will rest with the county rather than the community mental health program, except to the extent that the community mental health program is successful in obtaining payment from a third-party source as anticipated by MCL 801.4(2).

It is my opinion, therefore, in answer to your second question, that the costs incurred in providing mental health services to an inmate in a county jail rests with the county, regardless of the type of treatment or mental health service being delivered.

MIKE COX
Attorney General