

**Testimony To The
ADVISORY COMMISSION ON INTERGOVERNMENTAL RELATIONS
Prepared October 27, 2009 by the
North Dakota Association of Counties
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CONCERNING JAIL MEDICAL COSTS

Chairman Potter and members of the Advisory Commission, thank you for the request to speak on the issue of jail medical costs.

In order to put this issue in perspective, I need to provide some background. As is has been characterized in the Internet news magazine Stateline.org, "jail and prison inmates are the only Americans with a constitutional right to health care, and the cost to deliver it is on the rise".

The Eighth Amendment of the U.S. Constitution guarantees individuals the right to be free from cruel and unusual punishment, which the Supreme Court has determined to include the right of prisoners to have access to medical care. This access is not unlimited, but the denial of medical care is a Constitutional violation if prison or jail officials are "deliberately indifferent" to a "substantial risk of serious harm." The court has gone on to find that inmates have a claim against the correctional authority when poor treatment resulted in "sufficiently serious" harm.

Generally, for an injury to be considered "sufficiently serious," the harm must significantly change the prisoner's quality of life. For example, harm would be considered "sufficiently serious" if it causes degeneration or extreme pain.

With all of the court cases and definitions, it still often comes down to what inmates report as their symptoms – which often forces correctional administrators to err on the side of caution and authorize medical as well as dental care in situations involving pain or where health could deteriorate during the expected length of incarceration, (i.e. unable to eat due to severe tooth pain).

North Dakota's 53 counties maintain 26 jails, of which 16 are classified as "Grade 1" or can hold a prisoner up to one year. Seven are Grade 2 (up to 30 days) and three are Grade 3 (96 hours). As you can imagine, there are numerous joint powers agreements and contracts among the 53 counties to provide access to the appropriate facility for particular inmates.

The 26 jails have an absolute capacity of 1570, but because of classification and segregation requirements (accused, convicted, work release, male, female, etc.) the realistic capacity is somewhat less. In 2008 a periodic survey was updated, suggesting that the average daily population (ADP) statewide was 1063.

While a minority of jail inmates arrive with some form of medical insurance, most have none. Those with Medicaid benefits prior to incarceration, lose those benefits once they are "on the inside" by federal law. Those with

private insurance often lose that with any prolonged incarceration.

As you can imagine from the size of the jails in North Dakota, none can afford to maintain medical staff beyond the nursing staff necessary for intake screening and prescription management. The relatively low numbers also mean that most jails have little negotiating power with private medical facilities on rates. A few have convinced their medical facilities to charge "Medicare rates" for inmates, as a service to their community – but with the "regional" nature of most Grade 1 jails, many prisoners are actually coming from some distance making this argument more difficult.

While the day-to-day, run of the mill costs continue to increase – as they do for employers and individuals – the more random, catastrophic costs are what concern county officials the most. One situation, such as a heart attack requiring an open-heart surgery, could seriously compromise the finances of a small county. Every time a county places an inmate in jail, they are playing a game of roulette that they can never win and will ultimately lose.

Counties have investigated private insurance for catastrophic health costs, but most have found it to be prohibitively expensive. A statewide health insurance contract for all jails is being explored, but the costs remain extremely high – over \$215,000 annual premium – and properly allocating the premium costs would be difficult with the many small "occasional users" of the regional jails.

This is the information I hope the Committee was interested in receiving. County government would welcome any suggestions that the Committee may have to assist counties with this issue.

Jail Survey - October 2008

Facility	Capacity	ADP
Grade 1 - Up to One Year		
Barnes County (Valley City)	30	15
Bottineau County (Bottineau)	9	3
Burleigh County (Bismarck)	130	90
Cass County (Fargo)	348	248
Grand Forks County	246	170
Lake Region C.C. (Devils Lake)	74	95
McKenzie County (Watford City)	12	1
McLean County (Washburn)	30	8
Mercer County (Stanton)	20	10
Morton County (Mandan)	32	29
North Central CRC (Rugby)	129	75
Richland County (Wahpeton)	33	27
Stutsman County (Jamestown)	84	78
SW Multi-County (Dickinson)	60	26
Ward County (Minot)	104	80
Williams County (Williston)	112	45
Grade 2 - Up to 30 days		
Adams County (Hettinger)	7	0
Cavalier County (Langdon)	12	3
Mountrail County (Stanley)	12	11
Pembina County (Cavalier)	18	5
Rolette County (Rolla)	24	20
Trail County (Hillsboro)	13	6
Walsh County (Grafton)	21	18
Grade 3 - Up to 96 Hours		
Emmons County (Linton)	4	N/A
Logan County (Napoleon)	3	N/A
McIntosh County (Ashley)	3	N/A
	1570	1063

* New Jails - not operational in 2008 - ADP based on 2009 estimates