

**Testimony To The  
ADVISORY COMMISSION ON INTERGOVERNMENTAL RELATIONS  
Prepared July 1, 2010 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 your continued interest in the issue of jail inmate medical costs.

As we testified at your last meeting, counties spent about \$1.5 million in CY2009 on inmate medical costs – in compliance with State law and federal court decision requiring that jail authorities provide “necessary medical care”. While the cost itself is a significant issue, jail administrators have pointed out that the uncertainty of the cost is an even larger concern. Cass County testified about a single inmate that accrued over \$100,000 in medical costs alone – 50% of an inmate medical services budget that had been established for 7,300 inmates.

It was noted that, although private insurance follows and inmate into jail, most inmates (if they have coverage at all) receive their medical care through Medicare, Medicaid, or the Veteran’s Administration and currently these programs terminate the minute a person walks through the front door of the jail. Although counties were hopeful that federal health care reform legislation would address this, it did not – however it did include a requirement that the new “health care exchanges” continue to cover “accused” inmates – possibly a small future improvement.

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For these reasons, NDACo supports bill draft 10061.0100 amending the statutes currently addressing inmate medical costs.

Section 1 of the bill amends the definition section of the chapter and is proposed to simply make it crystal clear that when an inmate is not incarcerated within the jail facility, but supervised under electronic monitoring, home detention, or a similar program; that individual is not considered an “inmate” and therefore the jail is not obligated to fund “necessary medical care”. This is consistent with federal

requirements and present jail policies, but the lack of clarity of the current language results in continued disagreements with some medical providers.

Section 2 of the bill is the existing statute allowing the jail to establish inmate accounts and deduct certain costs from those accounts (12-44.1-12.1). Currently this section allows for medical cost deductions (among others) but then goes on to address the jail's responsibilities regarding inmate medical costs. This bill draft would maintain the "account" language, but delete the medical cost responsibility description for creation in the proposed new separate section of the bill draft.

The proposed new section (Section 3 of the bill) would accomplish several things. It would first recreate the jail's responsibility for ensuring that necessary medical care is provided, however it would be clearly limited to incarcerated inmates and the language used would mirror the federal court's requirements. The new section continues on to state that if the inmate has insurance, the medical provider must seek payment from that source first; and absent insurance, the medical provider would be limited to billing their costs at Medicare program rates.

Our office has been informed that the language on line 5 of page 3 should to be rephrased to avoid the perception that a facility would bill costs at different rates – something which is not permitted. That sentence may be better worded to read: If the inmate does not have health insurance coverage and it is determined that the inmate's medical costs are the responsibility of the correctional facility, that facility is not obligated to pay those medical costs at rates which exceed those paid under the federal medicare program.

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Regarding the second bill draft before the Commission addressing this issue, (10108.0100), we don't believe it is practical in its current form. The Department of Corrections and Rehabilitation is faced with this very same problem – a relatively few inmates with very large and unexpected medical costs. Simply adding the counties' catastrophic costs to those of DOCR, moves (but doesn't solve) the problem – therefore we cannot support this proposal.

NDACo would be more supportive of legislation creating a separate fund within State government which would be available to pay catastrophic inmate medical costs that



are faced by BOTH county and state facilities. Something that could be “pre-funded” with a State appropriation, funded with contributions from DOCR and county facilities, or quite possibly both. This approach could reduce and “normalize” costs for both state and county government, and therefore avoid the potential conflict between public safety and fiscal responsibility in these rare, but costly, situations.

There exist in State law several special funds that operate in such a manner, and may be models for this concept.

NDCC 12-65-08 created (in 2003) a “probationer violation transportation fund” to reimburse state or county costs should it become necessary for law enforcement to return a state probationer that has been allowed to transfer or travel out-of-state. The probationer (or the DOCR on their behalf) and (for the first several years) the resident county contributed to this fund. As of June 2007, the fund reached a level where county contributions were discontinued. This program, managed by DOCR, has been an unqualified success.

Similarly, NDCC 54-12-23 (enacted in 2003), created the “special operations team reimbursement fund” within the Office of Attorney General. Counties contribute varying amounts (\$200-\$1,000) based on population, and these contributions are matched with federal grant funds. The combined funds are used to reimburse the direct costs of training and dispatching the limited number of tactical law enforcement teams for hostage situations, extractions, bomb disposal, etc. wherever they are needed throughout the state. Counties collectively contributed about \$20,000 per year for 2003 through 2008, however, the fund balance allowed them to discontinue contributions for 2009 and 2010. Depletion of the fund will trigger contributions in 2011. This program has also been extremely successful.

Both programs address situations with some similar characteristics to the occasional catastrophic inmate medical costs incurred by both county jails and the DOCR. Probationer recovery and special operation team deployments are unplanned, unexpected, and extraordinarily expensive. This approach, we believe, could be a more equitable and sustainable method of addressing this problem.

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## **STATE FUND EXAMPLES**

**54-12-23. Special operations team reimbursement fund -- Continuing appropriation.** The attorney general may establish a special operations team reimbursement fund of up to two hundred fifty thousand dollars consisting of federal funds and moneys obtained from cities and counties. The funds are appropriated as a standing and continuing appropriation to the attorney general for reimbursement to city and county governments that provide special operations team services to rural areas. The attorney general shall develop guidelines for the reimbursement of expenses to city and county governments providing special operations team services.

### **12-65-08. Interstate transfer or travel of probationers -- Fees.**

1. Upon the approval by the department of corrections and rehabilitation of a request of a probationer who is under the supervision of the department of corrections and rehabilitation to transfer residence to another state under the interstate compact for adult offender supervision, the probationer shall pay to the department an application fee of one hundred fifty dollars. The department may waive the offender's application fee. If the department waives the offender's payment of the fee, the department shall pay the offender's application fee. In addition to the application fee paid by the probationer or the department, the county having jurisdiction over the probationer, upon approval of the application for transfer, shall pay to the department a fee of one hundred fifty dollars. However, if the balance in the fund created pursuant to subsection 3 exceeds seventy-five thousand dollars on June thirtieth of the immediately preceding fiscal year, the department shall waive the entire fee otherwise required to be paid by the county.
2. Any probationer residing in the state who requests a travel permit to travel to another state shall pay to the department a travel permit fee of ten dollars. In the case of illness or death in the probationer's family, the department may waive the travel permit fee for hardship.
3. The department shall transfer all funds collected or paid under this section to the state treasury for deposit in the probationer violation transportation fund. The funds deposited in this fund may be spent pursuant to legislative appropriation for the purpose of defraying the costs of returning to the state probationers who violate their conditions of supervision. The department may contract with a private entity to assist in the administration of the fund.