

State of Iowa Office of Ombudsman

ANNUAL REPORT FY2019



This annual report about the exercise of the Office of Ombudsman functions during the 2019 fiscal year is submitted to the Iowa General Assembly and the Governor pursuant to Iowa Code section 2C.18.

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The Office of Ombudsman is open 8 a.m. to 4:30 p.m.
Monday through Friday, except on designated state holidays.

Ombudsman's Message

You may be wondering why we are issuing two annual reports in the same year. That's because the due date of our report was moved last legislative session from April 1 to December 31. This means that the ground covered in our reports will now encompass the previous fiscal year, rather than the calendar year. Issuing our report just prior to the legislative session will alert lawmakers to the problems we identify more promptly.

Unabated Increases in Case Numbers

I wrote in last year's column that our case numbers rose for the fifth straight year in 2018. We are on course to see another sizable increase in calendar year 2019. On a fiscal year basis, 2019 case numbers were 7 percent higher than in 2018, reaching a total of 5,407 cases. Regardless of whether we report our statistics by calendar or fiscal years, if this rate of increase continues, we will set an all-time record next year for incoming cases in any 12-month period.

Once again, one of the biggest year-to-year increases came from county jails. We received 30 percent more complaints from jail inmates and their families in FY2019 than in FY2018.

I don't anticipate that our overall numbers will decrease anytime soon, for several reasons.

First, we expect an influx of complaints from local government employees due to a new law requiring those workers to be informed of our office and its authority to investigate fraud and waste. Second, jail populations do not appear to be decreasing, nor do we see significant improvement in the availability of mental-health treatment that would curb incarcerations. Third, our investigations continue to find that government agencies are understaffed. This understaffing has caused mistakes, made agencies less responsive, and increased frustrations for citizens and government employees alike. I made this same observation in our 2017 annual report, and I continue to be gravely concerned about what happens when government agencies are tasked to do more with less.

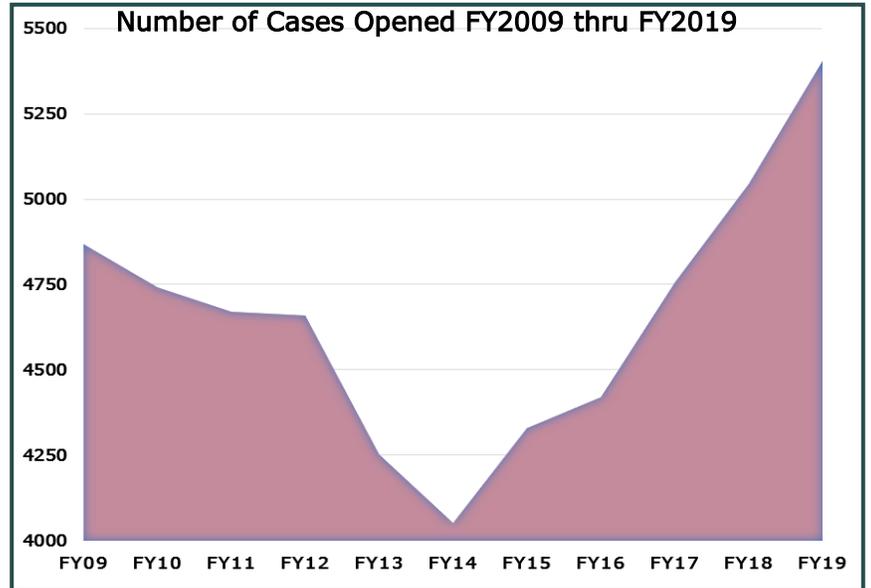
Transparency

I remain frustrated with transparency in all levels of government.

Iowa's Open Records Law lists dozens of records that are confidential unless "ordered ... by the lawful custodian of the records." This means that government agencies have the discretion, under the law, to release information in the interest of clearing up confusion, justifying decisions, or embracing accountability. Unfortunately, this broad power of the government to release records is rarely acknowledged by public officials, who usually err on the side of secrecy – often at the advice of their legal counsel. While I understand that government attorneys have a duty to protect and defend their clients, they also should consider the public's interest in government policies and decisions. Too often, citizens who make inquiries about their city, county, or state offices feel disregarded and shut out.

Nowhere is this disconnect more evident than among Iowa's professional licensing boards. Since we issued a public report in 2017 of the systemic secrecy of these boards, we have seen little improvement in their commitment to openness. (Read our special report: [A System Unaccountable](#)) Most, if not all of the boards, continue to issue form letters to complainants that say nothing about the basis of their decisions. My office has submitted a bill draft for the 2020 legislative session that would require the licensing boards to provide a statement of reasons to citizens when their complaints are dismissed.

We also have suggested legislation that would remove some roadblocks we have encountered in our investigations of government agencies. The proposed statutory changes would allow the Legislature to clarify whether agencies should be allowed to raise privileges to avoid sharing important information with us. I have argued that we cannot properly oversee agencies if they refuse to answer our questions, share records, or consent to the release of our findings.



(Continued on page 2)

Ombudsman’s Message

(Continued from page 1)

Government officials and employees must recognize that the work they do is the public’s business.

Common Sense

In addition to a lack of transparency, I am regularly disheartened by the lack of common sense employed by some government officials. All too frequently, we encounter government workers who think that written procedures and policies should dictate every action they take. In reality, written procedures cannot account for every scenario that might present itself. Policies are not usually perfect or infallible, nor are they set in stone.

As one example, we received complaints last year about an agency that admitted it had lost several payors’ checks. Even though the agency had obviously made a mistake, it told the payors that they would still be responsible for interest and penalties due to their late payments – because that was agency policy. Fortunately, we found a supervisor who recognized the unfairness of the situation and waived the penalties and interest. Still, this problem should have been corrected without the need for our intervention. This was far from the only time we have seen an office cite a policy as a basis to avoid doing the right thing.

Philip Howard wrote a book in 1994 entitled *The Death of Common Sense*. He offered a great observation on the problem with a rigid application of the law:

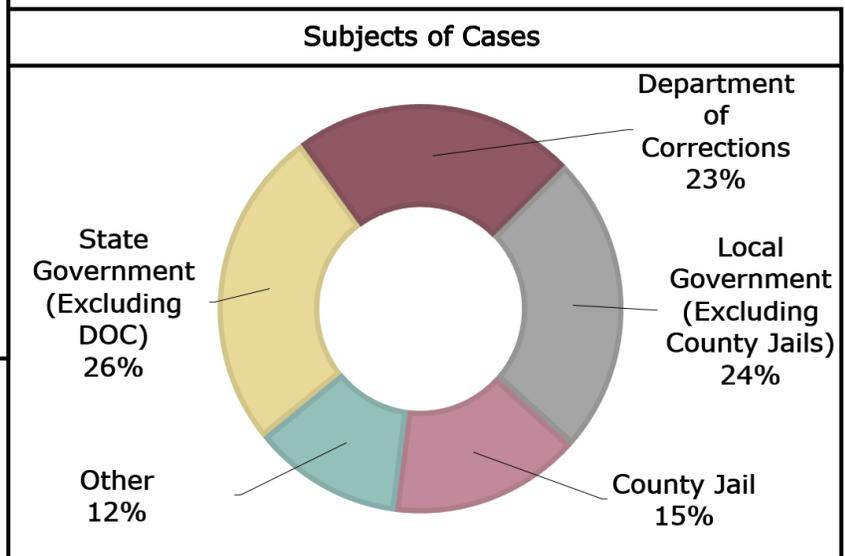
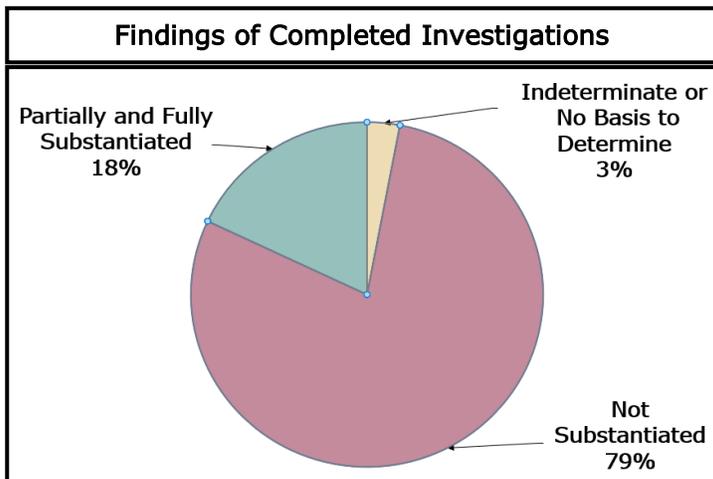
Precision, the experts say, ensures fairness. By eliminating any room for judgment or discretion, law will be the same for everyone. Fairness, we all could agree, is indispensable to law. Fairness, however is a far more subtle concept than making all the words on the page apply to everyone. Uniformity in law is not uniformity in effect.

In Closing...

I must, as always, thank my staff for their hard work, day in and day out. The success this office enjoys in identifying problems and resolving complaints is only possible because of their enthusiasm for the work and their dedication to high expectations in government.

We were fortunate to have former Des Moines Register reporter Clark Kauffman on staff in 2019 before he moved back into the news reporting world. I asked him to share his thoughts on his year in the office and he graciously agreed. You will find Clark’s column – unedited – on page 3. I think you will find it to be an insightful read.

I would also like to recognize two members of my staff, Elizabeth Hart and Jeri Burdick Crane, who will retire at the end of the year. Both were longtime state employees who spent 18 years in the Ombudsman’s office. Their service and dedication were unparalleled. I will miss both of them immensely.

Clark Kauffman—My Year at the Ombudsman's Office

During the year I spent working in the Iowa Office of Ombudsman, my colleagues and I fielded roughly 5,000 complaints from citizens about inefficiencies, negligence and suspected malfeasance within state and local government. Somehow, that experience left me with an even greater sense of faith in government. Each phone call and letter was a reminder of how government touches every aspect of our daily lives, and how those lives can be upended when government fails for whatever reason to do its job.

I had spent the previous 30 years as a newspaper reporter, speaking to government officials at all levels and in all disciplines. That experience taught me government isn't the omnivorous monolith some people believe it to be. But it also confirmed what I had long suspected: that government too often fails to meet the needs of the very people it exists to serve.

As an investigator with the ombudsman's office, I once spoke to a state official who acknowledged that citizens who had called her office with questions had been kept on hold for up to four hours, only to have their calls summarily disconnected when the office closed for the day. Hundreds of the agency's own customers had wasted a half-day on hold listening to an automated variation of the self-refuting phrase, *"Your call is important to us..."*

The citizen who complained about this was effusive in her praise for our office when we last spoke – even though I couldn't turn back the clock and give her back those four hours. I think she was grateful we had picked up the phone, we listened, we looked into her concerns, and we ultimately secured some assurances that corrective action was being taken. We couldn't, as the lawyers say, "make her whole," but we did restore some of her faith in government.

That's a big part of what the Office of Ombudsman does. In this day and age, particularly, I can't think of anything more important.

We've all heard the joke, "I'm from the government and I'm here to help." It suggests we'd all be a lot better off with less government in our life. If I had spent a half-day on hold, I might even subscribe to that theory, if only for a moment. But what does smaller government mean? It means even more time spent on hold. It means fewer inspectors walking the halls of health care facilities, fewer social workers holding the hands of people in crisis, and fewer abuse investigators shielding children and seniors from harm.

Government is all of us. It's that inspiring public-school teacher who changed the course of your life. It's the person who plows your streets while you sleep, licenses your doctor, and puts bad guys in jail. It's the person who rescues your neighbor from a burning home, checks on your child's day-care center, and tracks down the roofer who took your deposit before skipping town.

It's the person who procures books for your local library, checks the cleanliness of the kitchen at your favorite restaurant, and measures the bacteria in the lake where your family goes swimming. It's the person who makes sure a single mom can still feed her kids after being laid off and who checks the safety of the machinery in the factory where you work. It's the person who tells the local landlord that he can't deny you housing because of your religion or the color of your skin.

It's the person who inspects all of the gas pumps in town, cleans the toxins from the river water before it pours from the tap in your kitchen, and maintains the parks and trails around your home. It's the person who picks up your garbage, counts your vote on Election Day, volunteers for military duty in a hostile foreign land, and even ensures the safety of that gravity-defying carnival ride your little niece is so intent on riding.

This is the government. And like every human endeavor, past, present and future, it is flawed. Just as in private corporations, mistakes are made, budgets are cut, resources are squandered, money is misdirected, and managers mismanage. That's where the Office of Ombudsman comes in – not to penalize or point fingers, but to help right some of the wrongs and restore people's confidence in government.

When Governor Robert Ray created the office, he called it a "step in combatting the perilous impersonality of government" that would give Iowans a renewed sense of "direct participation in their government." From my point of view, the Office of Ombudsman lives up to that promise, and I suppose that's why it has renewed my own faith in government, despite my having spent the past 12 months examining all of its failings.

It's true what they say: A cynic is a person who knows the cost of everything and the value of nothing. Forty years of paying taxes has taught me the cost of government. A year in the Office of Ombudsman has taught me the value of government.

Clark Kauffman began working for Iowa Office of Ombudsman in October 2018. In November of this year, he left the office to accept a position as a reporter with States Newsroom.

Managed Medicaid

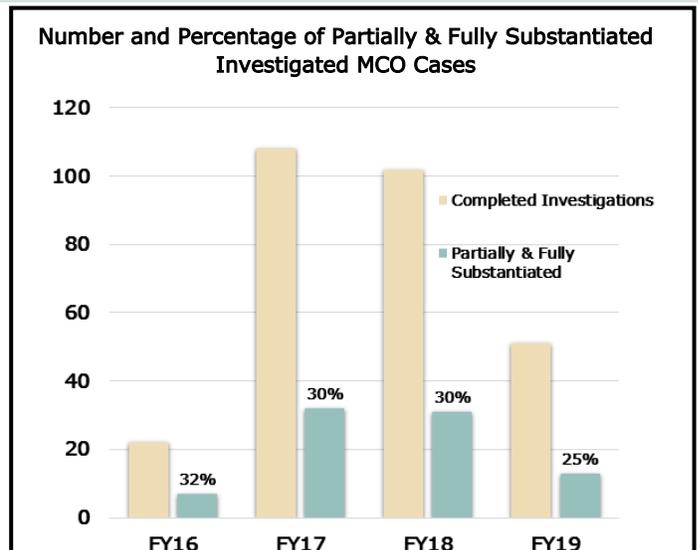
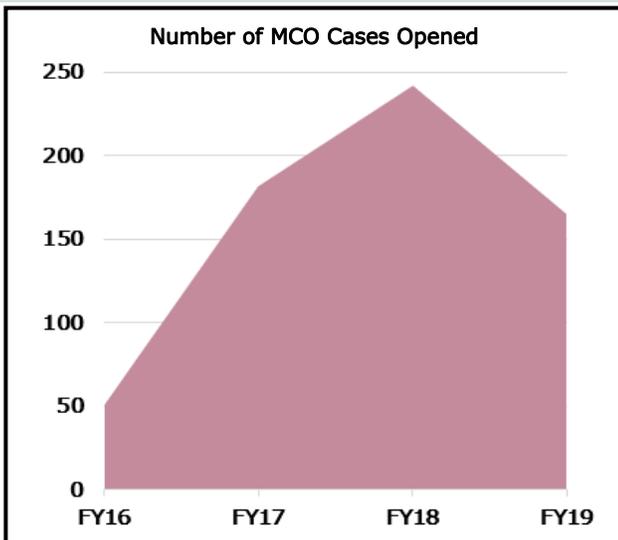
Medicaid Members Charged Dental Wellness Plan Premiums Despite Being Exempt

Iowa’s “Dental Wellness Plan” provides dental coverage for adult Iowa Medicaid members through two carriers, Delta Dental or MCNA Dental. All Dental Wellness Plan members receive full dental benefits in their first year of eligibility. Members who complete their “Healthy Behaviors” each year continue to receive full benefits, which includes an oral health self-assessment and preventative service. Members who do not complete their “Healthy Behaviors” may be charged a monthly premium of \$3. Non-payment of premiums can result in a reduction to “basic” dental benefits.

Our office received multiple complaints about the Dental Wellness program from Medicaid members who did not feel they should have had to pay the monthly premium.

- ◆ One complaint was from a western Iowa woman who had difficulty finding a dentist and was unable to complete her healthy behaviors. She didn’t feel it was fair to be charged a premium under those circumstances, so she filed a State Fair Hearing appeal. The Administrative Law Judge found in her favor. Despite winning the appeal, she continued to be charged a premium and eventually was placed on the basic dental plan. As a result of our inquiry, the agency ultimately agreed that she should not owe a premium and her full dental benefits were restored.
- ◆ A central Iowa man had requested a hardship, but he was charged a premium anyway. He received a notice that his dental benefits would be reduced if he did not pay by a certain date. When our office requested additional information from him in order to inquire with the agency, he noted that he had been on an Iowa Home and Community Based Services (HCBS) waiver for 15 years. We realized that he should have been exempt from premiums due to his status and advised the agency of this. The agency made corrections to ensure he was no longer charged a premium and his services were not reduced to basic.
- ◆ An eastern Iowa woman who was payee for her disabled son contacted our office because his dental benefits had been reduced to basic. Her complaint was that, as the payee, she should have been sent the premium notices instead of her son. She said he was too disabled to understand the notices or act upon them. We made an inquiry to the agency about the payee issue, but we also asked whether the member should be considered exempt from premiums since he was so ill. The agency determined he should have been exempt from premiums. The agency also agreed to review the error, which caused the premiums to be sent to the member rather than the payee. The agency reinstated the member to full dental benefits and agreed to stop sending premium notices.

Other complaints involved members who were charged premiums and reduced to basic dental benefits when they should have been exempt. The agency did not have a good way of sorting out who should be exempt from premiums and who should owe a premium. It is our understanding that the agency will work with Information Technology (IT) staff to better identify members who should be exempt from premiums. The agency is also working on administrative rules regarding the Dental Wellness Plan. We are hoping these efforts minimize the incidence of premiums being charged to exempt members and members erroneously being placed on the basic dental plan.



Managed Medicaid

Provider is Unpaid Because MCO Denies Receiving Claims

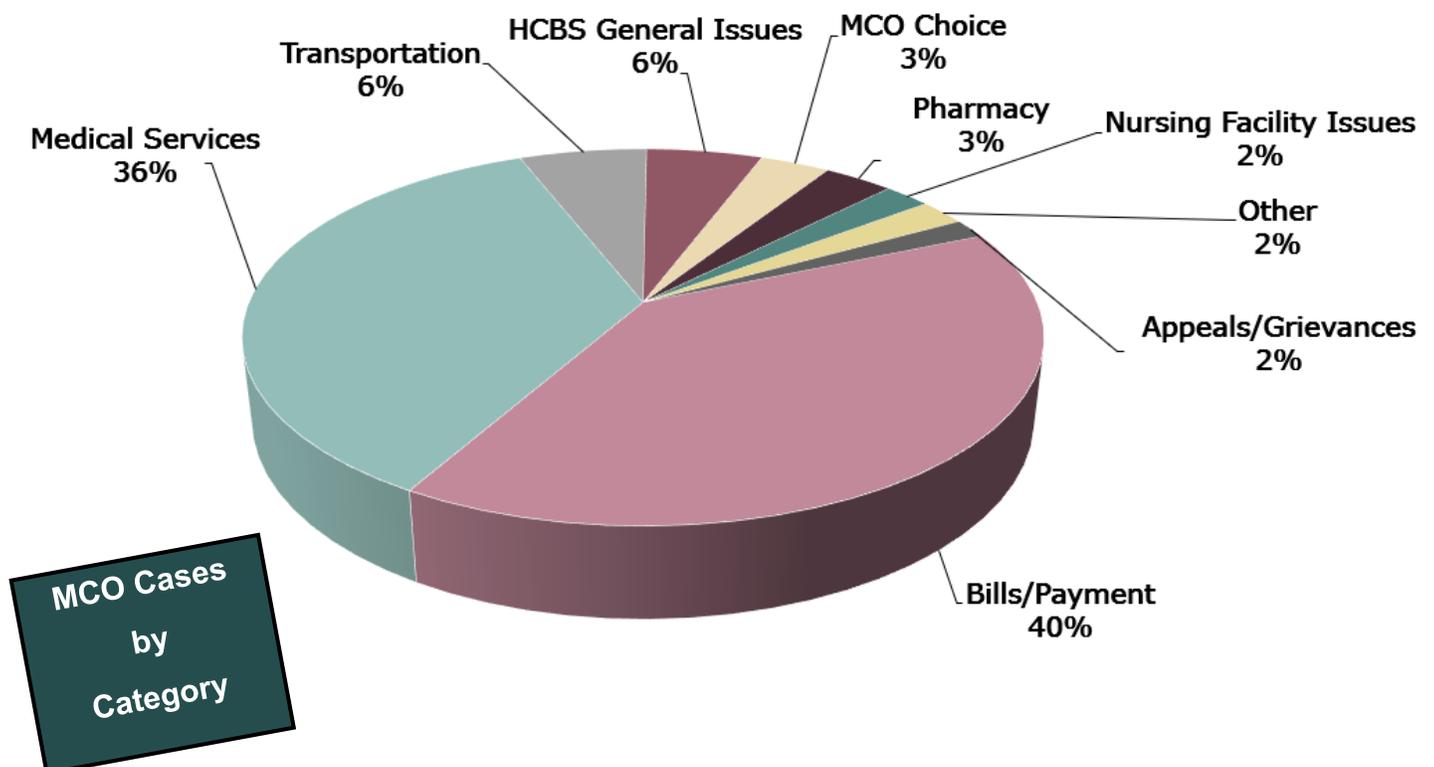
A central Iowa provider of meal services for Medicaid members contacted our office stating that the Managed Care Organization (MCO) did not pay her. She reported that she had not been paid for December 2018, January 2019, and February 2019. She said she had mailed the claims to the MCO, but the MCO told her they had not received the claims. The certified mail receipts she provided confirmed that the claims had been delivered to, and signed for, by someone at the mailing address.

We provided her documentation to the MCO and the claims were processed and paid within about a week. The MCO admitted that the claims arrived at their office and were signed for, but at some point, someone lost them. The MCO told us they were working on a better tracking system. For future claims, the MCO gave the provider the option of faxing her claims or submitting them electronically.

MCO Seeks to Recoup Provider Payments that Were Originally Approved

Iowa Home and Community Based Services (HCBS) waivers are Medicaid programs from the federal government where regular Medicaid rules are set aside, or "waived." The main purpose of waivers is to allow Medicaid recipients to receive services in the community rather than in institutions.

A central Iowa provider of HCBS Waiver services was authorized and approved by a Managed Care Organization (MCO) to provide services for a member at 17 1/2 years of age. The MCO later recouped six months of the payments, stating that the member should have been 18 years old before he received services. Our office contacted the MCO and it confirmed that services could be provided beginning when a member was 17 1/2 years old. The MCO admitted the payments had been recouped in error because the service code was for an adult service. The issue was addressed with the MCO's cost containment unit to prevent it from happening again. The claim was reprocessed for payment and the provider was paid back.



Corrections and Jails

Treatment for Sex Offenders Unfairly Withheld Until End of Sentence

Offenders have long come to our office with complaints about the Sex Offender Treatment Program (SOTP). In the past few years, we have taken a closer look at the practice of placing individuals into this treatment according to their tentative discharge dates (TDD).

In one case, we heard from an inmate who was required to complete SOTP because he had received a couple of prison disciplinary reports related to sexual misconduct; in other words, he was not a convicted sex offender. He complained that he would likely serve 25 years before he would be given the opportunity to participate. This meant every year that he came up for parole, the agency would not support him and it was highly unlikely he would receive an early release.

Agency officials conceded they had not relied on research or best practices when it came to placement of sex offenders in treatment. We also received conflicting rationales for their practice. Agency officials told our office they began relying on inmates' discharge dates for placement, given the lengthy waiting lists for SOTP. They said this was out of fairness and to ensure all receive treatment before discharge. They said it was

safer to have sex offenders under a period of supervision when released because if something goes awry, they can be revoked to prison. We were not convinced by this argument since requiring inmates to wait for treatment until they nearly discharge their sentences does not allow for much, if any, supervision in the community.

We acknowledged that a lack of agency resources impacts the ability to get offenders into treatment and that there are a multitude of factors that play into staffing decisions for treatment programs. Regardless, we are of the opinion, and have made it clear to agency officials, that if the only reason the agency does not support a person's early release is due to the lack of treatment completion - and placement in that treatment is restricted by not appropriately staffing the treatment program - the agency's actions are unreasonable and oppressive. We believe it is unfair to withhold treatment year after year while the Board of Parole continually denies release based on the fact that the offender has not completed said treatment by no fault of their own.

Serving Too Much Time

Our office was contacted by an inmate who disagreed with the agency's calculation of his tentative discharge date (TDD). We reviewed the inmate's records and found that he had been ordered to serve two concurrent (running at the same time) probation sentences out of two different counties. He was granted probation in November 2017, and was later revoked in August 2018. When he arrived at prison, he was informed that the TDD for one sentence was approaching, while the TDD for the other sentence was several months further away.

We discovered that the inmate had served time in a county jail for one of his charges and in a different county jail for the other charge. However, the credit for

each jail was applied only to the specific county sentence rather than to both sentences.

We pointed out to the agency that the inmate was entitled to credit toward both sentences for any time he spent in either jail after his probation began, so long as he had been served an arrest warrant pursuant to the other county's criminal case. Our position was based on an Iowa Supreme Court decision and Iowa Code section 907.3.

The agency agreed and the inmate's time computation was corrected to reflect the appropriate TDD. He was released on time, five months sooner than when he would have been had he not contacted our office.

Stuck in Iowa

An inmate reached out to our office for help after waiting eight months to be released. The inmate reported he had been given approval for a parole to an out-of-state detainer, but prison staff told him he could not be released unless he had an approved Iowa residence. Not being from Iowa and not knowing anyone in Iowa, this left him stuck. It seemed odd to us that there would be such a stipulation for a person who was approved to be released to an out-of-state parole.

Prison officials explained that when an inmate is paroled to a detainer, the agency needs an acceptable address on record for them in case the detainer is lifted so the agency knows where to find the offender. For reasons

we could not understand, several staff believed the address had to be in Iowa.

Once we contacted the proper agency authorities, it was determined that the inmate's mother's out-of-state address would be acceptable and he was soon released to his detainer.

Agency authorities blamed a communications breakdown for this error and assured us the facility staff was now aware of how to handle these types of releases. Officials also took it upon themselves to review other releases that were pending and found two similar cases that they then resolved.

Corrections and Jails

Making the Best of a Bad Situation

The son of a deceased state inmate was crestfallen when he realized that many of the man’s belongings had been apparently discarded rather than offered to his surviving family. The son had received his father’s TV, photo albums, and some arts and crafts he had made in prison; but a collection of cassette tapes that was meant for the inmate’s grandson was not accounted for.

We located a detailed inventory of the late inmate’s property and spotted several other items of potential value, including a watch, headphones, an AM/FM stereo, alarm clock, beard trimmer, electric razor, and bibles. The inventory also provided titles for all the missing cassette tapes.

We reviewed notes made by various prison staff and spoke to the warden. It became apparent that there had been a miscommunication between the inmate’s

son and staff who had handled the inmate’s personal effects. We received confirmation that many of the items on the inventory had been destroyed before their existence was disclosed to the inmate’s son. We asked the warden to share the detailed inventory with the son so that the cassette collection could be rebuilt. We also asked that the value of the discarded items, as specified in an inmate store catalog, be totaled and a check made out to the inmate’s son. The warden agreed and offered to reach out to the inmate’s family.

“I can do nothing but apologize,” the warden told us. “I certainly wish this would have happened differently.”

The warden said he would also change prison procedures to ensure that families are given a chance to review property lists before any deceased inmates’ personal items are destroyed.

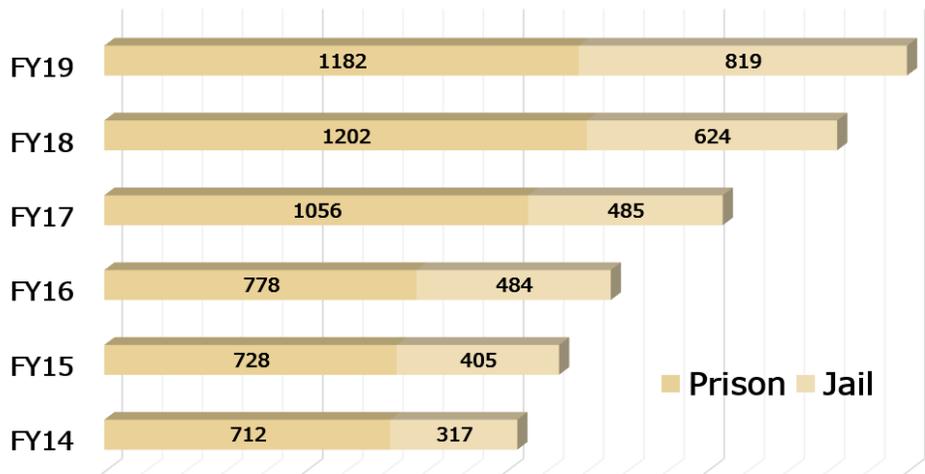
Personal Opinion Interferes With Policy

Multiple inmates filed complaints with our office because they were not being transferred to work release in a timely manner. We incorrectly assumed the problem was simply a case of long waiting lists and insufficient bed space at the work release facility. What we actually found was that the judicial district was failing to follow a policy of prioritizing work release placement for individuals whose parole was revoked.

We first analyzed the placement dates on the work release rosters for placement dates and compared them to the eligibility dates of the inmates who had their paroles revoked to confirm there was a problem. We then found that the residential manager responsible for assigning the work release beds was aware of the requirements to prioritize placement but had made a decision to take all offenders on a “first come, first served” order. He explained that it was a tracking nightmare if he followed policy and it also severely impacted officials’ ability to bring non-parole revocation offenders into their facility. The manager went on to say that placing parole revocation clients at the front of the wait list rewarded their negative behaviors and sent the wrong message.

Though we could understand his perspective, we did not believe the manager had the authority to unilaterally act contrary to policy. We argued that policies are developed by a “meeting of the minds,” and though we were not present for the discussion that led to the development of the policy, we trusted there was good reason to have it. Before the end of the day, the manager responded that he had spoken with agency leadership and the parole revocation clients would be placed at the top of the wait list. Since then, complaints from the district have practically ceased.

NUMBER OF PRISON AND JAIL COMPLAINTS



Corrections and Jails

An Unnecessary Escalation

A county jail inmate complained that he had been assaulted by a correctional officer who allegedly instigated a conflict with the complainant. The complainant wanted charges pressed against the officer for the alleged assault. Although our office cannot press charges, we can and often do review use-of-force complaints to ensure correctional staff handle incidents appropriately.

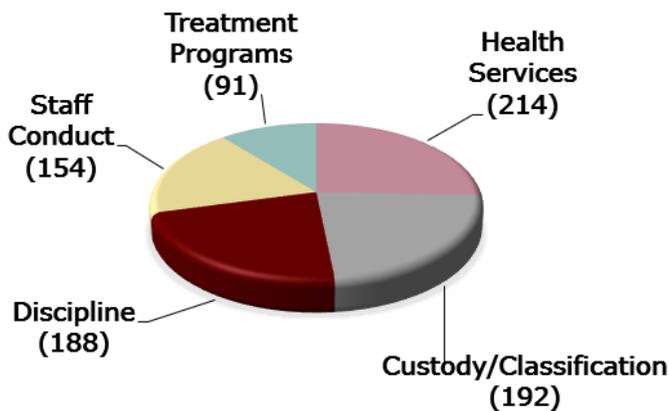
We requested incident reports and video evidence as part of our review. After reading the reports and watching the cellhouse video, it was clear that the officer involved in the conflict and another jailer misrepresented what had happened in their written reports. They claimed the inmate got in the officer’s face, but the video showed the officer stepped toward the inmate, made a provocative comment, and then shoved the inmate when he held his ground. While we do not condone the inmate’s insolence leading up to the violent physical confrontation, it could have been avoided had the officer made better decisions rather than unnecessarily escalating the conflict.

We substantiated the complaint and encouraged jail leadership to go over our findings with the involved staff members. We also determined that jail officials had failed to file a report with the state jail inspector within 24 hours of the incident, as required by administrative rule.

Taking Inmate Money Without a Legal Claim

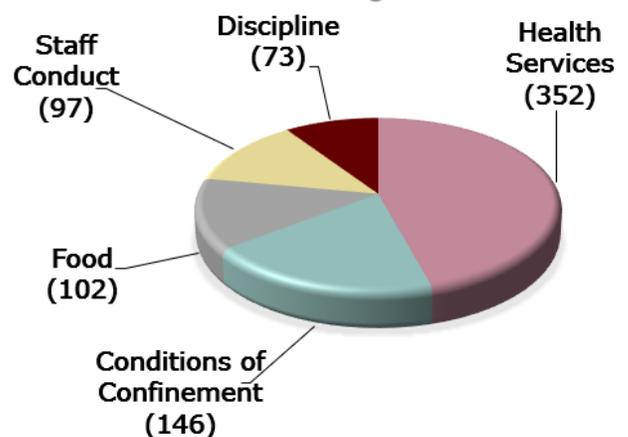
A jail inmate complained that after he was booked into the jail in late 2018, the jail illegally took \$543 of the cash he was carrying at the time. The money had initially been routed to his commissary account, but the system immediately laid claim to the \$543 as payment for a dental bill that dated back to a 2006 stay in the jail.

We asked the jail to show us the legally required court-approved reimbursement claim that it had relied upon to take the money. Initially, county officials provided our office with a court-approved claim, but we pointed out that the claim pertained to room and board at the jail, not medical expenses. We also noticed the claim was dated February, 2005 — long before the 2006 dental appointment had taken place. Eventually, five months after we first questioned the jail’s seizure of the money, the county reimbursed the inmate.



Top Five Prison Complaints Categories

Top Five Jail Complaint Categories



Corrections and Jails

Jail Food Fight

Our office made some in-depth inquiries into a number of food-related complaints from county jails in 2019. In response to a series of complaints from one central Iowa jail, we contacted the jail administrator who acknowledged the county's food-service provider had been having "big problems" and was at times serving none of the side dishes listed on the menu. A review of jail records showed that while the food-service contractor was supposed to be serving cake once or twice a week, it was instead substituting Jell-O or other items that delivered one-third as many calories.

We also learned that the contractor, at the direction of jail administrators, was routinely substituting some of the food it was paid to serve with donated items the sheriff's staff picked up each week at a local grocery store. The kitchen manager told us the donated food that wasn't consumed by inmates – cake, cookies, doughnuts, bread, and other baked goods – was regularly set out for the sheriff's staff to eat. The sheriff confirmed this, saying the donated leftovers were treated as "up for grabs" by the staff.

When we asked the sheriff whether anyone at the jail had been checking the meal trays to determine whether the county was getting all of the food the contractor was paid to serve, he said that responsibility had been delegated to the contractor itself. "That's the reason you hire a vendor," he said.

During our investigation, the jail and the contractor stopped using locally donated food in place of purchased menu items. We then recommended that efforts be made to reduce the number of menu substitutions, that portion sizes be made consistent with the calorie levels claimed on the menu, and that the jail staff routinely check meal trays to make sure county taxpayers weren't being shortchanged. The sheriff accepted those recommendations but rejected two others – that the jail use an independent dietician or nutritionist who wasn't employed by the food vendor, and that the jail use larger food trays to accommodate all of the food listed on the menus. Among other food-related cases:

- ◆ An inmate at a northern Iowa county jail complained that inmates were being served insufficient food. We determined that a dietician had last reviewed the Jail's menu in 2017, and the jail was routinely failing to meet the federal government's dietary recommendations due to miscalculations of portion sizes or calories. French fries, for example, were credited with five times as many calories as they delivered. Even some of the pre-packaged food delivered just half the calories the jail was claiming. When we raised these issues with the jail administrator, he offered no explanation, but said a new menu would be developed.
- ◆ A county jail in southeast Iowa was relying on a dietician's certification for a menu that was substantially different from the one used in the jail's kitchen. Also, the jail was serving bologna and an apple seven days a week for the evening meal. In addition, the jail was treating all sources of protein such as turkey and beef – as well as all vegetables, fruits and grains – as providing the same number of calories per ounce. When we questioned these practices, the jail's dietician acknowledged that from a nutritional standpoint she "would not recommend" the meals currently being served to inmates, but asked our office for guidance on whether to approve it anyway. We advised against doing so.
- ◆ In response to an inmate complaint, our office examined a year's worth of menus at a central Iowa jail. In 2016, the jail's dietician created a low-calorie menu to save money, but the jail never implemented the changes. Instead, the jail began using a menu that was never approved by a dietician, which contained half the fruit and vegetables of even the dietician's cost-savings menu. After we questioned the jail's practices, the administrator authored a letter indicating the menu met the minimum state dietary standards and had the dietician sign it. This "approval" was given without the dietician seeing any recipes or any information on portion sizes. After she signed the letter, the dietician contacted our office and asked what the state standards for certification were. In response to a series of recommendations from our office, the jail consulted with the dietician on a new menu that now delivers almost 3,200 calories per day, which is within state dietary standards.

Illegal Strip Search

Our office was contacted by a man who complained that he was illegally strip searched by a female jailer. Iowa Code section 804.30 states that a strip search must be conducted by a person of the same sex as the arrested person, unless conducted by a physician.

We contacted the jail administrator regarding the complainant's allegation. Due to our inquiry, the jail

administrator reviewed the incident and found that the illegal strip search did occur. The administrator assured us that they formally addressed the incident with the employee who conducted the strip search. To ensure that opposite-gender strip searches would not happen again, jail officials said they would review the law at their next staff meeting.

Local Government

New School Board Faces Vacancy Dilemma

A concerned citizen contacted us about a local debate over the right way to fill a vacancy on the board of a newly-formed school district after voters had approved consolidation of two districts. According to the reorganization petition that spelled out how the merger was to occur, four school board members were supposed to come from the historic part of one district, two were to come from the historic part of the other district, and one member would be unanimously appointed or specially elected.

The original board was selected without problem, but one member stepped down not long before the newly formed district was set to formally begin operating. That created questions about who should fill the seat and what portion of the district they should come from. The complainant who contacted our office argued the new board member should come from the part of the district that originally had four members.

The school district's attorney reviewed the matter and concluded that there was not a legal requirement to fill the vacancy the way the complainant wanted. The attorney argued that once the initial school board was seated consistent with the reorganization petition, the law that governs such mergers had been followed.

We found that the relevant code section did not contemplate what should happen when there is a vacancy on the initial school board. However, we thought it made the most sense - and it reflected the will of the voters - to appoint a new member from the same historic district that the former member represented. We suggested that officials make every effort to ensure the makeup of the new district's board reflected the will of the voters who approved the merger.

City Tows Truck Without Toeing the Legal Line

A northeast Iowa man complained that city officials illegally impounded his truck and did not allow him a hearing to dispute what happened. The complainant contacted our office after city leaders reportedly ignored his requests to air his concerns.

The whole situation started in 2014, when the complainant got a notice that said he was in violation of the city's nuisance ordinance because he had an unlicensed, junk vehicle parked alongside his property. In response, the complainant said that he sought out the town's mayor at the time, who reportedly told him "not to worry about it." So, the complainant didn't worry about it and left the truck parked where it was.

Fast forward to 2018, and the city towed the truck without notifying the complainant that it needed to be moved. This time, city officials cited their abandoned

vehicle ordinance to justify impoundment. However, city officials failed to send the complainant a certified letter within 20 days to notify him that the vehicle was taken into custody, as required by law. City officials also ignored the complainant's request for a hearing, which he was entitled to. In the meantime, the complainant's truck was sold because he was unable to claim the truck from the towing company.

We concluded that city officials had cause to tow the vehicle; it was unlicensed, apparently inoperable, and parked in the city right of way for a number of years. The problem was that city officials did not take all of the correct legal steps, thereby depriving the complainant of due process. Knowing that the complainant had a reasonable claim against the city, we suggested that city officials meet with the complainant to explore fair compensation.

A Lack of Hearing is Rectified

A complainant contacted our office after she received a disconnection notice from a municipal water utility. The notice stated that she had six days to make the payment or the water would be disconnected one week from the notice date. The complainant stated that she had not received any prior water bills, and the disconnection would greatly impact her and her children.

Iowa law authorizes a utility company to disconnect services if the account for the service becomes delinquent. However, disconnection cannot occur until the account holder has been given notice and has been given an opportunity for a hearing to contest the disconnection. We confirmed that the letter the complainant received constituted notice of the disconnection, but the complainant was never afforded an opportunity for a hearing to contest the disconnection.

The city attorney reviewed the matter after we made an inquiry, and agreed that the city code did not include information pertaining to a hearing prior to disconnection. The city accepted our suggestion that they update the city code to include the right to have a hearing, as well as what steps to take to request a hearing prior to disconnection.

Local Government

An Expensive Case of Mistaken Identity

Imagine discovering that your paychecks were being garnished by several hundred dollars due to unpaid court fines that weren't your responsibility. That was the situation facing a truck driver who called our office for help.

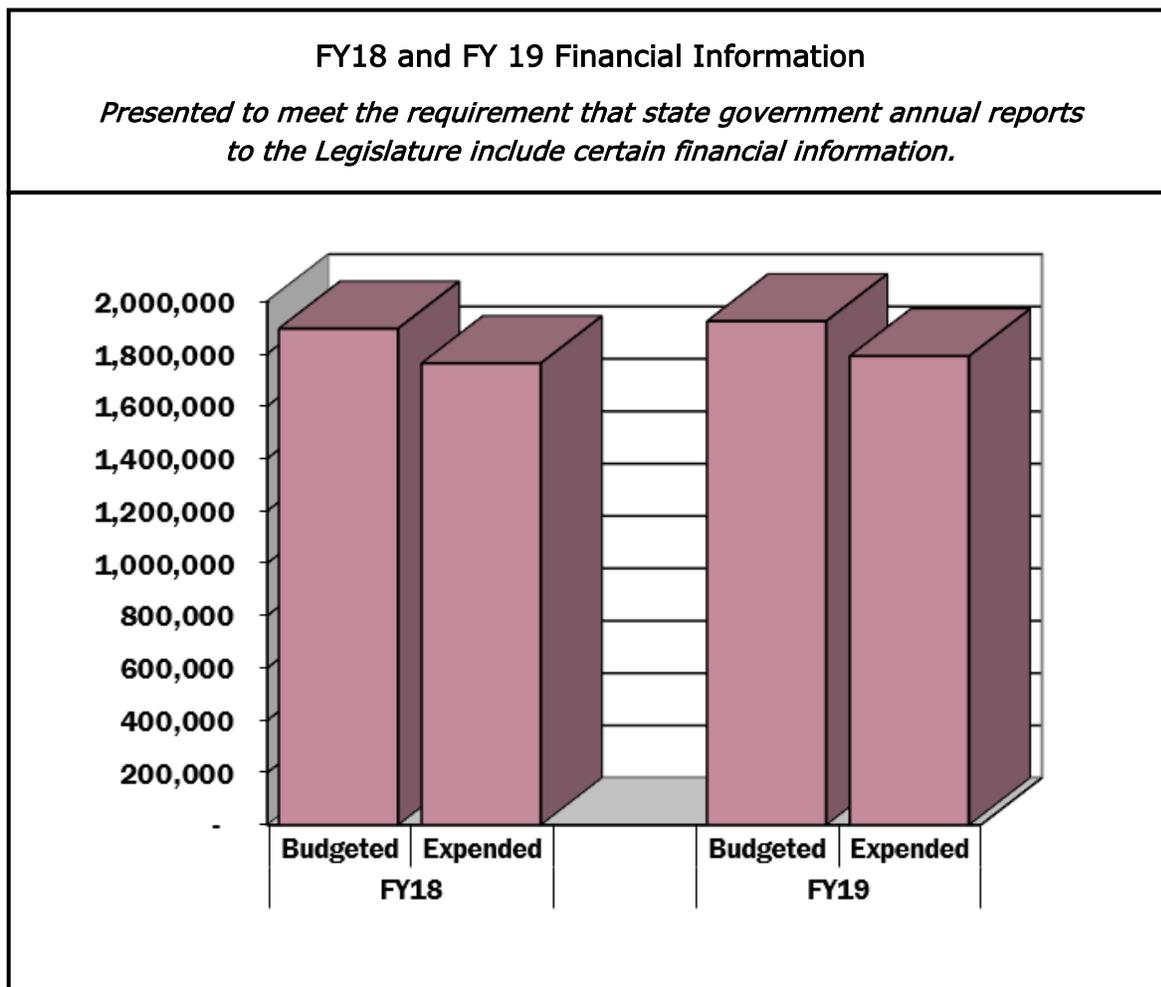
The man said he'd never been to Iowa, but was told that he owed \$1,060 for skipping court in two cases alleging alcohol-related crimes. Biographical information in the court records (and in police reports we requested) matched that of our complainant. But he continued to insist he wasn't the man who was arrested. The man said he was once a victim of identity theft, but he thought that problem had been resolved several years prior.

Before he contacted our office, the man had pleaded for leniency to a court clerk who took his information and passed it on to prosecutors. But no one in either office

had tried to investigate the man's claims. We asked the man for a current photo and a copy of his driver's license. We then asked the arresting police agency to dig up archived mugshots taken after each of the arrests. Although the arrests had taken place 15 years earlier, the suspect captured in police photos had a different appearance from the man who contacted our office.

We asked the county attorney and clerk of court to compare the sets of photos. Within days, the county attorney decided to cease collection efforts and drop the cases. The court followed by refunding the man all of the money that had been held from his paychecks.

The man was understandably elated. "Man, you are awesome," he wrote us in an email. "Thank you very much!"



FY2019 By AGENCY

	Jurisdictional Complaints	Jurisdictional Information Requests	Non- jurisdictional Cases	Total	Percentage of Total
State Government					
Administrative Services	9	0	0	9	0.17%
Aging	2	36	0	38	0.70%
Agriculture & Land Stewardship	5	1	0	6	0.11%
Attorney General/Department of Justice	10	3	0	13	0.24%
Auditor	1	2	0	3	0.06%
Blind	1	0	0	1	0.02%
Civil Rights Commission	6	3	0	9	0.17%
College Aid Commission	0	0	0	0	0.00%
Commerce	13	7	0	20	0.37%
Corrections	1182	42	0	1224	22.64%
County Soil & Water Conservation Districts	0	0	0	0	0.00%
Cultural Affairs	1	0	0	1	0.02%
Drug Control Policy	0	0	0	0	0.00%
Economic Development	0	0	0	0	0.00%
Education	7	1	0	8	0.15%
Educational Examiners Board	0	0	0	0	0.00%
Ethics and Campaign Disclosure Board	1	0	0	1	0.02%
Executive Council	0	1	0	1	0.02%
Human Rights	0	2	0	2	0.04%
Human Services	579	27	0	606	11.21%
Independent Professional Licensure	5	3	0	8	0.15%
Inspections & Appeals	35	6	0	41	0.76%
Institute for Tomorrow's Workforce	0	0	0	0	0.00%
Iowa Communication Network	0	0	0	0	0.00%
Iowa Finance Authority	1	0	0	1	0.02%
Iowa Lottery	0	1	0	1	0.02%
Iowa Public Employees Retirement System	0	0	0	0	0.00%
Iowa Public Information Board	5	0	0	5	0.09%
Iowa Public Television	0	0	0	0	0.00%
Law Enforcement Academy	0	0	0	0	0.00%
Management	2	0	0	2	0.04%
Municipal Fire & Police Retirement System	0	0	0	0	0.00%
Natural Resources	4	3	0	7	0.13%
Office of Ombudsman	2	50	0	52	0.96%
Parole Board	37	8	0	45	0.83%
Professional Teachers Practice Commission	0	0	0	0	0.00%
Public Defense	0	1	0	1	0.02%
Public Employees Relations Board	0	0	0	0	0.00%
Public Health	10	2	0	12	0.22%
Public Safety	11	1	0	12	0.22%
Regents	17	0	0	17	0.31%
Revenue & Finance	41	5	0	46	0.85%
Secretary of State	4	0	0	4	0.07%
State Fair Authority	0	0	0	0	0.00%
State Government (General)	146	35	0	181	3.35%
Transportation	31	1	0	32	0.59%
Treasurer	1	2	0	3	0.06%
Veterans Affairs Commission	3	0	0	3	0.06%
Workforce Development	31	1	0	32	0.59%
State Government - non-jurisdictional					
Governor	0	0	7	7	0.13%
Judiciary	0	0	143	143	2.65%
Legislature and Legislative Agencies	0	0	9	9	0.17%
Governmental Employee-Employer	0	0	12	12	0.22%
Local Government					
City Government	539	26	0	565	10.45%
County Government	1132	29	0	1161	21.48%
Metropolitan/Regional Government	22	0	0	22	0.41%
Community Based Correctional Facilities/ Programs	330	14	0	344	6.36%
Schools & School Districts	37	2	0	39	0.72%
Special Projects				38	0.70%
Non-Jurisdictional					
Non-Iowa Government	0	0	103	103	1.91%
Private	0	0	516	516	9.54%
Totals	4263	315	790	5406	100.00%