

April 29,2002

Mr. Dennis Paxinos
Yellowstone County Attorney
P.O. Box 35025
Billings, MT 59170-5025

Dear Mr. Paxinos:

You have requested that the Attorney General re-examine the holding in 47 Op. Att’y Gen. No. 2 (1997), which interpreted statutory changes to statutes governing provision of medical care to inmates in the county jail. That opinion held that the county is primarily responsible to third-party providers for post-arrest medical care given to a person who is ultimately charged with violation of state law, but the county may seek recovery from another party pursuant to state law. Your letter suggests that this holding be overruled or modified to recognize that the county need not pay for medical care for inmates not caused by some fault of the county. You suggest, for example, that the county would be responsible for costs incurred to treat injuries caused by a slip on a wet floor in the detention center, but not those incurred to treat the inmate’s self-inflicted injuries.

Having reviewed your letter and attached memorandum, and having carefully considered the arguments therein, it has been determined that no change in the holding of the earlier opinion is warranted. The county’s obligation to provide post-arrest medical care for inmates arises from the Due Process Clause of the United States Constitution. Clearly, the law does not allow the county to deny medical care to an inmate on the ground that the county would not be liable in tort for the cost of that care.

The real issue here revolves around financial responsibility for that care once it has been provided. The prior opinion holds that the county is the payor of first resort for health care providers who provide services to inmates, but allows the county to recoup those costs from third-party payors, such as insurance companies, or from the inmate if he or she has the financial ability to pay. This is clearly the scheme envisioned by Mont. Code. Ann. § 7-32-2222, which obligates the county to provide the necessary care and then, in subsection (4)(c), authorizes the county attorney to “initiate proceedings to collect from

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the inmate any charges arising from the medical services or hospitalization for the inmate involved in accordance with 7-32-2245.” This provision would be unnecessary if the county was not obligated to pay those charges in the first instance.

It is noteworthy that these statutes were substantially revised in 1995, but the legislature made no provision for relieving the counties of the obligation to pay for care required to treat injuries or illnesses for which the counties are not at fault. The legislature has not chosen to revisit these statutes since the 1997 opinion of this office was issued.

Obviously, if the legislature is not satisfied with the situation, it can change the statutes as it sees fit, within the confines of the requirements of Due Process. This letter of advice cannot be considered an official opinion of the Attorney General.

Sincerely,

CHRIS D. TWEETEN

Chief Civil Counsel

cdt/alh