

OP. NO. 04-013

**PRISONS AND OTHER METHODS OF CORRECTION: LOCAL
CORRECTIONAL FACILITIES – DUTIES OF SHERIFF – FUNDING LOCAL
CORRECTIONAL FACILITIES AND PROGRAMS – PRISONER PROGRAMS
AND TREATMENT.**

No requirement that sheriff, jail superintendent, or locality pay for inmate's medical treatment for condition preexisting incarceration, except when condition is communicable disease, serious medical need, or life threatening; sheriff must transport inmate to medical facility and pay for treatment when it is not available at jail.

The Honorable Robert T. Williamson
Sheriff for Frederick County
April 16, 2004

Issue Presented

You ask whether a sheriff, jail superintendent, or locality must pay for the treatment of an inmate, with a preexisting condition of a communicable disease, a serious medical need, or a life threatening condition, pursuant to the 2003 amendment of § 53.1-126; or whether the sheriff is required only to transport such inmate to a medical facility when medical treatment is unavailable at the jail.

Response

It is my opinion that a sheriff, jail superintendent, or locality is not required to pay for the medical treatment of an inmate with a preexisting condition, except when that condition is a communicable disease, a serious medical need, or a life threatening condition. It is further my opinion that when medical treatment for a communicable disease, a serious medical need, or a life threatening condition is not available at the jail, a sheriff is required to transport the inmate to a medical facility and pay for the treatment.

Applicable Law and Discussion

Section 53.1-126 previously imposed a duty upon sheriffs and jail superintendents to provide necessary medical services.¹ A prior opinion of the Attorney General concludes that § 53.1-126 obligates the sheriff for the medical expenses incurred in the treatment of inmates housed in his facility.² In 2003, the General Assembly amended § 53.1-126 (the "2003 amendment") to add limitations to the required payment for medical treatment:

Nothing herein shall be construed to require a sheriff, jail superintendent or a locality to pay for the medical treatment of an inmate for any injury, illness, or condition that existed prior to the inmate's commitment to a local or regional facility, except that medical treatment shall not be withheld for any communicable diseases, serious medical needs, or life threatening conditions.^[3]

The 2003 amendment contains two provisions. The first provision exempts payment for an inmate's preexisting medical conditions from the general requirement that a sheriff pay for the medical care of inmates housed in his facility. The second provision, however, limits the exception to conditions that do not include communicable diseases, serious medical needs, or life threatening conditions. Thus, even when an inmate has a communicable disease, serious medical need, or life threatening condition that existed prior to his incarceration, the sheriff is responsible for providing medical care at the correctional facility or paying for the costs of outside medical treatment.

Section 53.1-126 provides that when the medical facilities at a jail are adequately equipped, its medical staff may treat the inmate.⁴ The cost of treating an inmate at the jail is borne by the sheriff.⁵ Should the jail's medical staff determine that its facilities are inadequate to treat the inmate's condition, the sheriff must transport the inmate to a hospital or other appropriate medical facility⁶ and pay for the treatment.⁷

This interpretation of § 53.1-126 follows the general scheme of funding local correctional facilities. Generally, the state will provide funds to the localities to pay for the operating costs of local correctional facilities.⁸ Medical services are a portion of the operating costs.⁹ The Commonwealth has not manifested a willingness to take on additional expenses for inmate medical services, with one exception. The administrator of a local jail may petition the court to transfer an inmate, whom it convicted of a misdemeanor, and who is afflicted with a contagious disease, to the Department of Corrections.¹⁰ Once transferred, the Department is responsible for the inmate's care. In all other instances where medical treatment is required, however, the sheriff, jail superintendent, or locality remains responsible for the cost of inmate medical services.

Conclusion

Accordingly, it is my opinion that a sheriff, jail superintendent, or locality is not required to pay for the medical treatment of an inmate with a preexisting condition, except when that condition is a communicable disease, a serious medical need, or a life threatening condition. It is further my opinion that when medical treatment for a communicable disease, a serious medical need, or a life threatening condition is not available at the jail, a sheriff is required to transport the inmate to a medical facility and pay for the treatment.

¹See *Rector of Univ. of Va. v. Mitchell*, 50 Va. Cir. 381, 383, 1999 Va. Cir. LEXIS 449, at *4 (1999); see also *Farmer v. Brennan*, 511 U.S. 825, 832 (1994) (noting that Amendment VIII of Constitution of United States requires prison officials to provide adequate medical care for inmates housed in their facilities).

²See 1986-1987 Op. Va. Att'y Gen. 255; cf. 1987-1988 Op. Va. Att'y Gen. 469, 471 (concluding that local jail may employ physician to attend to inmates' medical needs).

³2003 Va. Acts chs. 928, 1019, at 1408, 1408, 1650, 1650, respectively. Both chapters are nearly identical; however, Chapter 1019 added the phrase "*serious medical needs*" to the amendment. 2003 Va. Acts ch. 1019, *supra*.

⁴See 1987-1988 Op. Va. Att'y Gen., *supra* note 2, at 471.

⁵A sheriff may charge inmates up to \$1 per day to defray the costs of their keep, which would include medical treatments. See Va. Code Ann. § 53.1-131.3 (LexisNexis Supp. 2003). Additionally, a sheriff may establish a program where inmates pay a portion of their medical expenses. See § 53.1-133.01 (LexisNexis Repl. Vol. 2002). Of course, a sheriff may recoup the cost of treating an injury from an inmate who intentionally inflicts injury on himself or another. See § 53.1-133.01:1 (LexisNexis Supp. 2003).

⁶See 1986-1987 Op. Va. Att'y Gen., *supra* note 2, at 255 (noting that sheriff should rely on advice of jail physician to determine when outside medical care is needed).

⁷See § 53.1-126 (LexisNexis Supp. 2003).

⁸See §§ 53.1-83.1, 53.1-84 (LexisNexis Repl. Vol. 2002).

⁹See § 53.1-85(3) (LexisNexis Repl. Vol. 2002).

¹⁰See § 53.1-22 (LexisNexis Repl. Vol. 2002).

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