In Jail and Out of Options

An Examination of the Systemic Issues affecting the Housing and Treatment of Iowans with Mental Illness in County Jails

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"*Correctional institutions are reservoirs of physical and mental illness, which constantly spill back into the community. If these diseases are to be treated properly, transmission interrupted, and the health of the general public optimized, then effective treatment and education must be provided within the jail system*."[2]

-Jay M. Pomerantz, MD

Part II: Mental Health Treatment and Medications in Iowa's County Jails

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Disability Rights IOWA
Law Center for Protection and Advocacy™

Table of Contents

Disability Rights Iowa (DRI) is the Congressionally-mandated protection and advocacy system for Iowans with disabilities, including individuals with mental illness. DRI's mission is to protect the human and legal rights of Iowans with disabilities and/or mental illness. DRI, as well as the other 56 protection and advocacy systems throughout the country, have the authority under federal law to investigate incidents of abuse and neglect of individuals with disabilities and to pursue legal, administrative, and other approaches to ensure the protection of individuals with disabilities. Protection and advocacy agencies are authorized to engage in a wide variety of activities to protect individuals with disabilities and/or mental illness, including monitoring facilities, conducting investigations, issuing public reports, engaging in litigation, administrative hearings and other dispute resolution activities, and educating policymakers. DRI's work to prepare, write, and distribute this report is funded under the Protection and Advocacy for Individuals with Mental Illness (PAIMI) grant, the Protection and Advocacy for Individuals with Developmental Disabilities (PADD) grant, and the Protection and Advocacy for Individual Rights (PAIR) grant.

I. Introduction

In Iowa's communities people have access to pharmacies and physicians, and many people take medications that affect their health, medical conditions, and even maintain lives in many cases. When a person is arrested and booked into a jail, access to that medication may end suddenly, whether it is a medication to treat a heart condition, seizure condition, or mental illness. Some of these medications require a person to take them on a timely and regular basis, or they will suffer negative effects that could be potentially irreversible or even deadly.

> "I have been told my medications for anxiety are being cut without seeing a doctor. Please, please help me."
>
> – an inmate in a county jail in Iowa

Denial of access to mental health treatment and medications is the most common complaint that DRI receives from inmates of county jails. Inmates contact DRI stating that they haven't received their medications since they were booked into a jail, that they have had their medications changed without consulting with any medical professional, or that their mental health medications have been withheld until they are able to provide payment for them. This report will discuss the legal responsibility of jails in providing mental health treatment, and will explain how jails are meeting, or not meeting, this important obligation.

II. Discussion

A. Legal Responsibility of Jails in Providing Mental Health Treatment

The Eighth and Fourteenth Amendments to the United States Constitution require jails to provide inmates with adequate mental health care.[3] Courts have determined that an inmate's right to mental health treatment is no different than their right to physical health treatment. County jails have the legal responsibility to provide treatment for the "serious medical needs" of inmates who are in their custody.[4] Serious needs include any condition, including mental health conditions, that have been diagnosed by a physician as needing treatment, or any other obvious condition that indicates a doctor's attention is needed.[5] Thus, if a jail houses a person who arrives at the jail with a valid prescription to treat a condition the jail must provide that treatment under the law. This legal responsibility is tempered however, by the ability of the jail to rely upon the medical opinion of practitioners that they provide to the inmate after the person enters the jail.[6] As such, inmates must be provided with access to their existing prescription medications after being booked into a jail, but those prescriptions can legally be changed, or discontinued, by another medical practitioner who sees the inmate while they are incarcerated. County jail staff also have a duty to investigate inmate medical complaints, and refer to medical professionals when there is a serious medical need. Treatment provided must "meet an acceptable standard of treatment and care in terms of modern medicine and technology, and current beliefs about human decency."[7]

B. Availability of Psychiatric Treatment

The state of Iowa is facing a mental health professional shortage. While some states average over 15 mental health professionals per every 100,000 residents, Iowa has fewer than 6 for that same population.[8] A further complication of this deficiency is that most psychiatrists in Iowa are clustered in a few select counties that have higher populations. Almost two-thirds of Iowa's psychiatrists practice in Polk, Johnson, and Linn counties, while sixty-eight counties don't have any psychiatrists at all.[9] As a consequence, practicing psychiatrists often have full case-loads, resulting in long wait times for patients. Considering the difficulty of private citizens to access mental health treatment, it is unsurprising that inmates also face barriers to accessing this care.

Approximately 70% of county jails in Iowa provide some form of mental health treatment to inmates who have mental illness, beyond medication confirmation and management. County jails typically provide mental health care for their inmates by one, or a combination of the following methods: in-house services provided by a mental health professional who comes into the jail; transportation off-site for the inmate to see a practitioner in the community; or services are provided via telemedicine which allows psychiatrists to visit with inmates via web camera on a computer at the jail.

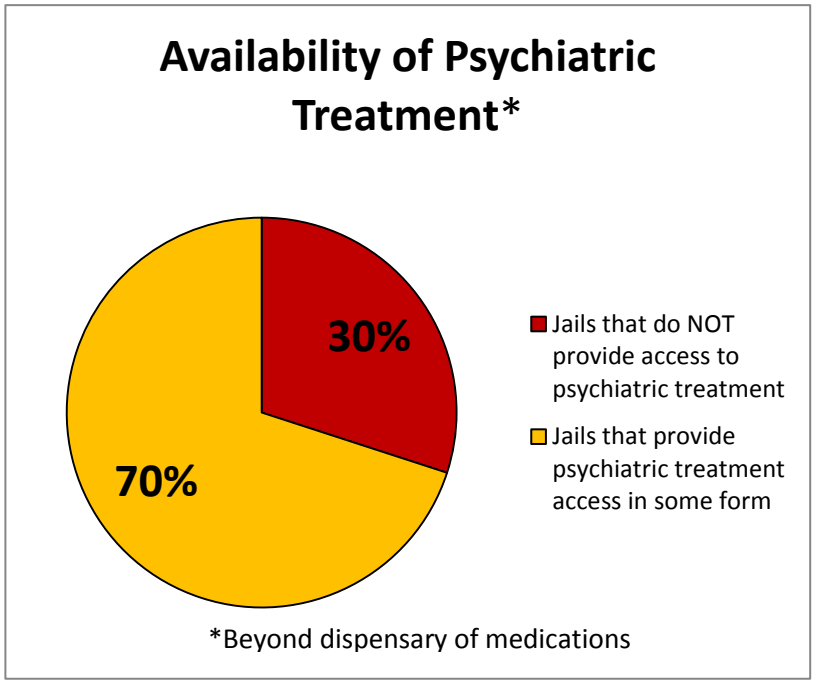

Figure 1: Pie chart showing that 70% of County Jails in Iowa provide mental health treatment beyond dispensary of medications.

Transporting inmates outside the jail to local community health centers, or to psychiatry offices or mental health institutes across the state, not only poses significant logistical and financial burdens on jail budgets and staff, the shortage in local mental health resources also results in long waits for inmates who could be in crisis, coupled with long travel while restrained. Many jails are looking for a more efficient way to provide inmates with mental health treatment without the long waits or hours of travel. Some of these jails work with their local Community Mental Health Centers, MHDS Regions, and some have turned to purchasing services via telemedicine. Telemedicinal psychiatry has become a

good option for rural jails, or jails located in counties that have no community mental health centers. Often MHDS Regions will contribute funding, or counties will partner with each other to provide funding for a telemedicine contract that allows the services to be accessible to multiple jails. These efforts, and other jail diversion efforts are discussed further in the third and final part of this report.

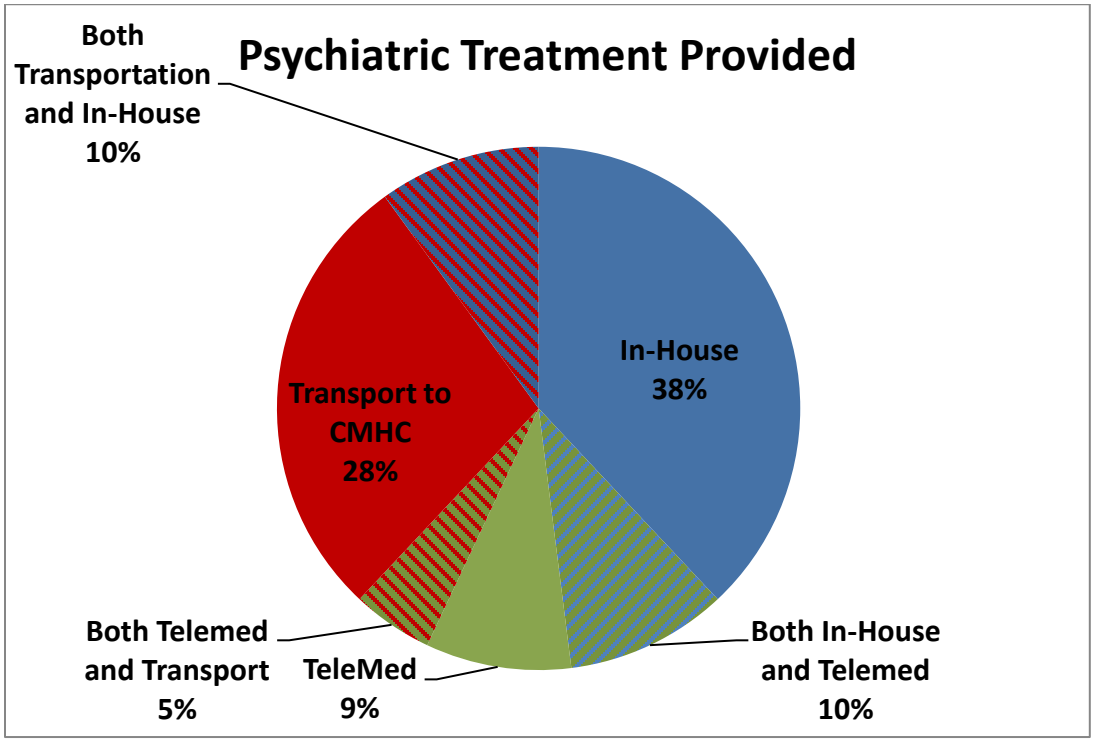

Figure 2: Pie chart showing percentages of types of treatment provided by county jails.

The 30% of Iowa's county jails that do not currently provide any mental health treatment options beyond medication management are falling below the legal standard of care for their inmates. These jails need to immediately identify psychiatric resources available to them in preparation for inmates with serious mental health needs, as even a delay in provision of this care can result in serious injury to the inmate.

Iowa law states that every jail "shall have a written plan to provide prisoners access to services for the detection, diagnosis and treatment of mental illness. The plan shall include a mental health screening process at admission."[10]

C. Access to Prescribed Medications

DRI consistently receives complaints from county jail inmates about access to prescribed mental health medications. Inmates and their family members have stated that upon entering jail, the inmate is denied access to their prescription medications for days or weeks after the inmate is booked, or the medication is restricted from them for the entirety of their stay. These complaints can be condensed to three distinct issues: initial access

to medications after booking, jail policies restricting certain medications by formulary or type, and denial of access based on non-medical factors such as cost or convenience.

i. Initial Medication Administration

Initial administration of medications in jails requires the confirmation and acquisition of the inmates current, valid prescription. Approximately 84% of county jails allow inmates or their family members to bring medications to the jail to allow for quicker access; however, usually the medication must be in its original prescription bottle, and it typically must be confirmed with a pharmacist before it is given to the inmate. This is because some inmates will bring in medications that are not valid, not what they are labeled, or are not their own. Some jails allow medications to be brought to the jail, but use it only to identify the correct and current information, then the inmate is given the same drug from the jails own dispensary. The remaining 13% of jails do not allow outside medications to be brought in, often because they do not have access to on-site staff or resources that allow them to confirm medications. Administration of medications after booking can be further delayed if the inmate is intoxicated, if the inmate is booked in late at night when medical professionals are not immediately available, or if the inmate cannot provide current information about their medications.

"I was booked into the jail along with all of my medications, yet a lot of my meds were suddenly discontinued."

- an inmate in a county jail in Iowa

Although confirmation and acquisition of a new inmate's medications can take time, jails should have efficient existing processes for this as delays in administering medications to inmates can constitute deliberate indifference in violation of the inmate's constitutional rights.[11] For example, delaying access to medications such as anticonvulsants, insulin, certain heart medications, and antipsychotics risks serious health complications for the inmate.

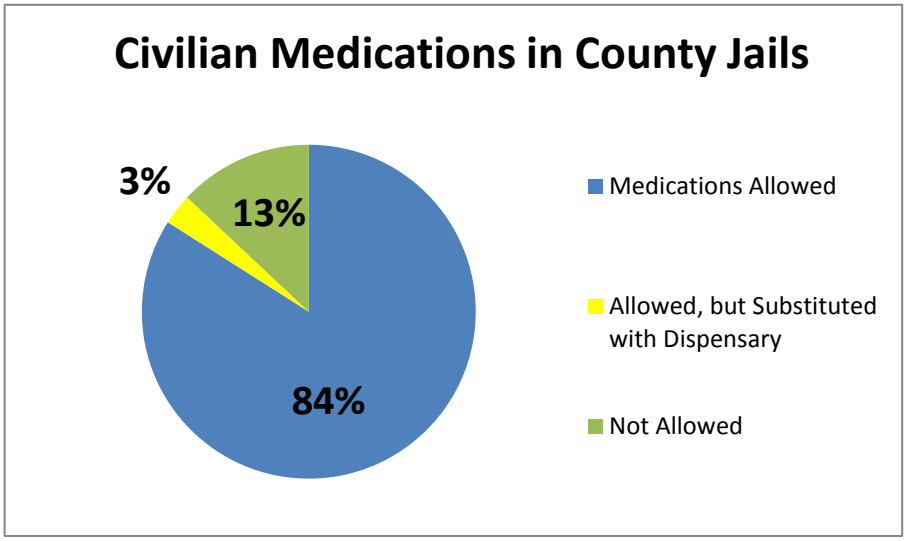

Figure 3: Pie chart showing that 87% of county jails allow inmates to bring in medications from the community.

ii. Medication "Type" and Formulary Restrictions

Another consistent complaint DRI receives from mentally ill inmates is the denial of access to specific medications, blocked by the jail as a result of their "type." Bans on the antipsychotic drug "Seroquel" are very common among county jails. Other common examples of medication "type" restrictions in jails include jail policies banning narcotics, benzodiazepines, sleep aids, and amphetamines. For example, if a person has a valid prescription for Alprazolam (a common benzodiazepine) and gets arrested, once they are processed into a county jail they are at risk of not having access to that medication, even if they have taken that medication for years.

> "I have been denied my prescription for Trazadone for my sleeping disorder and I've been denied Klonopin for my anxiety disorder for 7 months."
>
> -an inmate in a county jail in Iowa

Some jails contract with medical professionals who will review the inmate's medical history and will often substitute the benzodiazepine with an alternative drug, or gradually withdraw the inmate from the drug using taper procedures. Other jails will discontinue the medication entirely without medical oversight, a policy that can be harmful or even deadly to inmates who have been on the medication for years.[12] An inmate in an Ohio county jail was refused access to his prescription for Alprazolam and died within days from excruciating withdrawals that resulted in hallucinations.[13] That jail was sued by the family members of the deceased inmate and settled for over 3 million dollars.[14] This case is not unique. A simple internet search revealed dozens of similar cases and this situation could repeat in Iowa if jails continue to improperly deny inmates access to their medications. Jails which by policy or practice ban certain mental health medications and refuse inmates access to these medications without medical assessment or monitoring, risk the health and safety of their inmates as well as place themselves at great risk of liability.

Approximately 57% of Iowa's county jails restrict inmate medications based on type, but more than half of those jails allow exceptions to these restrictions or perform medically supervised tapers.

Similarly, many jails may restrict certain inmate medications by brand, based on an established formulary. Larger jails, and those who contract with a correctional medical company, often order medications from a pre-defined list of medications that are identical or similar to name-brand drugs. Disputes over jail formularies arise when there is no exact generic drug equivalent for an inmate's prescribed medication. This is especially problematic if an individual has managed their mental illness over a long period of time with a drug that is not on a jail's formulary list. In these situations, substituting mental health drugs is a risky gamble which might result in the unnecessary decompensation of a person who had previously successfully managed their symptoms, but regresses to

mental illness when in jail. Notably, almost every jail interviewed indicated that they provide exceptions to their formulary in such cases, and if necessary for the treatment of a particular inmate, a name-brand or off-formulary drug will be provided.

> "The jail changed my meds without consent and when they offered me the new ones without any information I refused to take something I knew nothing about."
>
> – an inmate in a county jail in Iowa

Legally, medication decisions including changes based on type or formulary are covered by the same principles. County jails are required by law to provide prescribed treatment for diagnosed conditions of incarcerated inmates. The Iowa Administrative Code states that a "prescription medication, as ordered by a licensed physician...shall be provided in accordance with the directions of the prescribing physician[.]"[15] However, jail staff can rely on the opinion of the medical authority they provide to the inmate over the inmate's civilian physician. [16] Thus it is acceptable under the law for a jail to substitute an inmate's civilian medications with new drugs recommended by a physician who contracts with, or works at the jail. This means that an inmate's civilian medication can be substituted by type or substituted to a drug covered under the jails formulary *if* the jails licensed treating physician recommends it. However the law does not allow non-medically trained jail staff to unilaterally restrict confirmed prescription treatments for inmates, solely based on jail policy, without the consultation or supervision of trained medical staff.

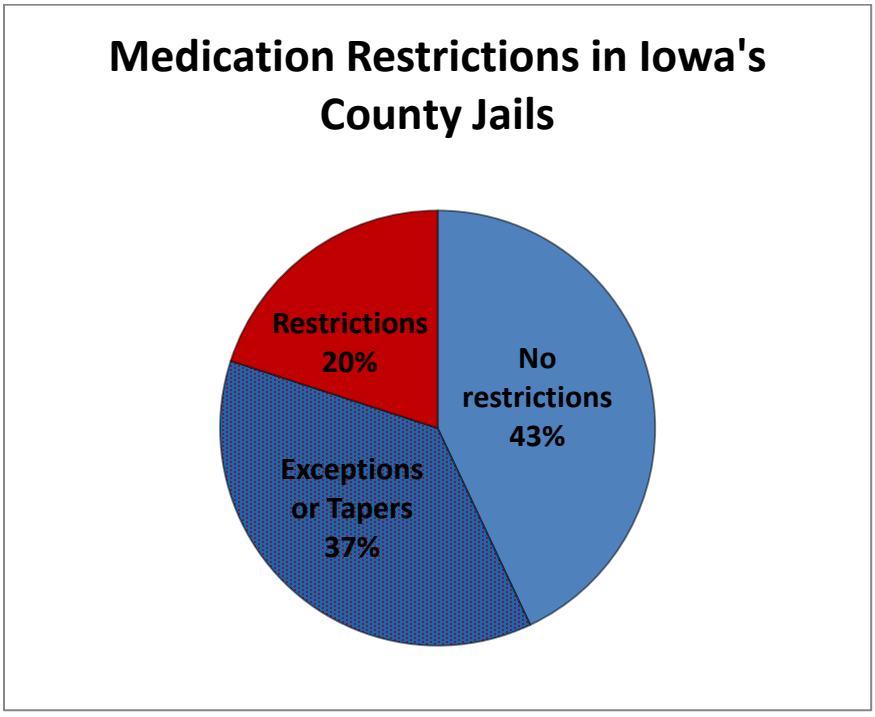

Figure 4: Pie chart showing that 20% of county jails in Iowa restrict access to certain medications without exceptions or providing tapers.

iii. Non-Physician Medical Decisions

Jail staff who are not medical professionals should not make medical decisions concerning inmate treatment. Medical decisions based on non-medical factors such as cost, duration of confinement, disciplinary reasons, or the ability of the inmate or other party to pay for the treatment, are not allowed under the law.[17] Similarly, if jail staff or medical staff provided by the jail make decisions that are so inadequate that "no trained health professional would ever make that decision" the inmate may have a valid claim for violation of his or her constitutional rights.[18] Iowa law requires that every jail have a designated licensed physician, and have access to medical resources on a 24-hour basis.[19]

DRI has received multiple complaints from inmates stating that they have been denied access to mental health appointments or medications based solely on their inability to pre-pay for the treatment.

> "I completed the medical kite to get a mental health appointment and they said they're not going to make me an appointment because I don't have $150.00 to cover it."
>
> – an inmate in a county jail in Iowa

Although most interviewed jail staff indicated deference to opinions of medical staff, or stated that they take the inmates to the local hospital if they have any doubts or concerns about the person's health or medications, not all jail staff indicated such caution. More than once DRI encountered staff who stated that they determine which medications inmates receive based on non-medical factors. For example, one agency indicated that in the case of an inmate who has identified many medications, they negotiate with the inmate about which identified medications they will receive until they can get an appointment with a local physician. On another occasion jail staff indicated that if an incoming inmate was on Medicaid but did not either bring their medications with them or have access to a Medicaid-financed re-fill, they would not provide the inmate with the medication until they were due for another re-fill.[20] In both of these situations jail staff without the requisite training are making medical decisions for inmates, risking the health and safety of their inmates, and opening up their agency to potential liability. Although we informed these agencies of the impropriety of their policies, and they rectified their practices, it is likely other jails in the state are also making medical decisions based on non-medical factors.

Although jails are not designed as therapeutic environments, and accessing mental health treatment for inmates can be logistically challenging, Iowa's county jails must have effective policies and practices in place to ensure that inmates with mental illness have access to mental health treatment and medications they need while incarcerated.

End Notes

[1] Photo credit: http://www.careaboutyou.info/wp-content/uploads/2015/02/cau-image-3.jpg.
[2] Jay M. Pomerantz, MD, *Treatment of Mentally Ill in Prisons and Jails: Follow-up Care Needed*, MEDSCAPE, *available at*, http://www.medscape.com/viewarticle/458600.
[3] Farmer v. Brennan, 511 U.S. 825, 832 (1994); *see also* Bowring v. Godwin, 551 F.2d 44, 47 (4th Cir. 1977).
[4] Estelle v. Gamble, 429 U.S. 97, 104 (1976) and IOWA ADMIN. CODE §201—50.15.
[5] Brown v. Johnson, 387 F.3d 1344, 1350–52 (11th Cir. 2004) and IOWA ADMIN. CODE §201—50.15.
[6] Vaughan v. Lacey, 49 F.3d 1344, 1345–46 (8th Cir. 1995).
[7] *See Estelle v. Gamble*, at 102.
[8] David Crary, *There's A Serious Shortage of Psychiatrists In The U.S.,* HUFFINGTON POST, Sept. 8, 2015, *available at* http://www.huffingtonpost.com/entry/theres-a-serious-shortage-of-psychiatrists-in-the-us_55eef13ce4b093be51bc128f.
[9] Chelsea Keenan, *Iowa faces shortage in psychiatrists, and resolving the problem won't be easy*, THE GAZETTE, Mar. 8, 2015, *available at* http://www.thegazette.com/subject/news/iowa-faces-shortage-in-psychiatrists-and-resolving-the-problem-wont-be-easy-20150308.
[10] IOWA ADMIN. CODE §201—50.15(6)(d).
[11] *See* Phillips v. Jasper Co., 437 F.3d 791, 795 (8th Cir. 2016).
[12] Donna J. Miller, *Sean Levert, denied medication, hallucinated for hours before he died in jail,* THE PLAIN DEALER, Nov. 11, 2008, *available at* http://blog.cleveland.com/metro/2008/11/post_15.html.
[13] *Id*.
[14] *County approves $3.375 million payment to settle Levert lawsuit,* THE PLAIN DEALER, Nov. 18, 2010, *available at* http://blog.cleveland.com/metro/2010/11/county_approves_375_million_pa.html*; see also* http://www.gbfirm.com/4-million-jail-death-settlement-largest-in-ohio-reforms-to-follow/.
[15] IOWA ADMIN. CODE §201— 50.15(7)(d).
[16] Vaughan v. Lacey, 49 F.3d 1344, 1345–46 (8th Cir. 1995).
[17] Hartsfield v. Colburn, 371 F.3d 454, 457 (8th Cir. 2004)(holding that withholding treatment for a prisoner for disciplinary reasons raises a factual issue as to deliberate indifference to a prisoner's serious medical need).
[18] *Your Right to Adequate Medical Care*, A Jailhouse Lawyers' Manual, Columbia Human Rights Law Review (2009); Rosado v. Alameida, 349 F.Supp. 2d 1340, 1344–45 (S.D. Cal. 2004).
[19] IOWA ADMIN. CODE §201—50.15(1).
[20] The Iowa Department of Human Services "Medicaid Provider General Program Policies" indicate that when a person is incarcerated, they are no longer covered for payment for services provided: "Payment will not be made for medical care and services that...are provided to a person while the person is an inmate of a non-medical public institution. A non-medical public institution includes, but is not limited to, jails, prisons, and juvenile detention centers." Iowa Department of Human Services, *Medicaid Provider General Program Polices, All providers I. General Program Policies*, 26 (June 1, 2016) *available at* https://dhs.iowa.gov/sites/default/files/All-I.pdf.