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PENAL INSTITUTIONS

Jails: Allow Jails to Recover Medical Costs from Inmates' Insurance Carriers, Provide for Deductions from Inmate Accounts to Defray Certain Costs

CODE SECTIONS: O.C.G.A. §§ 42-4-4(a)(2) (amended), 42-4-50 to -51, 42-4-70 to -71 (new),¹ 42-5-2 (amended), 42-8-35 (amended)²

BILL NUMBERS: HB 1170, HB 1769

ACT NUMBERS: 1202, 1393

SUMMARY: HB 1170 allows the officer in charge of a detention facility to recover medical costs from inmates' insurance carriers. HB 1769 provides that certain medical and other costs may be deducted from an inmate's jail account, and that repayment of the other costs may later be made a condition of probation.

EFFECTIVE DATE: July 1, 1992

History

A Georgia sheriff has a duty to provide jail inmates with medical care.³ Concern over rising medical costs incurred by jails providing inmate medical care led sheriffs to seek alternative means of paying those and other costs.⁴

HB 1170

HB 1170 was introduced as an effort to help counties and municipalities meet some of the rising costs of medical treatment of jail

1. Due to an oversight, HB 1170 and HB 1769 were both passed with sections to be codified at O.C.G.A. §§ 42-4-50 to -51. HB 1170 is now codified at O.C.G.A. §§ 42-4-50 to -51 and HB 1769 at §§ 42-4-70 to -71. See Code Commission notes, O.C.G.A. §§ 42-4-50 to -51, 42-4-70 to -71 (Supp. 1992).

2. HB 1170 and HB 1769 both added a new, and different, subsection (8) to O.C.G.A. § 42-8-35. The relevant subsection from HB 1170 is codified at O.C.G.A. § 42-8-35(8) and the new subsection added by HB 1769 is now codified at O.C.G.A. § 42-8-35(9).

3. O.C.G.A. § 42-4-4(a)(2) (Supp. 1992).

4. Gary Hendricks, *Medical Costs Rise Along With Jail Populations, Clayton Asking State if it Can Bill Prisoners*, ATLANTA CONST., Feb. 13, 1992, at G4. Clayton County spent one million dollars for jail medical costs in 1991 while DeKalb County spent over one million dollars; Fulton County expects to spend three million dollars in 1992. *Id.*

inmates.⁵ Originally, the bill provided that an inmate could be required to reimburse a detention facility for medical services furnished to him, or the officer in charge of the facility could arrange for his health insurance carrier to pay for the medical services rendered.⁶ As passed, the Act does not allow a sheriff or officer in charge to collect costs of medical treatment from an inmate personally.⁷

The Act amends chapter 4 of the Penal Institutions title of the Georgia Code by adding a new article 3.⁸ The Act also defines certain terms.⁹ A "detention facility" is defined as a municipal or county jail used for detaining persons charged with or convicted of a felony, misdemeanor, or municipal offense.¹⁰ As introduced, the bill included state penal institutions as detention facilities.¹¹ According to the bill's sponsor, the State Department of Corrections (DOC) did not want this bill to apply to state institutions.¹²

The Act defines an "inmate" as a person who is detained in a detention facility and charged with or convicted of a felony, misdemeanor, or municipal offense, and who is insured under existing individual, group, or prepaid medical coverage, or who is eligible for Medicaid benefits.¹³ Originally, this definition made no reference to insurance benefits.¹⁴ The insurance language was added by the House Committee on State Institutions and Property and remained in the bill as it worked through the General Assembly.¹⁵

5. Telephone Interview with Rep. Bill H. Barnett, House District No. 10 (Apr. 8, 1992) [hereinafter Barnett Interview]. Rep. Barnett sponsored HB 1170. Rep. Barnett stated that his local sheriff approached him and asked him to introduce legislation which would allow sheriffs to recover costs of medical treatment of jail inmates from the inmates personally or from their insurance carriers. *Id.*

6. HB 1170, as introduced, 1992 Ga. Gen. Assem.

7. O.C.G.A. §§ 42-4-50 to -51 (Supp. 1992).

8. *Id.*

9. *Id.* § 42-4-50 (Supp. 1992).

10. *Id.* § 42-4-50(1) (Supp. 1992). As introduced, the definitions section of the bill was to be codified at O.C.G.A. § 42-1-10, the General Provisions section of the Penal Institutions title. HB 1170, as introduced, 1992 Ga. Gen. Assem. The definitions were finally codified under the Jails chapter. See O.C.G.A. §§ 42-4-50 to -51 (Supp. 1992).

11. HB 1170, as introduced, 1992 Ga. Gen. Assem. Persons charged with county offenses were also included as potential inmates of detention facilities. *Id.*

12. Barnett Interview, *supra* note 5. Most of the language applying to state institutions was removed by the House Committee on State Institutions and Property. HB 1170 (HCS), 1992 Ga. Gen. Assem. Further clarification that the DOC was not included in the bill was made in the final version. HB 1170 (HFS), 1992 Ga. Gen. Assem.; see *infra* note 15.

13. O.C.G.A. § 42-4-50(2) (Supp. 1992).

14. HB 1170, as introduced, 1992 Ga. Gen. Assem.

15. HB 1170 (HCS), 1992 Ga. Gen. Assem.; O.C.G.A. § 42-4-50(2) (Supp. 1992). The final version of the bill further states that the term "inmate" does not apply to any sentenced inmate who is the responsibility of the Department of Corrections. O.C.G.A. § 42-4-50(2) (Supp. 1992).

The new definition of "inmate" reflects an important change in the bill as it developed. According to the bill's sponsor, the original intent of the legislation was to reach both insurance proceeds and inmate personal funds.¹⁶ While the bill was being considered in the House Committee on State Institutions and Property's Subcommittee on Penal Institutions, there was concern that requiring an inmate to reimburse jails for medical care could work hardship on the inmate's family.¹⁷ Prisoners' rights advocates were concerned that requiring inmates to pay personally for jail medical care was unconstitutional, particularly in the case of pretrial inmates who had not yet been convicted of crimes.¹⁸

The Act also provides that the officer in charge of a detention facility may require an inmate to state whether he has medical insurance,¹⁹ whether he is eligible for Medicaid benefits,²⁰ and if so, the name and address of the third party payor and the policy number.²¹ The Act provides that an officer in charge of a detention facility *will* provide a sick, injured, or disabled inmate access to medical services and *may* arrange for the inmate's health insurance carrier to pay for the service.²²

16. Barnett Interview, *supra* note 5.

17. Telephone Interview with Rep. Tim Perry, House District No. 5 (Apr. 8, 1992) [hereinafter Perry Interview]. Rep. Perry was concerned that if a jail was allowed to recover from an inmate personally, the inmate's family could lose its home if his assets were attached. *Id.* Rep. Perry is a member of the House Committee on State Institutions and Property. The Subcommittee on Penal Institutions considered HB 1170, and Rep. Perry co-sponsored the Floor Substitute of that bill. *Id.* See HB 1170 (HFS), 1992 Ga. Gen. Assem.

18. Telephone Interview with Gary Ratner, Staff Attorney, Georgia Legal Services (Apr. 6, 1992) [hereinafter Ratner Interview]. Mr. Ratner also stated that trying to collect money from primarily poor jail inmates was impractical as well. *Id.* Inmates stated that if they had money to pay for medical care, they could make bail and get out of jail. See Hendricks, *supra* note 4.

19. O.C.G.A. § 42-4-51(a)(1) (Supp. 1992). The original bill would have codified subsection (a) at O.C.G.A. § 42-1-10(2). HB 1170, as introduced, 1992 Ga. Gen. Assem.

20. O.C.G.A. § 42-4-51(a)(2) (Supp. 1992).

21. *Id.* § 42-4-51(a)(3)-(4) (Supp. 1992).

22. *Id.* § 42-4-51(b) (Supp. 1992). This language was not contained in the original bill. HB 1170, as introduced, 1992 Ga. Gen. Assem. The House Committee Substitute added the language, but provided that an officer in charge *may* provide access to medical services and arrange for an inmate's insurance carrier to pay for the services. HB 1170 (HCS), 1992 Ga. Gen. Assem. The change in language was in part a response to concerns by inmate advocates that the bill would give the officer in charge discretion to provide or not provide medical treatment. Barnett Interview, *supra* note 5. In addition, the new language allows the officer in charge to retain control over where treatment will occur. *Id.* This would prevent an insured inmate from demanding that treatment take place at, for instance, the Mayo Clinic, since his insurance company was paying for it. *Id.* There was no intention that inmates with insurance and those without would receive any different quality of medical services. *Id.*

The Act also provides that liability for medical care costs may not be construed as requiring payment by any person or entity other than the inmate personally or his insurance carrier.²³ The phrase "except by an inmate personally" is the only phrase remaining from the original bill which might be interpreted as implicating inmate liability for medical treatment costs.²⁴ The bill's sponsor stated that this language was not intended to implicate personal inmate liability, but would apply in the case where an inmate received the insurance benefit directly and would be required to pay the benefit over to the detention facility.²⁵

The Act also qualifies the duty of a sheriff to provide a jail inmate with medical aid²⁶ by adding that a sheriff may arrange for the health insurance carrier of an inmate, as defined in Code section 42-4-50, to pay for medical care provided to the inmate.²⁷ The Act does not change the sheriff's duty to provide access to care.²⁸

The Act also addresses the duties of governmental units having physical custody of inmates transferred from the custody of the State DOC.²⁹ The local governmental units are responsible for providing these inmates with medical care,³⁰ and the Act provides that the local governmental units may recover these costs from an inmate's insurance carrier.³¹

23. O.C.G.A. § 42-4-51(c) (Supp. 1992).

24. The original bill also contained a provision that the bill would not apply to an indigent inmate. HB 1170, as introduced, 1992 Ga. Gen. Assem. This language was deleted in the House Committee Substitute. HB 1170 (HCS), 1992 Ga. Gen. Assem.

25. Barnett Interview, *supra* note 5.

26. 1990 Ga. Laws 1443 (formerly found at O.C.G.A. § 42-4-2(a)(2) (1991)). This duty has now been modified by the Act, which added the language: "provided, however, that, with respect to an inmate covered under Article 3 of this chapter, the officer in charge will provide such person access to medical aid and may arrange for the person's health insurance carrier to pay the health care provider for the aid rendered. . . ." O.C.G.A. § 42-4-4(a)(2) (Supp. 1992).

27. O.C.G.A. § 42-4-4(2) (Supp. 1992). The original bill stated, in part:

[A]ny such person confined in the jail shall be required to reimburse the sheriff or county for medical aid furnished or the sheriff may provide such person access to medical aid and arrange for such person or the person's health insurance carrier to pay the health care provider for the aid rendered.

HB 1170, as introduced, 1992 Ga. Gen. Assem.

28. O.C.G.A. § 42-4-4(2) (Supp. 1992). The House Committee Substitute, instead of providing that an officer in charge "will" provide access to medical care, provided that he "may" provide access. HB 1170 (HCS), 1992 Ga. Gen. Assem. The House Floor Substitute changed the "may" to "will" to reflect similar language in O.C.G.A. § 42-4-51(b). HB 1170 (HFS), 1992 Ga. Gen. Assem.; *see supra* note 22.

29. O.C.G.A. § 42-5-2 (Supp. 1992).

30. *Id.* § 42-5-2(a) (Supp. 1992).

31. *Id.* § 42-5-2(b) (Supp. 1992). The medical care of inmates who are held in county jails but who are serving state sentences is the responsibility of the State Department of Corrections. *Id.* § 45-5-2(a) (Supp. 1992). This section of the original

The Act also adds a new condition to which a probationer may be subjected.³² The Act provides that an insured inmate covered under the Act who is reimbursed directly by an insurance carrier can be required to make reparation or restitution to a municipality or county which has provided medical care while he was incarcerated.³³ According to the bill's sponsor, this provision provides some "teeth" to the Act in that it would require an inmate covered under the Act to make sure that any insurance benefits payable to the jail by his insurance carrier are in fact paid to the jail.³⁴ This would have particular impact in cases where the insurance company has paid benefits directly to the inmate which he must then pay to the detention facility.³⁵ However, this Code section does not authorize a court to require an uninsured inmate to repay a county or municipality for medical aid provided to him while incarcerated.³⁶

The Act's reference to inmates who are eligible for Medicaid benefits under the Georgia Medical Assistance Act of 1977³⁷ raised concerns and questions from inmate advocates.³⁸ Inmates of public institutions are not eligible to receive Medicaid benefits while institutionalized,³⁹

bill allowed for inmate payment of medical bills. HB 1170, as introduced, 1992 Ga. Gen. Assem. Reference to expenses not paid by "the inmate or the inmate's health insurance carrier" in the original bill was changed in the House Committee Substitute to "the insurance carrier or the Department of Medical Assistance." HB 1170 (HCS), 1992 Ga. Gen. Assem. The House Committee Substitute provided in this section that the officer in charge "may" provide access to medical care and arrange for the inmate's insurance carrier to pay for the care; as in other sections of the Act, the "may" was changed to "will" in the final version. See HB 1170 (HCS), 1992 Ga. Gen. Assem.; O.C.G.A. § 42-5-2(b)(1) (Supp. 1992).

32. O.C.G.A. § 42-8-35(8) (Supp. 1992). Former subsections 8, 9, and 10 were renumbered 10, 11 and 12. *Id.* at § 42-8-35(10)-(12) (Supp. 1992) (formerly found at O.C.G.A. § 42-8-35(8)-(10) (1991)). The duplicate provision from HB 1769 was added at subsection 9. See *supra* note 2.

33. *Id.* §§ 42-4-50 to -51, 42-8-35(9) (Supp. 1992).

34. Barnett Interview, *supra* note 5.

35. *Id.* This would also apply to an inmate who would be required to follow up a claim with his insurance carrier to make sure it was paid. *Id.* The original bill contained language deleted by the House Committee on State Institutions and Property indicating restitution would be made to a "state or other governmental unit" for medical care. HB 1170, as introduced, 1992 Ga. Gen. Assem. Language indicating that this amount would be determined by the sentencing court and that no payment would be made to a governmental unit until reparation had been made to an aggrieved party under O.C.G.A. § 48-8-35(7) was included in the original bill but deleted in the House Committee Substitute. HB 1170 (HCS), 1992 Ga. Gen. Assem. The Act provides that no reparation or restitution will be made to a local governmental unit for medical care if the amount in question is in dispute unless the amount in question has been adjudicated. O.C.G.A. § 42-8-35(8) (Supp. 1992).

36. Barnett Interview, *supra* note 5.

37. O.C.G.A. §§ 49-4-140 to -157 (1990 & Supp. 1992).

38. Ratner Interview, *supra* note 18.

39. 42 C.F.R. § 435.1008 (1991).

so a sheriff would not be able to collect medical expenses from the Department of Medical Assistance.⁴⁰ Inmate advocates questioned why the Medicaid language was put into the bill at all.⁴¹

Inmate advocates were concerned that once an inmate is defined as an "inmate" for purposes of the Act,⁴² because he *was* eligible for Medicaid benefits before he was incarcerated, an attempt might be made to make him repay medical costs as a condition of probation, even though Medicaid would not cover the medical costs because they were incurred while the inmate was in a public institution.⁴³ The State would then be placing an additional burden on these inmates because of their status as recipients of federal benefits.⁴⁴ The bill's sponsor stated that there was no intent to thus burden Medicaid recipients or to require them to repay medical costs because of their status.⁴⁵

The House floor substitute passed the Senate Corrections Committee and was adopted by the full Senate without change.⁴⁶

HB 1769

When HB 1170 reached the House Committee on State Property and Institution's Subcommittee on Penal Institutions, and it became clear that jails would not be able to collect money from inmates personally for medical care provided while incarcerated, alternative sources of funding to defray jail costs were sought.⁴⁷ HB 1769 was introduced to reach inmate personal jail accounts to pay for what jail officials called "frivolous" requests by inmates for medical attention.⁴⁸ Many sheriffs

40. See *id.*; see also Hendricks, *supra* note 4. The General Assembly debated a similar measure a few years ago and did not pass it because Medicaid excludes benefits for prisoners and because it is difficult to get insurance companies to pay benefits to counties. Hendricks, *supra* note 4. In addition, many private insurance policies have clauses which would allow them to deny coverage for medical expenses of prisoners. Perry Interview, *supra* note 17. Those companies whose policies do not have such clauses now will likely add them as soon as claims are filed against them by jails. *Id.*

41. Ratner Interview, *supra* note 18. According to the bill's co-sponsor, the Medicaid language was not removed in the event that Medicaid might one day be payable for medical costs of inmates of public institutions. Perry Interview, *supra* note 17.

42. See O.C.G.A. § 42-4-5(2) (Supp. 1992).

43. Ratner Interview, *supra* note 18.

44. *Id.*

45. Barnett Interview, *supra* note 5.

46. O.C.G.A. §§ 42-4-4(a)(2), -50 to -51, 42-5-2 (Supp. 1992).

47. Perry Interview, *supra* note 17. Rep. Perry sponsored HB 1769.

48. *Id.* Rep. Perry said that in looking for alternative sources of money, the Subcommittee realized that some jail inmates had fair amounts of money in their jail accounts. *Id.* These accounts generally include the money an inmate has on his person when arrested, and any money sent to him by family or friends. *Id.* The money is typically used by the inmate for cigarettes and other incidental expenses in

feel that inmates request medical attention when they do not really need attention simply because they are bored or want to cause trouble.⁴⁹ HB 1769 does not relieve a sheriff from his duty to provide and pay for an inmate's actual medical needs.⁵⁰ If an inmate requests to see medical personnel and a medical practitioner or an officer of a detention facility determines that he actually does need medical care, the jail is responsible to provide and pay for the care.⁵¹ If an officer of the detention facility or a medical practitioner determines that the inmate does not in fact need treatment, the inmate may be charged five dollars for the visit if he has a balance of at least ten dollars in his jail account.⁵² HB 1769 is designed to deal with minor medical expenses, not the major expenses contemplated by HB 1170.⁵³

Other costs incurred as a result of wrongful acts by an inmate may be deducted from this jail account as well.⁵⁴ The expenses for which an institution's officer in charge may make a "reasonable deduction" from an inmate's jail account include the cost of willful damage of public property by an inmate while incarcerated,⁵⁵ the cost of medical treatment for injuries an inmate inflicts on himself or others,⁵⁶ extraordinary costs incurred as a result of an inmate's escape,⁵⁷ and costs of quelling an inmate riot in which an inmate was unlawfully involved.⁵⁸

jail. Ratner Interview, *supra* note 18. In most cases, these accounts are small or empty; Georgia county jail inmates rarely earn money in jail. *Id.*

49. Perry Interview, *supra* note 17.

50. *Id.*

51. *Id.*; O.C.G.A. § 42-4-71(b) (Supp. 1992).

52. O.C.G.A. § 42-4-71(a)(2)-(b) (Supp. 1992); *see supra* note 1.

53. Perry Interview, *supra* note 17.

54. O.C.G.A. § 42-4-71(b) (Supp. 1992). The bill's sponsor intended that these deductions be limited to five dollars per incident of wrongful conduct, as were the medical visits, given the relatively small amounts available in inmate accounts. Perry Interview, *supra* note 17. The Act provides, however, that a "reasonable deduction" will be made for these costs. O.C.G.A. § 42-4-71(a) (Supp. 1992). As introduced, the bill provided that a sheriff would establish criteria for the reasonable deduction with the approval of the municipal or county governing authority. HB 1769, as introduced, 1992 Ga. Gen. Assem. The Georgia Sheriffs Association opposed the idea of approval by the governing authorities. Perry Interview, *supra* note 17. The House Floor Substitute deleted the approval language and the sheriff will determine what constitutes a "reasonable" amount. HB 1769 (HFS), 1992 Ga. Gen. Assem.; Perry Interview, *supra* note 17.

55. O.C.G.A. § 42-4-71(a)(1)(A) (Supp. 1992).

56. *Id.* § 42-4-71(a)(1)(B) (Supp. 1992). Inmate advocates felt that physical injuries an inmate inflicted on himself did not belong in this section, which primarily addresses acts of property damage. Ratner Interview, *supra* note 18.

57. O.C.G.A. § 42-4-71(a)(1)(C) (Supp. 1992). The limitation to extraordinary costs was added by the Senate. HB 1769 (SCSFA), 1992 Ga. Gen. Assem.

58. O.C.G.A. § 42-4-71(a)(1)(D) (Supp. 1992).

The original bill did not limit deductions from inmate accounts to only those inmates with a balance of ten dollars or more in their accounts.⁵⁹ The House floor substitute added the ten dollar limit.⁶⁰ An amendment was offered and defeated on the House floor which would have charged inmates twenty-five dollars per requested medical visit.⁶¹ The bill's sponsor felt that five dollars was a reasonable charge for an inmate-requested medical visit, but that twenty-five dollars might be considered excessive if challenged in court.⁶²

As the Senate Corrections Committee considered HB 1769, prisoners' advocates expressed their concern that the five dollar charge was unfair to jail inmates because they do not have the opportunity to "self-medicate."⁶³ Charging five dollars for a request made for the purpose of getting an aspirin seemed excessive.⁶⁴ The Senate Corrections Committee added a definition of medical treatment, which requires a face-to-face visit with medical personnel for medical examination or treatment.⁶⁵ The Senate Committee also added a provision that any sums collected from an inmate would be reimbursed if the inmate was not convicted.⁶⁶

The Senate Corrections Committee also added a provision that a sentencing court may make repayment of expenses incurred for

59. HB 1769, as introduced, 1992 Ga. Gen. Assem. Prisoners' rights advocates were concerned about indigent inmates being forced to pay for medical visits. Ratner Interview, *supra* note 18.

60. HB 1769 (HFS), 1992 Ga. Gen. Assem.; O.C.G.A. § 42-4-71(a)(2) (Supp. 1992).

61. Perry Interview, *supra* note 17.

62. *Id.* Rep. Perry felt that the five dollar fee would withstand challenge because of the case of *Scott v. Angelone*, 771 F. Supp. 1064 (D. Nev. 1991). *Scott* involved a sentenced state inmate who challenged a prison regulation which allowed a four dollar fee to be deducted from an inmate's prison account for a non-emergency nonreferred medical visit. *Id.* The inmate did not challenge the constitutionality of the regulation, but the prison's authority to make the regulation under the Nevada Administrative Procedures Act. *Id.* at 1066. The only constitutional issue in the case was whether the prison could deduct from or freeze the inmate's account without a predeprivation hearing. *Id.* at 1067-68. Prisoner advocates point out that in Nevada, inmates are allowed to work and are paid at least minimum wage, so that their inmate accounts are considerably larger than those of most Georgia jail inmates. Ratner Interview, *supra* note 18. Advocates also point out that the Nevada case involved convicted inmates, while the Georgia Act would reach inmates who had not yet been convicted. *Id.*

63. Ratner Interview, *supra* note 18. For instance, an inmate cannot just go to the medicine cabinet and get an aspirin for a headache or a bandaid for a minor cut. *Id.*

64. *Id.*

65. O.C.G.A. § 42-4-70(3) (Supp. 1992). The definition reflects language found in the Nevada regulation. See *Scott v. Angelone*, 771 F. Supp. 1064, 1066 (D. Nev. 1991).

66. O.C.G.A. § 42-4-71(c) (Supp. 1992). Inmate advocates applauded this addition. Ratner Interview, *supra* note 18.

wrongful acts by inmates while incarcerated a condition of probation.⁶⁷
The House agreed to the Senate substitute without change.⁶⁸

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67. HB 1769 (SCS), 1992 Ga. Gen Assem.; O.C.G.A. § 42-8-35(9) (Supp. 1992).

68. Perry Interview, *supra* note 17; see Final Composite Status Sheet, Mar. 31, 1992.